

PDI-02 COMPLIANCE AND ADVICE

(*UCD module code: FIN1052B*)

Valid for exams up to and including May 2019



The
Insurance
Institute

This textbook is for members of The Insurance Institute
on the pathway to an APA or CIP designation.

PDI-02: Compliance and Advice

UCD module code: FIN1052B

This is a module on a programme of The Institute of Banking –
a recognised college of University College Dublin (UCD) –
leading to a UCD Professional Certificate or Diploma.



The Institute
of Banking



*A recognised
college of UCD*

Technical updater 2018

Máire Ryan McSherry MA, FCII, FCOI, LCOI updated this textbook in 2013, 2014, 2016 and March 2018.

Technical updaters

A number of technical updaters contributed to specific sections during the 2017 update.

Una Breathnach, ACII, LCOI updated this textbook in 2015.

Original author

David Ransom FCII is a Chartered Insurance Practitioner. He has worked as an underwriting manager, writing multinational business and global programmes in the London market for a major composite insurer. Having headed up training and examinations at the Chartered Insurance Institute (CII), he is the author of several current insurance texts, lecturing extensively on many insurance subjects. He runs his own training company and is a non-executive director of a firm of Lloyd's Insurance Brokers.

Declarations

This textbook was prepared by The Insurance Institute of Ireland ('The Insurance Institute') as a comprehensive support for members of The Insurance Institute of Ireland who are engaged in private study leading to a professional qualification. The textbook has been prepared solely for use by these students and every effort has been made to ensure accuracy. This textbook contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate. While efforts have been made to identify and obtain prior clearance from rights owners, whose work has been included in these materials, it may be that some copyright material has been unintentionally reproduced herein. Please contact the Institute should you consider this to be the case. The Insurance Institute, the authors, verifiers or contributors do not accept any legal responsibility whatsoever for consequences that may arise from any errors or omissions or any opinions or advice in the textbook.

Copyright

Copyright © The Insurance Institute of Ireland 2018. All rights reserved. This textbook is issued by The Insurance Institute solely to students taking its educational programmes and/or examinations. It may not be sold on or used, in whole or in part, for any course of study/examination of any other body whatsoever without prior permission, in writing, of The Insurance Institute. This study textbook, or any part thereof, may not be made available in any library and it may not be reproduced, in whole or in part, stored in a retrieval system or transmitted in any form or by any means – electronic, electrostatic, magnetic, mechanical, photocopying, recording or otherwise – without prior permission, in writing, of The Institute of Ireland.

Acknowledgement

The Insurance Institute of Ireland wishes to express its sincere gratitude to those who contributed to verifying this textbook. Their input has been invaluable in producing such a comprehensive textbook.

How to study this module

Before starting to study this module, you should log into the Member Area of www.iii.ie to access your online study supports. Below is a snapshot of what you will see under 'My Examinations'.

Getting Started PDI-02

- 1 APA/CIP Welcome Guide
- 2 Learning Style Quiz
- 3 PDI-02 Learning Plan
- 4 APA & CIP Study Skills

This section welcomes you to the module, identifies how you learn best, provides you with your learning plan and gives you invaluable study skills tips.

Your learning plan

Your learning plan is essential to getting you started on this module as it shows you how to plan your study and cover all the material ahead of your exam. It will help you find the best way to approach your study, give you advice on how to manage your time and ensure you give yourself the best chance of exam success.

● HOW TO USE YOUR LEARNING PLAN

Welcome to your PDI learning plan, designed to support you and keep you on track throughout the semester. We understand that distance learning can be tricky as it relies on self-directed study, so we've put together this learning plan to help you to balance your time, cover all of the course material and perform at your best on exam day.

Here are some of the ways the learning plan can help you on your way to success.

● FOCUS YOUR STUDY

The syllabus and learning outcomes highlight what you're expected to learn in each chapter and how you can be assessed. By referring back to the learning outcomes in each chapter, you can chart your progress and ensure you're covering the required material completely and correctly. Learn more about learning outcomes on page 4.

● MASTER EXAM TECHNIQUE

All of your study builds towards the exam, so keep this in mind throughout the semester. Practice mock exams in exam conditions to ensure you can reproduce all you've learned in an exam-style situation. Suggested exam timings and top tips for exam success can be found on page 14.

● MANAGE YOUR TIME

Studying while you work can be challenging, but leaving it all until the last minute is not the answer. You need to strike a balance between work and study. An online seminar can be found on page 14.

● USE YOUR STUDY SUPPORTS

Advancing your technical knowledge through the Professional Diploma in Insurance (CIP) may prove very demanding, so we've put together study supports to help you. Learn more on page 11.

● CONTACT US

We would love to take this opportunity to wish you well in your studies and encourage you to contact our Member Services team if you have any questions. Call us on 01 645 6070 or email memberservices@iii.ie – we're always happy to help.

We welcome all feedback, so if you have any ideas or suggestions on how this learning plan (or any of our products or services) can make more effective, please forward them to Member Services. Alternatively, you can include them in the next semester student survey.

Online study supports

We have a range of study supports that can help you as you work through this module. As well as your learning plan, these supports include:

- an e-book
- an exam countdown timer
- webinars
- chapter-by-chapter key points
- online mock exams with personalised feedback

You'll find these supports and more in the Member Area of www.iii.ie

Textbook

All of the questions that feature in your exam are based on this textbook. The online supports on the previous page are provided to aid your study of the textbook, not replace it. The textbook includes key features designed to help you break down and remember the material as well as understand central concepts. These features work as follows:



Examples: These indicate how theories operate in simple day-to-day situations.



Just thinks: These offer you an opportunity to interact with the material 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.



Quick questions: These appear throughout the textbook and are designed to test your knowledge as you go. You can check your answers at the end of each chapter.



End of chapter questions: These are a great opportunity to test your learning and understanding of the chapter's topics. You can check your answers at the end of the chapter.



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 solutions are provided to help you to focus your study and prepare for your exam.



Websites: Throughout the textbook we refer to websites that can be used to provide additional context to the material you're studying and keep you up-to-date with current trends and developments. It is important to note however, that you will only be examined on the information contained within this textbook.



Index: At the end of the textbook, there is an index of websites, legal cases, legislation, acronyms, and 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**, who will be happy to help.

Table of contents

Chapter 1	
Why and how we regulate	1
A The need for regulation	3
B Regulation and supervision	5
C Impact of European regulation	8
D European Union Non-Life Insurance Directives	11
E Insurance mediation	14
F Role of the Central Bank	19
G Summary	22
Chapter 2	
Impact of regulation	31
A Authorisation of insurers and intermediaries	33
B Regulatory supervision of insurers and intermediaries	36
C Enforcement by the Central Bank	43
D Regulation of the private health insurance market	47
E Summary	50
Chapter 3	
Agency and relationship management	59
A Creation of agency	61
B Duties of an agent and a principal	62
C Termination of an agency	64
D Agency and insurance	65
E Terms of business	68
F Review of insurances	70
G Summary	73
Chapter 4	
Impact of the Central Bank Consumer Protection Code	83
A Consumer Protection Code	85
B General principles	88
C General requirements	91
D Provision of information	97
E Knowing the consumer and suitability	102
F Post-sale information requirements	105
G Rebates	107
H Summary	108

Chapter 5			
Insurance documentation	117	Referenced websites, legal cases and legislation	235
A Quotations	119	Acronyms	237
B Proposal forms	122	Glossary of key terms	239
C Policy documentation	128		
D Renewals	133		
E Summary	135		
Chapter 6			
Other legal requirements	145		
A Financial crime	147		
B Data protection	151		
C Equality legislation	157		
D Consumer protection	159		
E Record-keeping	162		
F Summary	164		
Chapter 7			
Ethics and competency	173		
A Fitness and probity	175		
B Minimum competency	180		
C Minimum competency standards	183		
D Continuing professional development	186		
E Responsibilities of the firm	188		
F Ethics and conflicts of interest	192		
G Summary	202		
Chapter 8			
Dispute resolution	211		
A Resolving errors and complaints	213		
B Financial Services and Pensions Ombudsman	218		
C Insurance Compensation Fund	223		
D Investor Compensation Scheme	225		
E Summary	226		

Chapter**1**

Why and how we regulate

What to expect in this chapter

This chapter provides:

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

Those who work in the Irish insurance industry quickly realise that it has a high level of external regulation. Firms (and their employees) must follow rules and procedures governing their day-to-day business.

These rules are enforced by regulatory bodies, with serious consequences for firms that don't abide by them. This chapter introduces the concept of regulation and supervision of insurance markets and considers their main features. The chapter aims to familiarise students with key themes that will be further developed throughout this textbook, e.g. types of regulatory supervision, the impact of European regulation and the role of the Central Bank of Ireland (the Central Bank).

Learning outcomes for this chapter

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

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 or regulation. 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, there are many flaws in this theory. 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. Failure to provide indemnity or compensation will have a potentially devastating effect. It follows that, unless the insured is fully aware of the product's scope, its limitations and circumstances may lead to the refusal of a claim.
- Competence of advice – Because insurance products are generally viewed as complex legal documents, the consumer must rely on the adviser to guide them through the application or claims process. This creates information asymmetry, whereby one party has more, or superior, knowledge than another. In an insurance situation, it is likely that consumers will have only basic information or knowledge about the financial product, while the adviser will be very knowledgeable. Although advisers must achieve and maintain a minimum level of competence, the consumer is not in a position to assess this.
- Conflict 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 their client.
- Financial failure of an insurance provider – Though an extreme situation, any failure on the part of one or more insurance providers could harm the stability of the wider economy. The problems of one firm could spread to others and an example of the resulting effect can be seen in the previous collapse of the worldwide banking sector.

The Insurance Supervision Directorate of the Central Bank is responsible for the supervision of insurance and reinsurance undertakings authorised in Ireland. As in the financial services industry, the Irish insurance sector is significantly strengthening its regulation. The government's justification for this is that **regulation**:

- sustains the health 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 and/or intermediaries)



regulation

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



**intermediary**

generic term for firms of all types that give advice on insurance products (see also 'insurance intermediary')

**insurer**

a risk-carrying regulated entity (product producer)

insurance intermediary

person/firm who, for remuneration, undertakes or purports to undertake insurance mediation

**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)**

This term refers to an individual involved in the advising process. Although advisers perform a number of tasks, their main role is to help a customer decide on insurance products and services.

broker

This term refers to 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

This term normally refers to a person, firm or organisation that has appointed a regulated entity to act on its behalf for insurance purposes. For a broker, the terms 'client' and 'customer' are interchangeable.

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

consumer

The Central Bank defines a consumer as any of the following:

- 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)
- b. incorporated bodies with an annual turnover of €3 million or less in the previous financial year (provided not part of a group with a combined turnover more than €3 million) ... and includes a potential 'consumer'

This definition of 'consumer' may be extended by the **Insurance Distribution Directive 2016** which is due to come into effect in 2018.

According to the **Consumer Insurance Contracts Bill 2017**, a consumer is:

- a. a natural person who is acting for purposes that are wholly or mainly outside his or her trade, business, craft or profession, or
- b. a person or group of persons having an annual turnover of €3 million or less in the financial year preceding the year in which such person or persons enters into a contract of insurance, provided that such person or persons shall not be a member of a group of persons having a combined turnover greater than €3 million and includes both a consumer who at the pre-contractual stage of a contract of insurance proposes to enter into a contract of insurance and also a consumer who has entered into a contract of insurance, and includes, where relevant, an 'average consumer'.

customer

This is a broader term than that of 'consumer' as it refers to:

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

regulated entity

This term refers to an **insurer** or **insurance intermediary** (e.g. a broker) that is authorised and regulated by the Central Bank. We sometimes use the term 'firm' in this context.

B Regulation and supervision

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

- structural regulation
- systemic regulation
- prudential regulation
- conduct of business rules.



supervision

the act or function of overseeing something or somebody

We will now briefly consider each of the four types of regulation and supervision.

B1 Structural regulation

Structural regulation is concerned with how financial markets work, especially in terms of competition. Greater competition provides better value for consumers, stimulates business and enhances the economy.

Under the **Competition and Consumer Protection Act 2014**, following the amalgamation of the Competition Authority and the National Consumer Agency in October 2014, the Competition and Consumer Protection Commission (CCPC) was formed. The Commission has a dual mandate to enforce competition and consumer protection law and will endeavour to:

- protect and strengthen competition
- empower consumers to make informed decisions
- protect consumers from harmful business practices.

The Competition Authority had previously published market studies on competition and anti-competitive practices in the insurance industry¹. A more recent example of the CCPC's activity is its investigation into suspected breaches of competition law in the motor insurance sector which included raids on the offices of several key motor insurance providers in July 2017². The investigation relates to industry participants openly signalling up-coming increases in motor insurance premiums in the State. The motivation behind this investigation is the CCPC's belief that 'Markets work best where businesses vigorously and independently compete against each other for customers. Statements signalling future pricing predictions or intentions may result in a degree of unspoken coordination, which may breach competition law. Statements by senior industry players have raised serious suspicion as to whether there is a link between these messages and subsequent price increases. The evidence collected through both the witness summonses and the information requests will assist us in establishing whether there has been a breach of competition law.'



structural regulation

regulation relating to how financial markets work, specifically geared towards maintaining competitiveness

¹ 'Allegations of a cartel in motor and liability insurance (March 2005)' and 'Competition in the private health insurance market (February 2007)'.

² Mark Hilliard and Joe Brennan, 'Motor insurance providers in Ireland targeted in anti-cartel inquiry', *The Irish Times*, 4 July 2017.

The CCPC has been monitoring the motor insurance industry and we know from our contacts with consumers that the sharp rise in motor insurance premiums has had a significant impact on them. We continue to closely monitor developments and will, if necessary, take action to stop specific anti-competitive practices in the motor insurance sector.³



systemic regulation

regulation designed to oversee the stability of the financial system as a whole



prudential regulation

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

capital adequacy

the appropriate amount of capital required to support the insurance provider's operations

technical provisions

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

B2 Systemic regulation

Systemic regulation is concerned with the stability of the financial system as a whole.

The failure of one financial institution could cause other interconnected institutions to fail and consequently harm the economy. The social consequences of this, especially in banking, are obvious. Yet, 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 economy as a whole; however, it is susceptible to systemic risks from other parts of the financial system.

The collapse of US insurance giant AIG in 2008 is a prime example. AIG's main difficulties stemmed from its London office, which dealt in complex transactions providing insurance on previously low-risk securities such as 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'.⁴

B3 Prudential regulation

The term 'prudential', in this context, refers to taking all prudent (or sensible) steps necessary to properly and conscientiously regulate a given market. **Prudential regulation** focuses on the financial stability and soundness of individual financial institutions and is closely connected with systemic regulation. Prudential regulation is designed to set minimum standards and to contain, identify and minimise risk. It includes requirements about a firm's risk management and internal controls. For insurers, there is a particular focus on **capital adequacy**, solvency capital requirement (SCR) and **technical provisions**.

It is not always possible to prevent the failure of a financial services provider. Prudential regulation aims to identify and minimise risk but it cannot eliminate risk altogether.

³ Competition and Consumer Protection Commission, www.ccpc.ie > What's new > News > 2016-09-13 > CCPC issues summonses to motor insurance providers.

⁴ Andrew Clark, 'AIG's \$61.7bn crash sends markets plunging', *The Guardian*, 3 March 2009.

B4 Conduct of business rules

Conduct of business rules are a form of regulation focused on the firm's interaction with its customers (including the advising process) and the provision of competent customer service.



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystème

The Central Bank protects the interests of consumers of financial services. It works to achieve this objective by developing conduct of business rules that:

- 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 has a number of statutory (legal) codes of conduct that oblige firms to act in a fair and transparent manner. These rules require firms to act fairly and openly when dealing with existing or potential consumers.

Examples of **conduct of business rules** include:

- The Central Bank **Consumer Protection Code** (see Chapter 4)
- The Central Bank **Minimum Competency Code** and **Minimum Competency Regulations** (see Chapter 7).



conduct of business rules

rules relating to the firm itself, its structure and its interaction with its customers (the advising process)

Consumer Protection Code (CPC)

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



Minimum Competency Code (MCC)

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

Minimum Competency Regulations

regulations which in conjunction with the Minimum Competency Code impose certain obligations on regulated firms under Section 48 of the **Central Bank (Supervision and Enforcement) Act 2013**.

C

Impact of European regulation

In order to begin our study of regulation and compliance in the Irish financial system, we will first consider a significant influence on the Irish regulatory framework – Ireland's membership of the European Union (EU). For the past 45 years, this has been the key driver of insurance regulation and the development of Ireland's cross-border industry.

The Irish Constitution is the source of all law that applies in Ireland and all laws must conform to the provisions of the Constitution. Only the people of Ireland can alter the Constitution, by voting directly in a referendum. However, when Ireland joined the 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

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

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 freedom of particular significance 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 business (i.e. permanent presence) in that member state.



European regulation of the insurance market has two overall aims:

- Insurers and intermediaries will face the same rules and regulatory requirements across the Single European Market (i.e. a level playing field).
- 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).

C2 Legal framework

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

The term '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.

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:

1. **EU Regulations** are immediately binding in all EU member states. Individual states do not therefore have to take any local action to implement an EU regulation.
2. **EU Directives** are legally binding, but they allow EU member states to choose their own form and method of implementation (i.e. legislation), based on their own particular circumstances.
3. **EU Decisions** are legally binding, but only on the member states they address.

Supplementary law includes the case law of the Court of Justice, international law and general principles of law. It enables the Court of Justice 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 legislation. 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 Commission what measures it has taken
- is suspected of breaching EU law.

If no solution can be found at an early stage, the Commission can open formal infringement proceedings and eventually refer the member state to the European Court of Justice (ECJ).⁵

EU institutions and committees may also issue an **EU Recommendation/Opinion**. Although both play an important role in the decision-making process, neither is legally binding. They allow the institutions or committees to make their views known and to suggest a line of action without imposing any legal obligation on those they address.



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

law 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

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

EU Recommendation/ EU Opinion

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

⁵ Further information on European law and its implementation may be found at European Commission: www.ec.europa.eu > The European Commission > The European Commission at work > Applying Union law.

C3 Implementation of EU law

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

- A full **Act of the Oireachtas** is a Bill voted through the Dáil and Seanad (the Houses of the Oireachtas) and signed into law by the President, e.g. the **Criminal Justice (Money Laundering and Terrorist Financing) Act 2010**, which implemented into Irish law the **Third EU Anti-Money Laundering Directive 2005**.
- **Statutory instruments (SIs)** are a form of delegated legislation. There are five different types of SIs - orders, regulations, rules, bye-laws and schemes. Their purpose is to provide detailed rules that implement the more general provisions of particular European Directives or Acts of the Oireachtas. For example, **S.I. No. 653/2011 – District Court (Criminal Justice (Money Laundering and Terrorist Financing) Act 2010) Rules 2011** outlined detailed rules for the District Court to follow when interpreting certain provisions of this Act.



act of the Oireachtas

a Bill voted through the Dáil and Seanad (the Houses of the Oireachtas) and signed into law by the President

Statutory Instrument

a form of delegated legislation, which provides detailed rules that implement the more general provisions of a 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?

D

European Union Non-Life Insurance Directives

The first, second and third **Non-Life Insurance Directives** set out the provisions for the writing of non-life insurance business in the EU. This section briefly outlines some of the key provisions of each Directive.



insurance undertaking

regulated entity, i.e. an insurer, 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

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**. This Directive concerns the business carried on by **insurance undertakings** (i.e. insurers) that are established, or wishing to become established, in a member state. The Directive stated that the regulatory authorities of the home member state required the insurer to establish and maintain adequate technical provisions (reserves).

The **First Non-Life Insurance Directive** also established standard classes of non-life business by which insurers could be authorised. Authorisation was subject to certain restrictions, e.g. the legal form of the company, close links with non-insurance companies and the submission of a scheme of operations (essentially a business plan).

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

The **Third Non-Life Insurance Directive** introduced a single authorisation system for insurers. An insurance undertaking whose head office is in any 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 insurers to conduct business across the EU. The passporting system arose out of the ‘freedoms’ on which the EU is founded (i.e. of persons, services, goods and capital). Example 1.1 outlines the case of passported insurer Enterprise Insurance Company plc.



Example 1.1

Enterprise Insurance Company plc

Enterprise Insurance Company plc, an insurance undertaking, was regulated in Gibraltar. It insured motor products sold through managing general agents in the United Kingdom, Ireland and elsewhere in Europe. In July 2016, it announced that, due to solvency issues, it would cease trading with immediate effect. In Ireland, it was reported that Enterprise Insurance had insured up to 14,000 policyholders through Wrightway Underwriting managed agency, which sold policies to policyholders through insurance brokers. Wrightway Underwriting gave policyholders an ex-gratia pro-rata premium refund.⁶

⁶ Joe Brennan, ‘Thousands set to get refunds after collapse of Enterprise Insurance’, *The Irish Times*, 24 July 2016.



Just think

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



home country (state)

the country responsible for the supervision of authorised undertakings in their jurisdiction

host country (state)

the country that hosts relevant subsidiaries or branches

general good

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

An insurance undertaking (regulated entity) established and authorised in one EU member state (the home state) can sell to residents of another member state (the host state) by either establishing a branch in that jurisdiction or through cross-border services.

The **home country** regulator remains responsible for the prudential supervision of entities authorised in its jurisdiction.

The **host country** regulator retains control in certain areas, mainly consumer protection, and is entitled to impose certain obligations, restrictions and requirements, e.g. in marketing, advertising and taxation and conduct of business rules according to the **general good**.

These may apply to professional codes of conduct or minimum insurance conditions, e.g. protecting a weaker party in a contract relationship. The 'general good' varies from member state to member state. In Ireland, examples of Central Bank control in this area include the Central Bank Consumer Protection Code, the Central Bank Minimum Competency Code and Minimum Competency Regulations 2017.

The European Court of Justice (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 member state.

D1a Passporting, cross border services and Brexit

The UK voted to leave the EU on 23 June 2016 and Article 50 of the Treaty of Lisbon 2007 was triggered on 29 March 2017. This means that the UK will officially leave the EU no later than April 2019 and will lose its right to 'passport' within EU member states.

The UK is currently negotiating its exit from the EU and it will also have to negotiate trading arrangements between itself and the EU (or its individual member states).

The Central Bank's consultation paper (CP115) 'Authorisation and Supervision of Branches of Third Country Insurance Undertakings' provides an outline of the Central Bank's proposed approach to authorising and supervising existing branches of UK insurers. Post-Brexit, on the understanding that the UK will be regarded as a 'third country', a UK insurer may avail of the option to set up a third country branch in the European Economic Area (EEA) member state. The **Solvency II** regime facilitates a non-EEA insurer establishing a branch operation in an EEA member state subject to meeting specific regulatory requirements. However, this does not permit passporting into other jurisdictions and the insurer would only be permitted to write business in the jurisdiction in which it is established.⁷

⁷ John Larkin, 'Central Bank publishes consultation paper in relation to Third Country Insurance Branches in Ireland', William Fry, online article, 24 November 2017, www.williamfry.com.

Brexit has led to many key insurers arranging new domicile arrangements to ensure they can safeguard their existing passported business and attract new business, once Brexit has taken effect. There is intense competition between Dublin, Luxembourg, Brussels, Paris and other European financial centres to attract these insurers. An example is that of AIG and Lloyd's of London which opted to set up a base in Brussels. In early 2017, Sylvia Cronin (Central Bank Director of Insurance Supervision) said "we have been contacted by another 20 insurance entities to discuss authorisation."⁸

In September 2017, the Central Bank wrote to all Irish based insurance companies requesting that they inform them of their Brexit contingency plans – outlining the potential impact of Brexit on their operations and what plans they had made to cover the consequence. There was concern that 'level of preparedness within the insurance sector was not where it should be'.⁹

D2 Reform of solvency margins

The EU insurance and **reinsurance** undertaking's capital requirements, valuation techniques, corporate governance and reporting standards are dealt with under the **Solvency II Directive 2009** (in force since January 2016). **Solvency II** was transposed into Irish law by the **EU (Insurance and Reinsurance) Regulations 2015**.

The failure of any insurer disrupts the efficient operation of the market. **Solvency II** is predominantly a protection measure which aims to reduce the possibility of insurer failure by ensuring accurate and timely intervention by supervisors. It was designed to:

- produce a more consistent and harmonised solvency standard across Europe
- promote the international competitiveness of the EU insurance market
- increase confidence in the financial stability of the insurance sector; and
- secure an adequate level of consumer protection by reducing the chance of an insurer 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 to meet this level. It demands higher levels of corporate governance, oversight by boards of management and internal risk management (by requiring firms to establish a risk management function, an internal audit function and a compliance function).

Students are encouraged to keep up-to-date with **Solvency II** related development and information. The European Insurance and Occupational Pensions Authority (EIOPA) publishes statistics on a quarterly basis based on **Solvency II** reporting from insurance undertakings and groups in the EU and EEA.¹⁰



Quick question 3

What does the term 'general good' mean?



reinsurance

insurance for an insurance company, e.g. against large losses

⁸ Joe Brennan, 'At least 10 overseas insurers consider Irish move post-Brexit', *The Irish Times*, online article, 9 March 2017, www.irishtimes.com.

⁹ Joe Brennan, 'Irish-based insurers urged to improve Brexit preparations', *The Irish Times*, online article, 1 November 2017, www.irishtimes.com.

¹⁰ EIOPA, eiopa.europa.eu > Financial stability & crisis prevention > Financial stability > Statistics > EU/EEA (re)insurance statistics.

E

Insurance mediation



insurance mediation

any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or of assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims)

EU Insurance Mediation Directive 2002

loss adjuster

independent expert in processing claims from start to finish

customer

any person, firm or organisation to whom a regulated entity provides or offers to provide an insurance product or service (for an intermediary the terms 'client' and 'customer' are interchangeable) and any person who requests such a product or service

There are approximately 4,000 registered insurance and reinsurance intermediaries registered in Ireland. These intermediaries are subject to specific legislation and it is extremely important for us to understand how this legislation applies and to which entities. The Insurance Mediation Directive was adopted in 2002 but will soon be replaced by the Insurance Distribution Directive, which will offer improved consumer protection.

E1 Insurance Mediation Directive 2002

In 2002, the EU adopted the **Insurance Mediation Directive** (IMD) with the aim of regulating intermediaries by harmonising the rules for the practice of **insurance mediation** in member states. This Directive was transposed into Irish law by the **European Communities (Insurance Mediation) Regulations 2005** (IMR).

E1a Scope

The IMR defines an insurance or reinsurance intermediary as a person who, for remuneration, undertakes or purports to undertake insurance mediation.

Insurance mediation means any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or of assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims under insurance contracts).¹¹

Insurance mediation does **not** include an activity that:

- is undertaken by an insurer or its employee
- involves the provision of information on an incidental basis in conjunction with some other professional activity, as long as the purpose of the activity is not to assist a person to enter into or perform an insurance contract
- involves the management of claims of an insurance undertaking on a professional basis
- involves loss adjusting or expert appraisal of claims for reinsurance undertakings.

IMR and IMD's requirements do not apply, for example, to insurers or **loss adjusters**. Insurers are subject to other areas of regulation and loss adjusters typically act on behalf of insurers, rather than **customers**.

¹¹ Defined in the European Communities (Insurance Mediation) Regulations 2005, derived from the EU Insurance Mediation Directive 2002/92/EC.

E1b Main provisions

The IMD introduced a common system of registration. Once registered, an insurance intermediary is entitled to avail of passporting arrangements and undertake activity in other member states. As in the case of insurers (see Section D1), there may also be a need to comply with any general good requirements imposed by the laws of that state.

The IMD states that if an insurance intermediary claims to provide advice on the basis of a **fair analysis**, they must give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable them to make a recommendation in accordance with professional criteria regarding which insurance contract would be adequate to meet the customer's needs.

If the insurance intermediary does **not** claim a fair analysis, they must state either of the following:

- that they are under a contractual obligation to conduct insurance mediation business exclusively with one or more insurers, and in that case they shall, at the customer's request, provide the names of those insurance undertakings
- that they are not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurers and do not give advice based on a fair analysis and in that case, they shall, at the customer's request, provide the names of the insurance undertakings with which they may and do conduct business.¹²

Every insurance and reinsurance intermediary must hold **professional indemnity insurance** (PII) unless it is already provided by an insurance undertaking on whose behalf the intermediary is acting, or the insurance undertaking has taken full responsibility for the intermediary's actions (as is the case with **tied agents**, see Chapter 3D1). The current minimum levels of cover in Ireland are €1.25 million per individual claim, and €1.85 million in the aggregate for claims arising in any one year. In practice, intermediaries may hold a significantly higher limit than the minimum imposed. Separate arrangements apply in certain conditions where an agent is a tied agent.

It is important to note that, in relation to each authorised activity where there is a requirement to hold professional indemnity insurance cover, intermediaries are required to hold separate, ring-fenced cover. For example, a firm that is registered as an insurance intermediary under the IMD and also authorised as an investment intermediary under the **Investment Intermediaries Act 1995** (IIA) for its investment business, is required to hold ring-fenced aggregate PII cover of a minimum of €1.85 million in relation to **each** activity (the insurance mediation and the investment mediation).



fair analysis

providing of services on the basis of a sufficiently large number of contracts and insurers available on the market to enable the intermediary to make an informed recommendation

Consumer Protection Code (Definitions)

professional indemnity (liability) insurance

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

tied agent

an agent under the full responsibility of only one investment firm on whose behalf it acts, promoting investment and/or ancillary services to clients (or prospective clients), communicating instructions from the client in respect of investment services or financial instruments, and advising accordingly

¹² Adapted from 'Transposition Table on Directive 2002/92/EC...', Article 12, 1.e.ii and iii.



Example 1.2

In December 2017, the Central Bank entered into settlement agreements with four retail intermediaries for failing to hold professional indemnity insurance over a period of time. The enforcement action taken against the firms demonstrates the seriousness with which the Central Bank views non-compliance with this requirement.¹³

The IMD also requires that an intermediary:

- demonstrates the 'appropriate knowledge and ability' to undertake their responsibilities
- has operational procedures in place for the payment of premiums and claims payments
- has separate client trust/premium accounts
- provides certain professional information to customers, e.g. their identity, registration verification and details of their complaints procedure.

The IMD, through local implementation (IMR), also provides for penalties and sanctions including:¹⁴

- enforcement procedures by regulators, e.g. powers to search and inspect offices, remove and obtain records and the authority to obtain a warrant from a district court to enter a private dwelling (where there are reasonable grounds to suspect records are being held)
- penalties to include a fine not exceeding €3,000 (or €5,000 if not a natural person) and/or imprisonment for a term of not more than twelve months
- personal liability to be imposed on any member of management unless they can show that the offence was committed without their knowledge.

E2 The Insurance Distribution Directive 2016

The Insurance Mediation Directive, and the meaning of the term 'insurance mediation', is set to be replaced by the **Insurance Distribution Directive** (IDD). It is a recast of the existing Insurance Mediation Directive (IMD) and is designed to ensure a level playing field across all participants selling insurance products. The principal aims of the IDD are to improve retail insurance regulation, establish conditions to encourage fair distribution between distributors and to strengthen policyholder protection.

All states were to transpose the IDD into national law by 23 February 2018, but in late December 2017, the European Commission proposed to delay the IDD transposition date until 1 July 2018 and the implementation date until 1 October 2018. In order for this proposal to take effect it must be approved by the European Council and the

¹³ Central Bank of Ireland: www.centralbank.ie, News & Media>Settlement agreements with retail intermediary firms, 4 December 2017

¹⁴ Section 37, S.I. No. 13 of 2005/European Communities (Insurance Mediation) Regulations 2005 (as amended).

European Parliament. This approval was still pending when this text was published but students should keep updated regarding this legislation. This proposed delay is in response to feedback from the industry that the original timeline did not allow sufficient time for the implementation of the necessary technical and organisational changes.

One particular challenge for cross border firms is that the IDD is a minimum harmonisation directive which means that each member state is free to introduce more stringent provisions provided they are consistent with the Directive. This means that insurers may have to comply with multiple regulatory requirements in different jurisdictions where individual regulators choose to ‘gold plate’ some of the requirements.

E2a Scope

The scope of IDD is broader than that of IMD as it applies to any person carrying out the activity of **insurance distribution**, whether carried out directly by an insurer or through an intermediary. The IDD’s concept of ‘distribution’ recognises and applies its rules to three types of distributor (collectively known as ‘insurance distributors’):

- Insurance intermediaries, i.e. persons who pursue the activity of insurance distribution for remuneration and who are not ancillary insurance intermediaries
- Ancillary insurance intermediaries, i.e. persons who pursue the activity of insurance distribution for remuneration but whose principal professional activity is not insurance distribution, and who only distribute insurance products that are complementary to their goods or services. For example, car rental firms, travel agents and airlines.
- Insurers (this is different from the IMD, which only covered intermediary sales).

There are some limitations. For example, it doesn’t apply where the insurance is complementary to the goods provided (e.g. lost baggage for an airline) and it doesn’t apply to policies where the premiums are less than €600 on an annual basis.

E2b Main provisions

The IDD prescribes several principles and rules for any insurance distributor, including rules regarding:

- The overarching requirement to act honestly, fairly and professionally
- All marketing communications to customers or potential customers, which should be fair, clear and not misleading, and should always be identifiable as such
- Remuneration policies, which should not conflict with the duty to act in the customer’s best interests
- Standards for advised and non-advised sales, including:
 - taking a statement of the customer’s demands and needs, and giving the customer objective information about the product in such a way as to enable the customer to make an informed decision
 - whether or not there is advice, providing relevant information about the product in a comprehensible form in a standardised insurance product information document (IPID), which should be drawn up by the manufacturer of the product
- Cross-selling, where an insurance distributor offers any insurance product along with a non-insurance product, whereby the distributor must tell the customer whether they can buy the components separately



insurance distribution

the activities of advising on, proposing, or carrying out other work in preparation or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts, including the provision of information

Insurance Distribution Directive 2016 (Definitions)

- 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 IDD focuses specifically on the need for insurers' employees and insurance intermediaries to possess appropriate knowledge to perform their duties. This follows on from the IMD but specifies that continuous professional development (CPD) of at least 15 hours must be completed to ensure this. This is consistent with the Central Bank's minimum competency requirements. The IDD'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. The IDD's specification that controls must be established in relation to the custody of customer premiums and that member states must ensure appropriate complaints mechanisms are in place is consistent with the Central Bank's **Consumer Protection Code 2012**.



Quick question 4

What is the principal aim of the IDD?

F

Role of the Central Bank

The Central Bank Reform Act 2010 created a new, fully integrated Central Bank of Ireland (the Central Bank), subject to the control of a unitary board called the Central Bank Commission. The Central Bank is responsible for financial services regulation.

As we will see in Chapter 2, the Central Bank authorises, regulates and supervises insurers and intermediaries. It does so as part of its wider role in ensuring the stability of the financial system and protecting consumers of financial services.

The consumer protection elements of Central Bank's Strategic Plan 2016-2018 included:

- working to develop a positive consumer-focused culture within regulated firms
- ensuring the consumer protection framework remains effective by reviewing, developing and enhancing the protections in place and by influencing and shaping European and international developments
- monitoring and enforcing compliance with the required standards through themed reviews and inspections.¹⁵

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

- Irish-authorised financial service groups and other providers with a head office in Ireland
- overseas branches of Irish-authorised financial service providers (FSPs).

The Central Bank has a different role in relation to insurers and intermediaries established and authorised in other EU member states but have established a branch in Ireland or conduct cross-border services. In these cases, the Central Bank acts as a host state regulator. This is due to the EU-wide passporting system (see Section D). This role includes ensuring:

- compliance with financial crime regulations by EU branches operating in Ireland
- compliance with conduct of business rules by all financial services providers operating in Ireland (including those authorised elsewhere).

As we identified in Section D1, a host country may impose obligations and requirements on EU-authorised firms on the basis of the general good.

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 to provide rules requiring strict adherence (rules-based regulation) or principles that only need interpretation by individual firms (principles-based regulation).

¹⁵ Central Bank of Ireland, 'Strategic Plan 2016-2018', online report pdf, pg. 13.

A principles-based regulation system is made up of 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 that the most effective means of regulation is a combination of principles- and rules-based regulation. The Central Bank's current enforcement ethos is based on a model of assertive, risk-based supervision, underpinned by a credible threat of enforcement. The Central Bank supports the rules with general principles of behaviour. This two-tiered regulatory approach allows the Central Bank to benefit from the advantages of both regulatory approaches.

Table 1.1 highlights the advantages and disadvantages of principles-based regulation from the perspective of the regulated 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>New situations, products and services can be more easily assessed against principles.</p> <p>Firms are different in their client profiles, so each firm can apply principles appropriately. They need only expand or tailor their compliance rules 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>

For example, the Consumer Protection Code (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 rules, insurers and intermediaries must nevertheless ensure that they achieve the outcomes described in the principles, as well as complying with the more prescriptive rules. Failure to adhere to a prescriptive rule or a general principle can result in sanctions for the firm. For example, let us consider Extract 1.1.

1.1

Extract Regulatory Imperative, CPC Chapter 2

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

It is clear that an insurer or intermediary will need to do more than simply 'obey the rules' in order to demonstrate that it acts in the best interests of its customers.

client

a person, firm or organisation that has appointed a regulated entity to act on their behalf for insurance purposes



regulated entity

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



In recent communications, the Central Bank has highlighted the importance of strengthening the culture of regulatory compliance within firms. In January 2017, Sylvia Cronin, Director of Insurance Supervision at the Central Bank, spoke about the role of 'culture' in insurance supervision. She said that "culture is the consequence of our attitudes and behaviours. It is the way we think, act, speak to each other and make decisions, sometimes subconsciously. A culture can often determine if a person will engage in effective or ineffective behaviours when nobody is looking ... Under a risk based regime, for this to truly get traction in an organisation, a conscious effort needs to be made to shape the attitudes and mind-sets of people across your company, from the boardroom to the frontline staff."¹⁶

We will consider the role of the Central Bank in more detail in Chapter 2.

¹⁶ Central Bank of Ireland, 'Remarks by Director of Insurance Supervision, Sylvia Cronin, at the Association of Compliance Officers in Ireland (ACOI)', online press release, 18 Jan 2017, www.centralbank.ie.

G

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 examination of 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 regulation of insurers, intermediaries and the private health insurance market.

G2 Study tips

It's 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, **Connect** has many online study supports that can help you as you study this module.

G3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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 four key areas that suggest a need for external regulation for insurance/financial services.

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

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

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

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

6. Explain the purpose of a statutory instrument.

7. State which Non-Life Insurance Directive established the standard classes of insurance business in which insurers could be authorised.

8. Define 'insurance distribution' (**as introduced by the Insurance Distribution Directive 2016**).

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

10. List the advantages of principles-based regulation.

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 four key areas are:
 - potential for serious financial loss
 - competence of advice
 - conflict of interest
 - financial failure of an insurance provider.
2. Structural regulation is concerned with the way financial markets work. It is geared towards maintaining a competitive market, as greater competition provides good value for consumers, stimulates business and enhances the economy as a whole.
3. 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.
4. The 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 business (i.e. having a permanent presence) in that member state.
5. 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.
6. The purpose of an SI is to provide detailed rules that implement the more general provisions of particular European Directives or Acts of the Oireachtas.
7. The Directive referred to was the **First Non-Life Insurance Directive 1973**.
8. Insurance distribution refers to the activities of advising on, proposing, or carrying out other work in preparation or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts, including the provision of information.
9. Intermediaries must hold professional indemnity insurance with a minimum indemnity limit of €1.25 million per claim and €1.85 million in aggregate.
10. Advantages of principles-based regulation:
 - New situations can be more easily assessed against principles.
 - Each firm can apply principles appropriately to their own client base.

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 from the insurer or intermediary. In an insurance transaction, the bargaining power and knowledge of the parties are usually very different and this could act to the detriment of the insurance 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 term 'general good' 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.
4. The principal aim of IDD is to improve retail insurance regulation, establish conditions to encourage fair distribution between distributors and to strengthen policyholder protection.

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**, this marking system is applied to allow you to prepare for your exam.

1. 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:

2. Market issues that relate to how financial markets work, such as competition, fall under which type of regulation or supervision?
 - A. Structural regulation.
 - B. Prudential supervision.
 - C. Conduct of business regulation.
 - D. Systemic supervision.

Your answer:

3. An Irish insurance intermediary has professional indemnity insurance with an indemnity limit of €900,000 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

1. 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

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.

2. Market issues that relate to how financial markets work, such as competition, fall under which type of regulation or supervision?
 - A. Structural regulation.
 - B. Prudential supervision.
 - C. Conduct of business regulation.
 - D. Systemic supervision.

Chapter reference: Chapter 1B1

Question type: U

Correct response: A

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

3. An Irish insurance intermediary has professional indemnity insurance with an indemnity limit of €900,000 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

Chapter reference: Chapter 1E1b

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.

A flexible, professional approach to learning

We offer a range of study supports that cater for all learning styles.

- **Learning Plans**
- **Ebooks and Podcasts**
- **Interactive webinars**
- **Chapter Key points**
- **Sample Exam Papers**
- **Lectures**



The
Insurance
Institute

Access online study supports in the Member Area
of www.iii.ie

Impact of regulation

What to expect in this chapter

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

For the purposes of this textbook, the term ‘authorisation’ refers to the process of applying to the Central Bank for permission to conduct insurance business; the term ‘supervision’ refers to how the Central Bank ensures that the firm (insurer 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:
A	Authorisation of insurers and intermediaries	State the requirements for the authorisation of insurers and intermediaries and demonstrate the main supervisory methods used by the Central Bank.
B	Regulatory supervision of insurers and intermediaries	
C	Enforcement by the Central Bank	Describe the powers of the Central Bank and demonstrate its enforcement options.
D	Regulation of the private health insurance market	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 and intermediaries

In Chapter 1, we learned that the Central Bank is responsible for authorising (and supervising) insurers and intermediaries in Ireland. We also looked at the strong impact of the European Union on the Irish regulatory system.

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

A1 Authorisation of insurers

Of particular relevance to the conduct of Irish non-life insurance business are the **Insurance Acts 1909–2009** and the **European Union (Insurance and Reinsurance) Regulations 2015** (i.e. the legislation that transposed the **Solvency II Directive** into Irish law).

An insurer cannot carry out insurance 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 with its head office in Ireland must:

- be a company registered under the **Companies Act 2014** and have its head office and registered office in Ireland
- submit details of its directors, managers and authorised agents for approval of their **fitness** and **probity**
- submit a detailed scheme of operations, essentially a business plan (which must include a summary of the nature of the 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

solvency capital requirement

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

underwriting

process of risk pooling, risk evaluation, risk selection and risk pricing

The process involves completion of a detailed application form, in which the insurer 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 to the 'authorisation in principle' and the applicant must satisfy these conditions before final authorisation is given. However, the applicant may not write any insurance business before receiving the final Certificate of Authorisation. The Central Bank indicates that the application process usually takes about six months from initial completed application form through to final authorisation, however, the process can take longer. The final decision on applications rests with the Central Bank Commission.



retail intermediary

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

A2 Authorisation of insurance intermediaries

Before we consider the authorisation process for **intermediaries**, it is worth noting that **retail intermediaries** fall into three regulatory categories:

- insurance/reinsurance intermediaries
 - under the **European Communities (Insurance Mediation) Regulations 2005 (IMR)**
- investment intermediaries – under the **Investment Intermediaries Act 1995 (as amended) (IIA)**
- mortgage credit intermediaries
 - under the **European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (CMCAR)** and/or mortgage intermediaries – under the **Consumer Credit Act 1995 (as amended)**.¹⁷



Under IMR, an insurance intermediary must be authorised/registered with the Central Bank in order to practise insurance mediation (see Chapter 1E1) or provide advice to consumers about:

- general insurance products
- life assurance protection products
- health and medical insurance products;

or, if they wish to:

- act as an insurance intermediary on behalf of an insurance company they have an agreement with
- carry out specified activities, e.g. loss assessing and assisting consumers in dealing with claims under insurance contracts.¹⁸

¹⁷ Adapted from Central Bank of Ireland: www.centralbank.ie > Financial Regulation > Industry Sectors > Brokers/Retail Intermediaries.

¹⁸ Adapted from Central Bank of Ireland: www.centralbank.ie > Financial Regulation > Industry Sectors > Brokers/Retail Intermediaries > Insurance Brokers/Intermediaries.

As we saw in Chapter 1E1a, the term ‘insurance mediation’ is defined under IMD as ‘any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or of assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims under insurance contracts).’¹⁹ This means that the term ‘intermediary’ is not simply restricted to insurance broking or mediation. It includes other activities, such as loss assessing or other ways of advising consumers on making a claim. It is an offence to practise any of these activities without Central Bank registration.

To apply for authorisation, the intermediary must submit an application form, which can be downloaded from the Central Bank website. The Central Bank will require details of the firm, its ownership, nature of business, agency appointments held and how the firm is being run; this includes staff experience and qualification(s), cash flow projections, group organisational charts and confirmation that the firm holds the required amount of professional indemnity insurance (see Chapter 1E1b).

The applicant must also demonstrate how the firm will comply with its legal obligations and the Central Bank’s handbooks and codes, and must give details of the person who is responsible for compliance. Each director, qualifying shareholder and senior manager must complete (or have completed for them) an ‘Individual Questionnaire’ 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.

Prior to 2005, Irish insurance intermediaries were subject to the IIA, even though the list of ‘investment instruments’ in this Act specifically excluded insurance policies. The amendment of the IIA by the **Insurance Act 2000** (which extended the list of investment instruments) led to insurance policies being included within its scope. As a result, for many intermediaries in Ireland, there currently exists a parallel regime of authorisation under the IIA and registration under the IMR. The differences in the specific activities allowed by both regimes are beyond the scope of this textbook. It is worth noting, however, that since introduction of the requirement for ring-fenced levels of professional indemnity insurance (PII) cover for each regulated activity in October 2014, many insurance intermediaries not engaged in investment business opted to revoke their authorisation under the IIA and retain their registration under the IMR only.

¹⁹ Defined in the European Communities (Insurance Mediation) Regulations 2005, derived from the EU Insurance Mediation Directive 2002/92/EC.

B

Regulatory supervision of insurers and intermediaries

We saw in Section A that insurers 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 insurer or intermediary, to make sure they continue to meet all aspects of their regulatory obligations.

The Central Bank uses a number of different tools to supervise insurers and intermediaries. Some of these tools are used for both types of insurance firm, but others are specific to either insurers or intermediaries, reflecting the different risks posed by each. For example, as insurers are responsible for paying claims, the rules regarding an insurance firm's financial soundness are more complex than those applying to 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 supervision 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 Supervision of insurers and intermediaries

**PRISM**

Probability Risk and Impact SysteM: a formal risk-based framework designed by the Central Bank to provide a structured approach to assessing financial services firms based on impact and probability

B1a Risk rating

In late 2011, the Central Bank announced the introduction of a supervision framework called **PRISM** – Probability Risk and Impact SysteM.²⁰ PRISM is a supervisory tool which focuses on the most significant firms, the risks they pose and the level of damage they could cause to the financial system, the economy and consumers if they were to fail.

PRISM explicitly 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, all regulated firms are divided into four categories, i.e. high-impact (including ultra-high), medium-high, medium-low or low. Although relatively few in number, high-impact firms are very important for ensuring financial and economic stability and are therefore subject to a higher level of supervision.

²⁰ Central Bank of Ireland, 'PRISM Explained', online report pdf, February 2016.



Just think

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

Small insurance intermediaries are among the many thousands of low-impact firms.

The highest-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.

Despite their low-impact PRISM rating and the fact that the individual failure of a low-impact firm would not make or break the Irish economy, it is important to note that the Central Bank has specifically allocated resources for enforcement actions against such firms where breaches are discovered.

This categorisation of high to low impact is complemented by a risk assessment framework developed under **Solvency II** specifically for the insurance sector. This framework involves a risk score being applied to each risk category for each firm. This risk score drives the intensity of the Central Bank's level of engagement. The four risk scores are basic, standard, enhanced and intensive. There is a separate model for low-impact firms.

B1b Themed onsite inspections

The Central Bank's focus on a particular area of compliance or regulation may be driven by market intelligence, internal sources, the media or other external sources (e.g. reports from members of the public, competitors, other regulators, employees or ex-employees, consumers and An Garda Síochána), and there have been a number of 'themed visits' in recent years. The Central Bank will issue a letter to certain firms (insurers or intermediaries) indicating the nature or theme of a proposed visit. On completion of visits to a sufficient number of firms, the Central Bank then presents its findings to all authorised firms by means of an industry letter.

The themed inspections for 2017 included:

- insurance companies selling niche/add-on insurance
- payment institutions' safekeeping of client funds
- retail intermediaries' compliance with minimum standards; and
- retail intermediaries acting as managing general agents on behalf of insurance companies.²¹

²¹ Central Bank of Ireland, 'Consumer Protection Outlook Report 2017', p.16.

Previous inspection topics include:

- ‘**Motor Damage Claims Processing (2017)**’ – an assessment of insurers’ compliance with the claims processing requirements of the CPC.
- ‘**Review of Health Insurance Renewal Process (2016)**’ – a focus on how health insurance providers engage with and/or advise their consumers during the annual renewal process, in the context of the CPC.
- ‘**Cyber Security/Operational Risk (2015)**’ – an inspection of controls and procedures around system security and access.
- ‘**Integrity of Regulatory Returns (2015)**’ – a review of firms’ regulatory reporting.
- ‘**Variable remuneration for sales staff – Insurance Companies and Credit Institutions (2014)**’ – a review of incentive arrangements for sales staff in terms of the Consumer Protection Code (CPC) 2012. The review noted a failure to recognise the risks to consumers or to minimise those risks accordingly.²²

As mentioned in Section B1a, the Central Bank is also increasing its inspection activities for firms rated as low-impact under PRISM.

The Central Bank’s priorities for 2017 centred on its consumer protection objectives and its mission of ‘Getting it right for consumers’. Summary extracts 2.1 and 2.2 from the ‘Consumer Protection Outlook Report 2017’ provided some clarity to these priorities.

2.1

Summary extract Central Bank Consumer Protection Outlook Report 2017

Absence of a consumer-focussed culture²³

We continue to highlight that the absence of a consumer-focussed culture within firms presents a significant risk to consumers. A positive consumer-focussed culture manifests itself in many ways including how firms communicate with their customers, how they are helped to understand the financial decisions they are making and how firms incentivise their staff. It is important that firms are open to and facilitate feedback from their customers and are willing to learn from past mistakes. This can help firms identify emerging consumer risks as well as building a stronger relationship with their customers.

²² Central Bank of Ireland, www.centralbank.ie > Financial Regulation > Consumer Protection > Themed Inspections

²³ Central Bank of Ireland, ‘Consumer Protection Outlook Report 2017’, p.6.

2.2**Summary extract** Central Bank Consumer Protection
Outlook Report 2017²⁴

Ensuring that the interests of consumers of financial services are protected continues to be a key priority for the Central Bank as reflected in our mission statement of ‘Safeguarding Stability – Protecting Consumers’ and in the strategic objectives of our new Strategic Plan, 2016-2018.

In order to consistently deliver the right outcomes for their customers, firms must put consumers’ interests at the centre of everything they do. This starts with firms understanding the risks faced by their consumers, not only from the products and services they buy, but also from the behaviour of the firms themselves and the wider market and environment.

This Consumer Protection Outlook Report (CPOR) aims to highlight a number of those consumer risks which the boards and senior management of all regulated firms need to consider. The CPOR also outlines those priority areas that the Consumer Protection Directorate within the Central Bank will be focussing on over the next couple of years in the context of our consumer protection mandate.

All firms have a responsibility to help their customers make the right decisions. This responsibility arises not only when selling new products and services but throughout the whole relationship with the customer. This means looking at the relationship through the lens of the customer and not purely from the firms’ perspective.

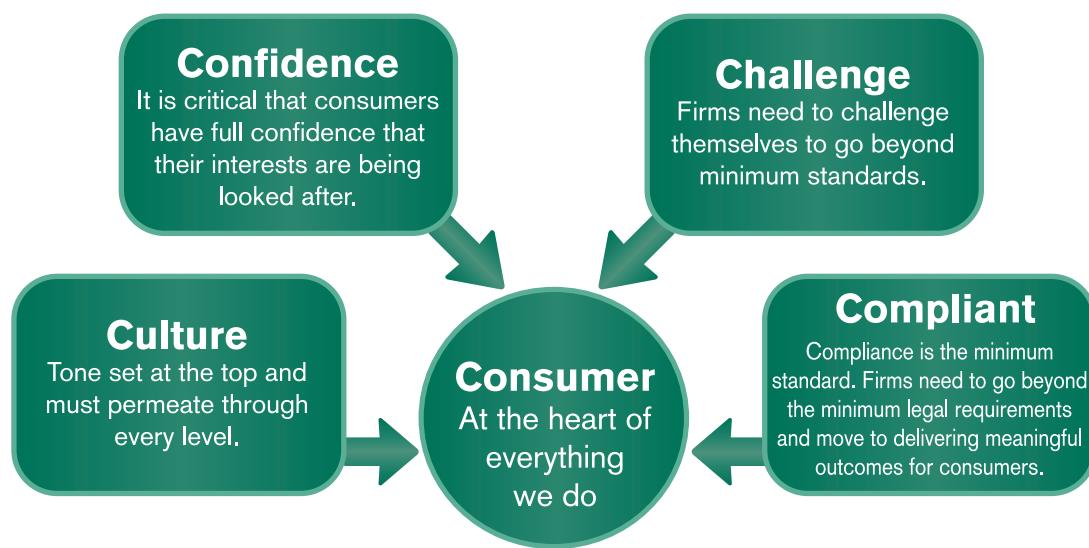
The Central Bank, as part of its consumer protection mandate, will continue to challenge firms to demonstrate how they are delivering for their customers. We will also continue, where necessary, to take the appropriate supervisory and enforcement actions to ensure that consumers are being protected.

The ‘5Cs Framework’ (illustrated in Figure 2.1) is about the:

- **Consumer** – The consumer is at the centre of the 5Cs framework.
- **Culture** – Boards and senior managers must develop a consumer-focused culture and embed it in all areas of the firm.
- **Confidence** – Consumers have a right to expect firms to treat them fairly and with dignity and respect. They should have confidence in the firms they deal with.
- **Challenge** – The Central Bank will challenge firms on their culture, practices, products and services if there may be a threat to consumer protection.
- **Compliance** – Firms need to go beyond the minimum standards to deliver meaningful outcomes for consumers.²⁵

²⁴ Central Bank of Ireland, ‘Consumer Protection Outlook Report 2017’, p.2-3.

²⁵ Central Bank of Ireland, ‘Consumer Protection Outlook Report 2015’ p.3.

Figure 2.1 The '5Cs' framework

B1c Consumer protection risk assessments



Consumer Protection Risk Assessment (CPRA) model

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

In March 2017, the Central Bank published its **Consumer Protection Risk Assessment (CPRA) model**. This model assists the Central Bank's supervisors in carrying out an assessment of how consumer protection risk is managed within regulated firms. These assessments will form a key element of the Central Bank's promotion of a more positive consumer-focused culture in regulated firms. CPRAs consist of on-site assessment by a supervisor (a design review and an effectiveness review), followed by formal feedback. The Central Bank will mostly conduct targeted CPRAs, selecting specific modules and elements focussing on priority risks. These assessments will be in addition to and support the regular program of thematic inspections.²⁶

B1d Reviews and correspondence

These are carried out with individual insurance firms, as and when required. There is a higher level of involvement with firms that have been identified as high risk or medium-high risk (see Section B1a).

B2 Supervision of insurers

The Central Bank supervises firms to ensure that they comply with strict solvency rules that require insurers to maintain adequate technical provisions (reserves) and solvency capital requirement (SCR). Insurance firms must be able to match assets with known and estimated future claims liabilities and associated expenses.

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 regulated entity to submit relevant key information via a secure, web-based electronic reporting system, termed 'online reporting' (ONR). 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.

²⁶ Central Bank of Ireland, 'A Guide to Consumer Protection Risk Assessment', online pdf, March 2017, www.centralbank.ie.

B2a Analysis of insurance returns

This is the main means by which the Central Bank supervises the financial soundness of individual firms. The primary requirement is to maintain adequate technical provisions (reserves), and solvency capital requirement (SCR) (see Section A1).

As noted, technical provisions (reserves) 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 solvency requirement is one of the key measures of its financial soundness. Under **Solvency II** the insurer needs to set its solvency requirement based on its own assessment of risks by using either the standard formula or an 'internal model' – which needs to be approved by the Central Bank – to identify what it considers to be an appropriate level of capital (see Section A1).

B3 Supervision of intermediaries

The Central Bank's general supervision approach ensures that all regulated insurance and reinsurance intermediaries 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.



competence

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

Insurance and reinsurance intermediaries are supervised by a combination of on-site and off-site (desk-based) monitoring. In light of the size of the intermediary sector, increased use of technology allows Central Bank supervisory teams to focus on desk-based analysis of financial returns, thematic reviews, trigger-based supervision and spot-check inspections. For instance, dedicated supervision teams are now 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 annually a Retail Intermediary Annual Return (RIAR) to the Central Bank of Ireland, using a web-based tool called the Online Reporting System (ONR). 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 six months following the reporting date (the submission due date).²⁷

The RIAR covers four key areas:

- **General information about the firm** – 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 (but exact information varies, depending on the type of intermediary). For intermediaries authorised under the IIA, information must be based on audited accounts. There is no such requirement for intermediaries registered under the IMD; they can choose to base their figures on their financial year-end management accounts
- **Ownership information** – owners', qualifying shareholders' and partners' details

²⁷ Central Bank of Ireland: www.centralbank.ie, Home > Financial Regulation > Industry Sectors > Brokers > Retail Intermediaries > Annual Online Return.

**product producer**

any regulated entity 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**

- **Conduct of business information** – scope of its business activities, professional indemnity insurance and key information showing compliance with the Central Bank Minimum Competency Code (MCC) and Consumer Protection Code (CPC).

Investment intermediaries authorised under the IIA must also demonstrate compliance with the Central Bank *Handbook of Prudential Requirements for Investment Intermediaries*.²⁸ The document sets out the basic requirements for investment intermediaries on how they conduct their business and includes the following specific financial and reporting requirements:

- An investment intermediary must be in a position to meet its financial obligations and must be solvent at all times (i.e. have a positive net asset position).
- If an investment intermediary acts as a **product producer** (i.e. appoints, sub-brokers), it must have a minimum qualifying shareholders fund or capital fund of €50,000 at all times.
- There is also a requirement for sole traders, partnerships and unincorporated bodies to submit a Certificate of Solvency, verifying that the investment intermediary is solvent and able to meet its financial commitments. All intermediaries are required to prepare annual audited accounts. These online accounts form part of the RIAR specified above.

B4 The role of insurers in regulation

The **Investment Intermediaries Act 1995 (as amended)** has a number of provisions that require insurers to take responsibility for certain activities of intermediaries they deal with.

- **Appointment of intermediaries** – Section 28 of the Act provides that an insurer may not appoint an intermediary to act on its behalf or pay any commission, fee or other reward to an intermediary, or accept any orders placed by the intermediary unless, to the best of its knowledge and belief, the intermediary is a certified person, of good character and complies with the Act (and other Insurance Acts). The insurer is required to make ‘reasonable enquiry’ about authorisation and registration. Insurers are required to establish a register of all of their appointed intermediaries at their principal office in the State. The register must be open to public inspection, and copies must be provided to the Central Bank at specified intervals in practice, every 12 months.
- **Termination of an agency** – Where an insurer terminates the appointment of an intermediary, the following actions must be taken:
 - The insurer must immediately inform the Central Bank of cancellation and the reasons for its actions.
 - The intermediary must publish a ‘notice of discontinuance’ in a national newspaper, within 14 days of being informed of cancellation.
 - If the intermediary does not publish the notice of discontinuance in a newspaper, the insurer must place the notice within 28 days of informing the intermediary of cancellation.

²⁸ Central Bank of Ireland, *Handbook of Prudential Requirements for Investment Intermediaries*, online pdf, July 2014, www.centralbank.ie

C

Enforcement by the Central Bank

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

If the Central Bank is concerned that a regulated entity has contravened (breached) a legal requirement, it may conduct an examination. The Central Bank then obtains information and makes a decision on whether to establish an inquiry. Before taking this action, the management of the regulated entity, or person concerned, is given reasonable opportunity to respond. The inquiry then decides if a contravention has occurred and decides on appropriate sanctions. The detailed inquiry process is beyond the scope of this textbook, but can be found on the Central Bank website.²⁹ At any time before the conclusion of an inquiry, the parties may enter into a settlement agreement. This binds both the Central Bank and the regulated entity.

C1 Nature of sanctions

In circumstances where the Central Bank determines that a regulated entity has committed a contravention, a range of sanctions is available. When deciding the appropriate sanction(s), the inquiry will consider factors such as:

- whether the contravention was deliberate, dishonest or reckless
- how often the contravention occurred and for how long
- whether the contravention revealed serious weaknesses of the management systems or internal controls
- the extent of the loss or risk of loss caused and the effect, if any, on **vulnerable consumers**
- the nature and extent of any financial crime committed
- how quickly, effectively and completely the regulated entity brought the contravention to the attention of the Central Bank or any other relevant authority
- how much the regulated entity co-operated with the Central Bank or other agency provided during the investigation
- any remedial steps taken since the contravention was identified
- the previous record of the regulated entity
- any other considerations.



vulnerable consumer

a natural person who:

- a. has the capacity 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)
- 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)

²⁹ Central Bank of Ireland, 'Inquiry Guidelines prescribed pursuant to section 33BD of the Central Bank Act 1942' 2014, online pdf, www.centralbank.ie.

The Central Bank may pose 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 to the Central Bank 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 Central Bank's inquiry and investigation
- revocation of (i.e. taking away) a regulated entity's authorisation³⁰
- an order disqualifying a person from being involved in the management of a regulated entity for a specified period.

All penalties imposed on regulated entities for failure to comply with the relevant code(s) are published on the Central Bank website.

The Irish Financial Services Appeals Tribunal (IFSAT) is an independent, statutory body that deals with complaints from regulated entities about certain Central Bank decisions. Where a regulated entity disagrees with a Central Bank decision or a sanction, IFSAT provides an accessible, efficient and effective method of appeal.

To demonstrate how seriously the Central Bank views the failure to implement the requirements of its Codes, we will consider Case study 2.1 and Case study 2.2, which examine sanctions imposed by the Central Bank.

Case study 2.1

Settlement agreement with AXA Insurance Limited³¹

In July 2016, the Central Bank entered into a settlement agreement with AXA Insurance Ltd. The Central Bank reprimanded the firm and 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**. AXA had failed to:

- ensure that individuals operating a prescribed script function between January 2008 and April 2012 referred requests for information and advice to an appropriately accredited individual, in contravention of the MCR and the MCC;
- ensure that individuals operating a prescribed script function between January 2008 and April 2012 were supervised by an appropriately accredited individual, in contravention of the MCR and the MCC;
- maintain a register of accredited persons in the format prescribed by the MCC
- comply with the Complaints Resolution provisions of the 2012 Code over a six-month period from January to June 2014.

The background notes to this case indicate that the Central Bank's Consumer Protection Supervision Division conducted an onsite inspection of the firm's branch office in Derry and the Firm's head office in Dublin. The inspection focused on the firms claims department, in particular on the team whose main function is to process motor and property claims.

³⁰ Central Bank of Ireland, 'Outline of the Administrative Sanctions Procedure 2014', online pdf, www.centralbank.ie.

³¹ Central Bank of Ireland, 'Settlement Agreement between the Central Bank of Ireland and AXA Insurance Limited', online pdf, 26 July 2016, www.centralbank.ie.

Case study 2.2

Arch Reinsurance Europe DAC

The Central Bank conducted a full risk assessment of Arch Reinsurance Europe Underwriting from January to June 2014, which included a governance review.

In March 2016, the Central Bank imposed a fine of €275,000 on the company for breaches of the Corporate Governance Code. The company had failed to comply with certain standards required by the Code; in that some of its governance structures and internal controls were not sufficiently robust, its risk committee was not sufficiently effective and it failed to adequately oversee its subsidiary. In a statement, the Central Bank said these failures showed a compliance culture which fell short of the standard expected in relation to corporate governance.

These findings have been accepted by Arch Re Europe as part of the deal with the Central Bank.

Derville Rowland, the Central Bank's Director of Enforcement, said the code was introduced to strengthen standards of corporate governance in light of the financial crisis.

'It sets out clear minimum corporate governance requirements for firms and their subsidiaries and reflects the importance which the Central Bank places on robust corporate governance and a culture which promotes and encourages best practice,' she said. 'Corporate governance risks remains on our agenda as a key enforcement priority across all sectors and firms. Where evidence of poor standards of corporate governance is found in firms, the Central Bank may take enforcement action,' Ms Rowland added.³²

In another important case, the Central Bank decided that it was in the public interest to waive a fine of €5 million against Quinn Insurance in July 2013, as the firm went into administration and fully relied on funding from the Insurance Compensation Fund (ICF).³³ In April 2017, the Central Bank commenced an inquiry into Quinn Insurance as it had 'reasonable grounds' to suspect that 'certain persons who were concerned in the (former) management of Quinn Insurance participated in the commission of a suspected prescribed contravention' of EU non-life regulations.³⁴ In October 2017, two former Quinn Insurance executives brought a High Court challenge against the Central Bank, in which they questioned the constitutionality of the inquiry process and complained that it was oppressive and unreasonable. The case was dismissed by the High Court Judge who said that the executives must await the outcome of the inquiry before seeking to bring a court challenge.³⁵ The enquiry is ongoing.



Quick question 1

List the key failings of AXA Insurance Ltd that led to the large fine.

The answer is at the end of this chapter.

³² RTE, 'Central Bank fines Arch Re Europe for breaches of code', online article, 22 March 2016, www.rte.ie.

³³ Central Bank of Ireland, 'Settlement Agreement between the Central Bank of Ireland and Quinn Insurance Limited (Under Administration)', online press release (no date).

³⁴ Louise Bacani, 'Central Bank begins hearings on insurance execs' regulation breach', *Insurance Business UK*, online article, 2 August 2016, www.insurancebusinessmag.com.

³⁵ Tim Healy, 'Ex-directors of Quinn Insurance lose High Court case over Central Bank inquiry', *The Irish Times*, online article, 3 October 2017, www.independent.ie.

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, Article 150 of the **European Union (Insurance and Reinsurance) Regulations 2015** (see Section A1) provides that the Central Bank may exercise its powers under financial services legislation to 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, where this authority is empowered to designate assets of an insurer or reinsurer for the purposes of **Solvency II**.

The Central Bank also has significant powers under the **Insurance Act 1983** to have an administrator appointed 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 for the winding up of 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. In the case of Quinn Insurance for example, following an extensive sale process, the administrators signed a deal in April 2011 to sell the company to US insurance giant Liberty Mutual and Anglo Irish Bank (Quinn Group's main creditor). Insolvency management is clearly an important aspect of the role of the Central Bank.³⁶

³⁶ 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 legal and regulatory constraints governing underwriting and risk acceptance.

Following the **Third Non-Life Insurance Directive 1992** and the subsequent opening up of the market in 1994, the **Health Insurance Acts 1994–2016** became the source of regulation for the private health insurance market. These formally enacted into law the four principles on which the market had operated up to that time. These principles are:

1. 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 age, gender, sexual orientation or current or prospective health status. However, in May 2015, the **Health Insurance (Amendment) Act 2014** modified this principle with the introduction of a system of **Lifetime Community Rating**. We will cover this in the Personal General Insurance module.
2. Open enrolment – An insurer must accept all individuals regardless of the risk they pose.
3. 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.
4. 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**.

These principles are considered in more detail in the Personal General Insurance module.

D1 Regulation and supervision of private health insurers

The **Health Insurance Act 1994** also provided for the establishment of an independent regulator of the private health insurance market – the Health Insurance Authority (HIA). The HIA was established by ministerial order in February 2001 and its main objective is linked to upholding the principle of community rating.

All private health insurers must be authorised and regulated by the Central Bank and must fully meet all its requirements (as must other insurers). In addition, health insurers are subject to regulation by the HIA.



policyholder/insured

a person/firm that is insured under an insurance policy

lifetime community rating

the older a person is when they 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

schedule

a single page incorporated into a policy booklet to personalise the policy



Quick question 2

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)?

D2 Functions and powers of the Health Insurance Authority



An tÚdarás Árachas Sláinte
The Health Insurance Authority

The HIA maintains the Register of Health Benefits Undertakings. Under Section 14 of the **Health Insurance Act 1994 (as amended)**, any health insurer (including those with headquarters outside Ireland) conducting health insurance in 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 types of undertaking included on the register:

- **Open membership undertakings** – these are Vhi Insurance DAC (trading as Vhi Healthcare), Irish Life Health DAC (known as Irish Life Health), Elips Insurance (trading as Laya Healthcare) and HSF Health Plan Ltd.
- **Restricted membership undertakings** – these provide insurance to people who are employees of a particular organisation and include the Garda Síochána, Electricity Supply Board and Prison Officers' schemes.

The main functions of the HIA are:

- to monitor the health insurance market and advise the minister (either at his or her request or on its own initiative) on matters relating to health insurance
- to monitor the operation of the Health Insurance Acts and, where appropriate, to issue enforcement notices to enforce compliance with the acts
- to carry out certain functions in relation to **risk equalisation**, including management and administration of the Risk Equalisation Fund
- to take such action as it considers appropriate to increase the public's awareness of their rights as consumers of health insurance as well as the services available to them
- to maintain 'The Register of Health Benefits Undertakings' and 'The Register of Health Insurance Contracts'.

The HIA is responsible for making sure that private health insurers comply with all the provisions of the **Health Insurance Acts 1994 to 2016**. Following the **Health Insurance (Miscellaneous Provisions) Act 2009**, if the HIA believes that a registered entity 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



open membership undertakings

the three commercial health insurers operating in the Irish private health insurance market, who must accept any customer seeking to take out cover with them

restricted membership undertakings

the 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 that they insure

- the timeframe to do this (not less than 45 days). If the registered entity receiving the notice does not accept that it is in breach, it has 45 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 registered entity 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 entity to take the steps required to correct the breach. If this happens, the entity will now be subject to a court order. Failure to comply would have serious consequences, including removal from the Register of Health Benefits Undertakings and therefore 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 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 the application of these principles in insurance.

E2 Study tips

It's 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, **Connect** has many online study supports that can help you as you study this module.

E3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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 company must meet when applying for authorisation as an insurer.

2. State what the term 'solvency capital requirement' (SCR) means.

3. List the four categories that regulated firms are divided into under the PRISM supervision framework.

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

5. State the main financial requirement for an intermediary that acts as a product producer.

6. According to the **Investment Intermediaries Act 1995**, state **the** actions that an insurer must take when cancelling an agency with an intermediary.

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

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

9. The Health Insurance Authority maintains the Register of Health Benefits Undertakings. State the **two** types of undertaking listed in this register.

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 with its head office in Ireland must:
 - be a company registered under the **Companies Act 2014** and have its head office and registered office in Ireland
 - submit details of its directors, managers and authorised agents for approval
 - submit a detailed scheme of operations (business plan)
 - 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 of how it will cover its underwriting liabilities and solvency capital requirement
 - have the required minimum paid-up share capital.
2. The level of eligible own funds that that Solvency II legislation requires insurers/reinsurers to hold to meet liabilities and absorb significant losses.
3. Under PRISM, all regulated firms are divided into four categories, i.e. high-impact (including ultra-high), medium-high, medium-low or low.
4. If an insurer chooses to set its solvency requirement using an 'internal model', the model chosen must be approved by the Central Bank.
5. An intermediary that acts as a product producer (i.e. appoints sub-brokers) must have a minimum shareholders' or capital funds of €50,000 at all times.
6. The following steps must be taken:
 - An insurer must immediately inform the Central Bank of the cancellation and the circumstances surrounding it.
 - If the intermediary does not publish the notice of discontinuance in a newspaper within 14 days of being notified of cancellation, the insurer must place the notice within 28 days.
7. Any three of the following sanctions:
 - a caution or reprimand
 - a direction to refund any charge or sum paid for the provision of a financial service
 - a fine payable to the Central Bank 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 Central Bank's inquiry and investigation
 - revocation of a regulated entity's authorisation
 - an order disqualifying a person from being involved in the management of a regulated entity for a specified period.

8. The main objective of the Health Insurance Authority is to uphold the principle of community rating.
9. The two types of undertaking listed in the Register of Health Benefits Undertakings are:
 - open membership
 - restricted membership.

Answers to quick questions

1. The failings of AXA Insurance Ltd, which led to the €675,000 fine (and demonstrate the significance the Central Bank attaches to compliance) were failures to:
 - ensure that individuals operating a prescribed script function between January 2008 and April 2012 referred requests for information and advice to an appropriately accredited individual, in contravention of the MCR and the MCC;
 - ensure that individuals operating a prescribed script function between January 2008 and April 2012 were supervised by an appropriately accredited individual, in contravention of the MCR and the MCC;
 - maintain a register of accredited persons in the format prescribed by the MCC; and
 - comply with the Complaints Resolution provisions of the 2012 Code over a six month period from January to June 2014.
2. The four principles on which the private health insurance market is based are: community rating, open enrolment, lifetime cover and minimum benefits. Insurers cannot distinguish their prices on grounds of age, gender, health or other risk criteria. 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:
- A. the Central Bank of Ireland
 - B. the European Central Bank
 - C. the recognised regulatory authority of the EU member state
 - D. the Central Bank Commission

Your answer:

2. GCM Insurers submitted a copy of the register of all their appointed intermediaries to the Central Bank in March 2017. The next time GCM Insurers will be required to do so under the **Investment Intermediaries Act 1995** is in:
- A. 1 month
 - B. 3 months
 - C. 9 months
 - D. 12 months

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

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

Chapter reference: Chapter 2A1

Question type: K

Correct response: C

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

2. GCM Insurers submitted a copy of the register of all their appointed intermediaries to the Central Bank in March 2017. The next time GCM Insurers will be required to do so under the **Investment Intermediaries Act 1995** is in:
 - A. 1 month
 - B. 3 months
 - C. 9 months
 - D. 12 months

Chapter reference: Chapter 2B4

Question type: U

Correct response: D

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

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

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:
A	Creation of agency	Identify the concept of agency, the main duties of an agent to its principal and how an agency may be terminated.
B	Duties of an agent and a principal	
C	Termination of an agency	
D	Agency and insurance	Explain how agency operates in insurance.
E	Terms of business	Explain the scope of a Terms of Business Agreement between a regulated entity and a consumer, and outline why regulated entities should conduct regular reviews of customers' general needs.
F	Review of insurances	

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 an offer made by one party is unconditionally accepted by the other. In practice, many insurance contracts are not created directly between an individual (or firm) 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 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 to insurance contracts.

In law, anyone who acts on behalf of another person is an agent. If we allow someone to act on our behalf, i.e. by **consent** or agreement, or even if we allow them to say that they are acting for us, we will probably have to accept legal responsibility for what is done on our behalf. Both parties enter into a legally enforceable agreement, often through an appointment expressed in writing.

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

**broker**

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

agent

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

principal

a person for whom another acts as agent

consent

the most common means of creating an agency between a principal and an agent

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 responsibilities than an agent, but their responsibilities are no less significant. In insurance, many of these general duties are reinforced by legislation and by Central Bank codes.

Table 3.1 Duties of an agent

obedience	One of the prime duties an agent owes to their principal is the duty to obey instructions. If the agent fails to comply, the principal has the right to sue the agent for damages.
personal performance	As a general rule, agents must perform the duties imposed on them by the principal. Other than purely administrative tasks such as typing and posting letters, they may not delegate their duties to someone else. In practice, however, many insurance agents are companies, so it is often market practice for these duties to be given to specialists within the company. It is important to note that where any delegation or outsourcing occurs, the principal remains responsible for the actions of its agents and any delegated tasks.
due care and skill	A person must exercise due care and skill in the performance of all acts undertaken in the course of their duty as an agent. An agent is expected to offer a level of care and skill appropriate to their qualifications, knowledge and experience.
good faith	An agent has a fiduciary relationship with their principal. This means that the relationship is based on the duty of good faith. It follows that the agent must not allow their own interests to conflict with their duties to the principal. An agent must not accept bribes or secret commissions, or use confidential information from their client for any purpose other than the client's benefit.
accountability	An agent must account to their principal for all monies they receive on behalf of the principal, and must keep a proper record of all transactions.

fiduciary relationship

relationship that is recognised by the law as being based on trust and responsibility. In the insurance context, this means that legal duties and obligations are placed upon the agent as a result of having undertaken to perform certain activities on behalf of the principal



Table 3.2 Duties of a principal

remuneration	The agent has a right to the remuneration (i.e. payment) agreed by their principal, or if none has been fixed, to a reasonable remuneration as appropriate. For insurance transactions the remuneration usually consists of commission, and to earn this, the agent must prove that they were the effective cause of any transaction. Basically, an agent has not 'earned' their commission until a contract has been concluded.
indemnity	Subject to any express terms in the agency agreement, an agent has a right to claim from their principal an indemnity (payment) 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, perhaps, the agent's imprisonment is not grounds for termination.



Quick question 1

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

The answer is at the end of this chapter.

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 insurance intermediary such as a broker may, at different times, act on behalf of either the insurer or their client.

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 agent (i.e. an intermediary such as a broker) 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 mediation** 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 people or firms that seek their services. For example, when a consumer approaches an insurance broker for advice about taking out a motor insurance policy, they expect the broker to help them choose the policy that best meets their needs. They probably also expect the broker 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. It is also important to remember that insurance intermediaries will be considered as being involved in insurance distribution once IDD is implemented. It is useful at this stage to identify the main types of insurance intermediary and the nature of the advice they provide to consumers. The Central Bank Consumer Protection Code (CPC) contains important provisions in this area.

Firstly, an intermediary may use the term '**broker**' only where the principal regulated activities of the intermediary are provided on the basis of a fair analysis of the market. The CPC defines a 'fair analysis of the market' as 'providing services on the basis of a sufficiently large number of contracts and insurers 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.'³⁷


proposer

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

insurance mediation

any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or of assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims)

EU Insurance Mediation Directive 2002

³⁷ CPC, Chapter 12 (Definitions). As noted in Chapter 1E2, consistent with definition under EU Insurance Mediation Directives.



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 analysis of the market'?

The term 'sufficiently large' 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 use a very small panel for motor insurance when claiming a 'fair analysis'.

As we will see in Section E, regulated entities 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 analysis or more limited analysis of the market. The CPC states that a 'limited analysis of the market' means providing services on the basis of a limited number of contracts and product producers available.³⁸ This means that, while the firm is not tied to just one product producer, the services are not provided on the basis of a fair analysis of the market. Where advice is given on the basis of a limited analysis of the market, the intermediary must clearly disclose to the consumer the names of the product producer whose products or services it considers.

Some intermediaries provide services on the basis of a fair 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 Agreement (Document)** (Section E).

Secondly, an intermediary may only use the term 'independent' in its name (or to describe its activities), where it:

- a. provides the regulated activity on the basis of a fair analysis of the market
- b. allows the consumer the option to pay in full for the regulated activity by means of a fee.³⁹

A consumer who approaches a firm that uses the title 'independent insurance broker' can therefore reasonably expect that firm to search a wide selection of the market and find the insurer and policy best suited to their needs.

Where an intermediary is tied to a single product producer for a particular product or service, it must disclose this fact to the consumer in all communications with the consumer in relation to that particular product or service, including all advertisements and the Terms of Business Agreement. While a **tied insurance intermediary** may act under the direction of one or more insurance undertakings for insurance products that are not in competition, a tied agent acts under the full and unconditional responsibility of only one undertaking.

D2 Who is the principal of an insurance intermediary?

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

³⁸ Chapter 12 (Definitions), CPC.

³⁹ Provision 4.16, CPC.

D2a Agent of the client

The intermediary is an agent of their client (the client is their principal) when:

- the intermediary gives general advice to the client as to the cover they require and the market to place their business
- the intermediary helps the client to complete a proposal form (or adds information to the form on their behalf)
- the intermediary carries out a physical survey of the premises for the purpose of presenting the information, together with other risk details to the insurance market
- the intermediary and the client defraud the insurer
- the intermediary gives 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 (the insurer is their principal) when:

- the intermediary has express authority from the insurer to receive and handle proposal forms
- the intermediary handles the forms according to a previous course of business with the insurer and within an implied authority that has arisen
- the intermediary surveys and describes the property on the insurer's behalf
- the intermediary acts without express authority, and the insurer either subsequently ratifies this action or has ratified such actions in the past
- the intermediary collects 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
- the intermediary has express authority to handle claims
- the insurer has given express authority to the intermediary under the terms of a **delegated authority** scheme.

The implication is that, in placing any insurance, the intermediary (unless a tied agent) 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.

In the case of a tied agent, it is important to note that an insurer is responsible for any act or omission by the agent regarding the contract of insurance, as if the agent was 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



Quick question 2

What effect does delegated authority from an insurer have on an intermediary in an insurance transaction?

E

Terms of business

The CPC requires a regulated entity to draw up its terms of business (TOB) with consumers and present these terms in a stand-alone document. This document must be issued before providing the first service to a consumer. Extract 3.1 shows the minimum requirements for the terms of business, but firms may include additional information if needed.

3.1

Extract Regulatory Imperative, CPC 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 terms of business (also known as the Terms of Business Agreement or Document) must set out the basis on which the regulated entity provides its regulated activities and must include at least the following:⁴⁰

- the legal name, trading name(s), address and contact details of the regulated entity 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)
- a description of the regulated activities carried out
- a statement that the advice given to the consumer is based on a fair analysis of the market, a 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 regulated entity 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, e.g. risk management or claims assistance
- a summary of the regulated entity's policy on how it will use a consumer's personal data, in compliance with the obligations of the **Data Protection Acts** and 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 (to be considered further in Chapter 7F)

**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

⁴⁰ 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 regulated entity'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 Terms of Business Agreement.



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



Quick question 3

When must a regulated entity supply a Terms of Business Agreement to a consumer?

F

Review of insurances

So far, we have focused primarily on setting up an agency relationship and what is required to make sure that this is both effective and compliant. However, insurance contracts, unlike other contract arrangements, 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, contact should be made with a client during the period of the insurance. The nature of the after-sales service and any associated costs must be communicated and agreed. This information will have featured in the Terms of Business Agreement.

**adviser (advisor)**

an individual involved in the advising process

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 the policyholder 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

Most intermediaries will assume that the client will notify them of the need for any mid-term changes, unless there are reasons for the intermediary to think otherwise. Where the client's insurance needs are relatively straightforward, the intermediary will indicate the issues that are important to the insurer's interests, and will emphasise that the client is responsible for notifying the intermediary of any mid-term changes that might increase the risk. We examined this continuing duty to disclose material facts in the Nature of Insurance module.

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 be made to the client's other policies, e.g. **liability insurance** or **business interruption insurance**.

Typical situations in which an adviser may have additional 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 added penalty points
- the addition of a partner or child to a private health insurance policy
- a client request to change their level of cover
- assisting the client with a claim
- ensuring the client's compliance with special 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 the adviser to have a more frequent, proactive review with their 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 (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 twice a year. However, there may be situations in which a proactive approach is needed for a period of time. Consider Example 3.1.



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 Agreement



Quick question 4

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

F1 Renewal review

When a customer renews an insurance policy, insurers and intermediaries need to plan the renewal process in line with the requirements of the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007**. We will consider these regulations in Chapter 5.

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

- Business description – Any change must be notified to ensure the validity and type of insurance policy. For example, a change of business description, such as from furniture sales to furniture manufacturer, will change the client's insurance requirements. The insurer will consider the new liability exposures and they may revise the premium or the 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 or 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.

G Summary

Although this is a fairly short chapter, there is still a lot to learn! We considered 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 agent, 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 (CPC). This continues our study of the regulatory framework in which regulated firms provide advice and services to consumers.

G2 Study tips

It's 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, **Connect** has many online study supports that can help you as you study this module.

G3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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 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 responsibilities 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 agent'.

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 Agreement 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. 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, different employees can perform certain specialist tasks.
3. Two responsibilities of a principal to an agent are:
 - to provide remuneration, either as agreed or, if no agreement has been fixed, whatever is reasonable
 - to provide 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. This means providing services on the basis of a limited number of contracts and product producers available on the market, i.e. although not tied to one product producer, the services are not provided on the basis of a fair analysis of the market. When this is the case, the names of the insurers approached must be provided.
6. A tied agent is an intermediary who is tied to a single insurer. They can only provide advice about the products of the insurer to which they are tied and all responsibility for their actions is accepted by that insurer.
7. The intermediary is an agent of the insurer when:
 - the intermediary has express authority from the insurer to receive and handle proposal forms
 - the intermediary handles the forms according to a previous course of business with the insurer and within an implied authority that has arisen
 - the intermediary surveys and describes the property on the insurer's behalf
 - the intermediary acts without express authority, and the insurer either subsequently ratifies this action or has ratified such actions in the past
 - the intermediary collects 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
 - the intermediary has express authority to handle claims
 - the insurer has given express authority to the intermediary 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 regulated entity 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)
- a description of the regulated activities carried out and details of the level of service provided for each product type
- a statement that the advice given to the consumer is based on a fair analysis of the market, a limited analysis of the market or, if the intermediary acts as a tied insurance intermediary, for one or more insurance products
- a general statement of the charges imposed directly, e.g. charges for making changes to a policy, issuing duplicate documentation or for other services, e.g. risk management or claims assistance
- a summary of the regulated entity's policy on how it will use a consumer's personal data, in compliance with the obligations of the Data Protection Acts
- 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 to state that any failure to pay premiums due will result in policy cancellation or incurring a late-payment charge
- a summary of the regulated entity'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 Agreement.

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:

- Business description
- Scope of cover
- Newly acquired items and proposed change
- 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 Agreement should be supplied to each consumer (as a stand-alone document) before providing the first service.
4. It is likely that a presentation will need to be made to other insurers to check the availability of credible options at renewal, and 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. Zeal Brokers, a tied agent, 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 Agreement
- D. Zeal Brokers, regardless of whether or not Zeal Brokers referred the matter to the insurer to which they are tied

Your answer:

3. 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 agent
- C. the agent of the client
- D. an insurance assessor

Your answer:

Answers to 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

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.

2. Zeal Brokers, a tied agent, 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 Agreement
 - D. Zeal Brokers, regardless of whether or not Zeal Brokers referred the matter to the insurer to which they are tied

Chapter reference: Chapter 3D2b

Question type: U

Correct response: B

Learning outcome: Explain how agency operates in insurance.

3. 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 agent
 - C. the agent of the client
 - D. an insurance assessor

Chapter reference: Chapter 3D2a

Question type: U

Correct response: C

Learning outcome: Explain how agency operates in insurance.

Impact of the Central Bank Consumer Protection Code

What to expect in this chapter

This chapter is all about 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 – rules about quotations (Chapter 5), conflicts of interest (Chapter 7) and requirements for complaints handling (Chapter 8).

However, as the textbook does not cover the entire CPC, we encourage students to read the full document on the Central Bank website.⁴¹

⁴¹ Central Bank of Ireland, 'Consumer Protection Code 2012', online pdf, www.centralbank.ie.

Learning outcomes for this chapter

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

A

Consumer Protection Code

The current Consumer Protection Code (CPC) came into effect in January 2012. An additional Chapter (relating to debt management firms) was included in 2015.⁴² 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 entities
- 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 term includes small firms (those with a turnover of €3 million or less), and recognises that small enterprises may not have any greater understanding of insurance matters than the average individual. However, it is important to note that the €3 million figure is only a guideline and 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 insurer, intermediary or both.

The general principles – covered in Chapter 2 of the CPC – apply in respect of what are termed all 'customers' in the State for the provision of services and advice. Other chapters of the CPC apply in respect to those who fall within the definition of 'consumer', some being specifically restricted to 'personal consumers'. There is another category to which certain rules apply – the 'vulnerable consumer'.

Table 4.1 explains the definitions of these terms (in adapted form) as used in the CPC.⁴³ Some of these were introduced in Chapter 1A, and also appear in the Glossary of key terms at the end of this textbook.



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

⁴² Another Chapter (18) was introduced in November 2014 and is effective from 1 January 2015.

⁴³ Chapter 12, Definitions, CPC.

Table 4.1 Definitions used in the CPC (adapted)

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

A1a Who is a vulnerable consumer?

Identification of a consumer's vulnerability requires the exercise of judgement and common sense⁴⁴ and should be based on a consumer's ability to make a particular decision at a point in time.

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

⁴⁴ Central Bank of Ireland, 'Consumer Protection Code 2012 Guidance', online pdf.

Table 4.2 Identifying a vulnerable consumer

	Vulnerable consumers	Examples of vulnerabilities
1	Capable of making decisions, but their particular life stage or circumstances should be taken into account when assessing the suitability of insurance products or services.	Age, low income, illness, bereavement.
2	Capable of making decisions, but require reasonable accommodation to do so.	Hearing-impaired, vision-impaired, English is not their first language, poor literacy.
3	Limited capacity to make decisions (permanent or temporary).	Mental health difficulties, intellectual disability.

As you can see, not everyone over a certain age or with a physical disability should be classed as a vulnerable consumer. The issue also presents an opportunity. One of the most cited criticisms of the financial services industry is that it has lost consumer trust. The industry is now taking active steps to help consumers to 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 customer needs to make sure that they fully understand the insurer's terms and conditions and the overall contents of the proposal form. Notes to this effect should be retained on the customer's file.

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 regulated entity'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), some of these general principles are developed into specific rules that apply to a regulated entity's dealings with its consumers.

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

4.1

Extract Regulatory imperative, CPC 2.1

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

This links to a later requirement to avoid conflicts of interest. Honesty, fairness and professionalism are positive qualities that should be a major part of all business dealings – not simply in customers' best interests, but to support the integrity of the market. It links the firm's behaviour with its responsibility to uphold best market practice.

4.2

Extract Regulatory imperative, CPC 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 the Minimum Competency Code (MCC). 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 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 a lack of due care on the part of a firm. The relative merits of different products must be fully understood and explained.

4.4**Extract** Regulatory imperative, CPC 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 prevents a firm from relying purely on 'an intention to comply'. The firm must show that it has adequate resources in place, e.g. compliance, risk and internal audit mechanisms, effective governance and internal challenge 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 2.5

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

'Relevant' information includes client preferences and risk appetite, as we shall see in later chapters.

4.6**Extract** Regulatory imperative, CPC 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 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 7.

4.8**Extract** Regulatory imperative, CPC 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 8.

**complaint**

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

4.9

Extract Regulatory imperative, CPC 2.9

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

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

4.10

Extract Regulatory imperative, CPC 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.

4.11

Extract Regulatory imperative, CPC 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.

It is unlikely that this particular requirement is aimed at the general insurance sector, but rather the banking sector. Nevertheless, the principle applies to all regulated firms. For example, if an insurer refuses to provide a quotation for motor insurance or renew a motor policy, this could be seen as preventing access to a basic financial service.

4.12

Extract Regulatory imperative, CPC 2.12

Comply with the letter and spirit of this Code.

Specific emphasis on the spirit of the CPC is necessary for two reasons:

- Certain areas of the CPC rely on principles rather than specific rules. Phrases such as 'properly' and 'promptly' or 'on a timely basis' are used, and firms are expected to embrace these in a positive and active manner. For example, 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 an insurance 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 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.

**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.

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.

Insurers must provide a vulnerable consumer (see Table 4.1 for definition) with reasonable arrangements and/or assistance that may be necessary to assist their dealings with the firm. This would clearly include (but not be limited to) access to premises.

A firm must do three things if dealing with a person with a **power of attorney**, acting on behalf of a consumer:

- obtain a certified copy of the power of attorney
- ensure that this permits the person to act on the consumer's behalf
- operate within its limitations.⁴⁵

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 advertising a 'claims recovery service', when in reality they only send a single letter of request to recover an uninsured loss.

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.⁴⁶

Instructions received from a consumer must be processed properly and promptly.⁴⁷ This means that the adviser has a duty to process what is requested, but it goes further than this. 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 specified, or all, legal or financial matters

⁴⁵ Provision 3.7, CPC.

⁴⁶ Provision 3.9, CPC.

⁴⁷ Provision 3.3, CPC.



Example 4.1

As an adviser you receive notification that your client, Brendan, wishes to insure his house contents while they are in transit to his new home. This would prompt you to consider the following:

- Brendan's current insurance cover, i.e. whether the contents are already covered under the existing household policy
- changing the address on the current policy (and checking the adequacy of the sum insured)
- finding out if Brendan has any other policies through you (in order to change the address and, in the case of motor insurance, possibly revise the premium, depending on the new area where the car is to be kept).

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.

C1 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.



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 in advising clients that, in order to obtain quotes, they must purchase this facility.

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.

There are also requirements relating to 'bundled' products. The cost of the individual parts of a policy must be provided to the consumer in writing. A commercial combined policy, for example, could not simply show a total premium but must show the price of each section of the policy. This is because 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.⁴⁸

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.

⁴⁸ Provisions 3.19-3.21, CPC.

When bundled products are offered over the phone, all required information must be provided orally at the time, and then followed up in writing.⁴⁹

C2 Remuneration

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:

- either another regulated entity or an individual for whom a regulated entity has taken full and unconditional responsibility under the **Investment Intermediaries Act 1995**
- a member of, or regulated by, an approved professional body (or those regulated/ qualifying at the material time).⁵⁰

In recent years, the Central Bank has issued discussion and consultation papers on intermediary remuneration.⁵¹ Its concern is around consumer protection and 'inducements' that give rise to conflicts of interest (e.g. inducements based on volume of business placed or business retention). These papers have also proposed that firms should no longer be permitted to describe themselves and their regulated activities as 'independent' where they accept and retain inducements. Any change in this regard would have a significant impact on the current market practices in relation to remuneration.

Under IDD, a distributor may receive inducements if it does **not**:

- have a detrimental impact on the quality of the relevant service to the customer
- impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.⁵²

C3 Personal visits and consumer contact

A regulated entity is not permitted to make an unsolicited personal visit to a consumer who is an individual. There are no exceptions to this rule – a regulated entity can never, for example, knock on a consumer's door without a prior appointment.

Personal visits are permitted only when the consumer has given informed consent, which must be obtained and recorded for each separate visit. Informed consent means that the consumer knows the purpose (e.g. has requested information about a product), plus the time and date. Extract 4.13 covers the rules that apply to personal visits.

⁴⁹ Provision 3.23, CPC.

⁵⁰ Provision 3.25, CPC.

⁵¹ Central Bank of Ireland, 'Consultation Paper CP116', online pdf, November 2017, www.centralbank.ie

⁵² Article 46 & 57, Insurance Distribution Directive.

4.13

Extract Personal visits

- A regulated entity must not make an unsolicited personal visit, at any time, to a consumer who is an individual.
- A regulated entity 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 regulated entity by means of a personal visit. A regulated entity must obtain informed consent separately for each personal visit and must maintain a record of this consent.
- A regulated entity 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.⁵³

Extract 4.14 shows the rules that apply to telephone contact.

4.14

Extract Telephone contact

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

- a. the regulated entity 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 regulated entity 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 regulated entity.

A regulated entity 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 regulated entity permission to make telephone calls to them for specified purposes and the contact is in respect of such specified purposes

⁵³ Provisions 3.37-3.39, CPC.

4.14

Extract Telephone contact (cont'd)

- 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.⁵⁴

A regulated 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.⁵⁵

**C3a Compulsory elements**

Certain actions/components are compulsory in relation to the personal visit or telephone call itself. The order of providing information is exactly the same for personal visits as for telephone calls. Extract 4.15 covers compulsory actions that apply.

4.15

Extract Personal visits and telephone contact

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

- a. identify themselves by name, the name of the regulated entity 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.

⁵⁴ Provisions 3.40-3.41, CPC.

⁵⁵ Provisions 3.42-3.43, CPC.

In each case, if the consumer indicates that they want no further contact from sales and marketing, the insurer must comply with this and record the fact.⁵⁶

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 Roisin, 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 Roisin's motor policy. He also advises Roisin 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 followed the compulsory requirements, in the correct order.

C4 Handling payments

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

- the firm's name and address
- the name of the consumer who provided payment (or on whose behalf the payment was made)
- the amount received and the date it was received
- the purpose of payment
- in the case of an insurance intermediary, that receipt of a completed insurance proposal does not automatically put a policy into effect.⁵⁷

The CPC premium handling requirements ensures 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'. 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.⁵⁸



Firms must also maintain a detailed monthly reconciliation of each client premium account.

⁵⁶ Provisions 3.44-3.45, CPC.

⁵⁷ From Provision 3.5, CPC.

⁵⁸ From Provisions 3.46-3.50, CPC.

D

Provision of information

Chapter 4 of the CPC sets out the **information** that a regulated firm must provide to a consumer. This includes Terms of Business Agreement and the 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.

**information**

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, or in the context of the provision of MiFID services or activities

Minimum Competency
Code 2017

key information

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

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 this 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.⁵⁹

D2 Regulatory status

The CPC sets out the rules concerning both the content and disclosure of a firm's regulatory status (see Example 4.4) 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).

⁵⁹ Provisions 4.1-4.4, CPC.

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

The content of the statement differs according to whether the regulated entity is authorised in Ireland or in another EU member state. The format of the regulatory disclosure statement, as stated by the CPC, is as follows:

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

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 is endorsing either the firm or its products or services.⁶⁰

Example 4.4 shows some typical regulatory statements on insurer and intermediary websites.



Example 4.4

Regulatory statements on websites

An insurer or intermediary with its head office in Ireland will have a very simple regulatory statement on its website, such as:

FluidCo Insurance PLC 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 state in which it is authorised and the fact that it is regulated by the Central Bank for conduct of business rules. For example:

Offshore Legal Expenses Insurance Company Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority of the United Kingdom and regulated by the Central Bank of Ireland for conduct of business rules.

D3 Terms of business

The Terms of Business Agreement sets out the basis on which a regulated 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 3, the CPC specifies the content of this document.

⁶⁰ From Provisions 4.7-4.11, CPC.

D4 Information about products

Before offering, recommending, arranging or providing a product, a regulated entity must provide information in writing to the consumer about the product's main features and restrictions. This is to help the consumer to understand the product. Before the consumer enters into a contract for that product or service, the firm must also provide in writing the terms and conditions attaching to a product or service. Distance sales (those that involve methods other than 'face-to-face' contact) are also subject to the additional requirements of the distance marketing regulations (which are discussed further in Chapter 6D2).

The regulated entity must provide specific information to consumers at the quotation stage and at the proposal stage. This is an important means by which the Central Bank protects consumers of financial products. The firm must provide key information to help a consumer fully understand the product's benefits and limitations. We will consider these requirements in Chapter 5.

As mentioned in Chapter 1E2b, under IDD, there is a requirement to provide key information in an Insurance Product Information Document (IPID). The IPID should:

- be a short and stand-alone document;
- be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- be written in the official languages, or in one of the official languages, used in the part of the Member State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;
- be accurate and not misleading;
- contain the title 'insurance product information document' at the top of the first page;
- include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

The IPID should also contain the following:

- information about the type of insurance
- a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks
- the means of payment of premiums and the duration of payments
- main exclusions where claims cannot be made
- obligations at the start of the contract, during the term of the contract and in the event that a claim is made
- the term of the contract including the start and end dates of the contract
- the means of terminating the contract.⁶¹

D5 Information about charges

Before providing a product or service to a consumer, a regulated entity must provide written information about all charges that will be passed on to the consumer.

A regulated entity must also display in its public offices, in a manner that is easily accessible to consumers, a full schedule of its fees and charges. This information must also be available on the firm's website (if it has one).⁶²

D6 Information about remuneration

An intermediary must explain to a consumer how they (the intermediary) are paid for their services. Prior to the sale of a non-life insurance product, an insurance intermediary must:

- disclose in general terms to a consumer that they are paid for the service provided to the consumer by means of a remuneration arrangement (normally commission) with the product producer
- inform the consumer of the amount of remuneration receivable in respect of that service or that details of remuneration are available on request
- disclose in general terms to a consumer any remuneration arrangements with product producers that are not directly based on the service provided to an individual consumer but are based on levels of business introduced by the intermediary to the product producer, or that may be perceived as having the potential to create a conflict of interest.

⁶¹ Article 20, IDD

⁶² From Provisions 4.55-4.56, CPC.

The disclosure requirement must be included in the Terms of Business Agreement (as noted in Chapter 3E), or communicated through some other suitable mechanism, and with renewal notices.⁶³

In practice, intermediaries tend to indicate that the amount of remuneration is available on request. However, where an intermediary charges the consumer a fee, the option and 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, it must explain to the consumer whether or not the commission will be offset against the fee, either full or in part.⁶⁴

⁶³ From Provisions 4.59-4.60, CPC.

⁶⁴ From Provision 4.61, 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 definite timescales – especially for responding to consumers in different situations.

As stated earlier, a firm must 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, including:

- 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 of these matters may be relevant to specific products, e.g. critical illness, payment protection, private health insurance. However, the CPC only requires establishing these insofar as they are relevant.
- Financial situation – It is unlikely that the adviser is able to access this information for private individuals, although it may be available for small firms. For financial advisers, detailed information must be obtained from the consumer, especially when life, pensions and investment products are being sold. In all cases, the adviser must gather enough information to enable them to decide whether a client can afford a particular product (see Section E1).
- Attitude to risk – Some consumers are comfortable retaining a degree of risk, while others prefer the security of an insurance product that offers a high level of protection. Risk questionnaires are now used to assess a consumer's attitude to investment risk and to advise them of their risk profile. We look at this further in the Personal General Insurance module and the Commercial General Insurance module.

The CPC also requires the advising firm 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 to the consumer. This is also important when policies are being renewed. Where there is no material change, this must be noted on the consumer's records.⁶⁵

Where a consumer refuses to provide the required information, the advising firm must let the consumer know that it does not have the information that it needs to assess suitability. It therefore cannot offer the consumer the product or service they seek. For this reason it is essential for the advising firm to:

- be aware of what represents vital information for the purpose of giving advice
- carry through this requirement precisely if material information is not forthcoming.



Quick question 2

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

⁶⁵ Provision 5.3, CPC.

The adviser must also request the consumer to certify the accuracy of information provided.⁶⁶

E1 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 advising firm must consider and document whether:

- the product or service meets that consumer’s needs and objectives
- the consumer is:
 - likely to be able 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.⁶⁷

For example, an adviser would fall short of the CPC requirements if they were to persuade a consumer to purchase an expensive form of comprehensive motor insurance, which the consumer is unlikely to be able to afford, when a suitable basic motor insurance product can 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 policy.

Where a single product (or selection of products) is offered, it must represent the most suitable product for that consumer.⁶⁸

E2 Statement of suitability

Prior to providing or arranging a product or service, a firm must prepare a written statement setting out the reasons why:

- a product or service (or options if listed) offered to a consumer is/are considered to be (most) suitable for that consumer
- a recommended product is considered to be the most suitable product for that consumer.

The reasons provided must reflect the information gathered (referred to at the beginning of Section E) to assist the consumer in understanding how the recommendation meets their needs and objectives, personal circumstances and financial situation. 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 module and the Commercial General Insurance module.

The requirement to prepare a statement of suitability may seem somewhat unnecessary for relatively straightforward policies, 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 policies require a tailor-made statement of suitability.⁶⁹

⁶⁶ Provisions 5.4-5.5, CPC.

⁶⁷ Provision 5.17, CPC.

⁶⁸ Provisions 5.20-5.23, CPC.

⁶⁹ Provisions 5.20-5.23, CPC.

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. 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 very 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.

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 terms of business, it must provide each affected consumer with a revised Terms of Business Agreement as soon as possible.⁷⁰ In practice, this often means an intermediary sending out a revised document, along with the renewal notice documentation, to customers as their policies fall due.

F2 Information about insurance products

An insurer must issue policy documentation within 5 **business days** (as per Example 4.5) from the date that all relevant information is provided by the consumer and cover is agreed (i.e. the conclusion of the contract). 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



Example 4.5

Business days

If a policy is completed 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, as only business days are counted.

It is important to note that this requirement relates to conclusion of the contract, not the inception date of the policy (when cover starts). If all details have been agreed prior to the inception date (as is normally the case) the 5 business days runs from the date of conclusion.

⁷⁰ Provision 6.1, CPC.



Quick question 3

Consider John's new household insurance policy. He agreed all the policy terms and conditions on 25 January and sent the remittance 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?

An insurance intermediary must, within 5 business days of receiving the policy documentation from an insurer, provide them to the consumer. 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 days after conclusion of the contract. If the intermediary receives them from the insurer earlier, the 5 business days period begins for the intermediary on receipt of the documents.

In compliance with the **Fourth EU 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.⁷¹

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 days in advance of any change.⁷²

⁷¹ Provisions 6.13-6.14, CPC.

⁷² 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 premium rebate becomes due as soon as they are aware of the circumstances giving rise to the rebate (e.g. as soon as they are told about a change of car or a request to remove an item from a policy).
- For intermediaries – The rebate becomes due when they receive it from the insurer, or when the insurer notifies the intermediary that it is due, and permits payment by the intermediary from funds held by the intermediary on its behalf.

In both cases, the rebate must be paid to the consumer within 5 business days of it becoming due. This allows the firm enough time to process the repayment, without causing any unnecessary delay for the consumer.

Where the premium rebate is €10 or less, the 5-business-day rule applies; however, the consumer can be offered a choice of the following options:

- to receive the premium rebate
- to receive a reduction from a renewal premium or other premium currently due
- to permit the regulated entity to make a donation of 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. The firm must document the donation and keep a receipt from any relevant charity.⁷³

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 six 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. The consumer and intermediary may agree to deduct the charges from the rebate, but the Central Bank requires that the agreement be in writing and details clearly stated.⁷⁴

⁷³ Provisions 7.1-7.2, CPC

⁷⁴ From Provisions 7.3-7.5, CPC.

H

Summary

The information in this chapter showed us how the CPC applies to all aspects of a firm's dealings with its consumers. If you work for an insurer or intermediary, it is very important to know the provisions of the CPC and the obligations they create.

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's 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, **Connect** has many online study supports that can help you as you study this module.

H3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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 4.

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

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

3. List the information that a receipt must contain for every payment made by a customer.

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

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

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

7. State the purpose of a 'statement of suitability'.

8. State the time limit 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.

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

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 outside their business, trade or profession.
2. The representative of a regulated entity must immediately and in the following order:
 - a. identify themselves by name, the name of the regulated entity 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 received and the date it was 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:
 - disclose in general terms that it is paid by means of a remuneration arrangement with the insurer
 - inform the consumer of the amount of remuneration receivable or that details of remuneration are available on request
 - disclose in general terms to a consumer any remuneration arrangements with product producers that are not directly relevant to the service provided but are part of an arrangement between the intermediary and the product producer (e.g. volume overriders), or that may have the potential for a conflict of interest.
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 set out the reasons that reflect the information gathered, to assist the consumer in understanding how the recommendation meets their needs, objectives, personal circumstances and financial situation, and to recommend the product or services that is/are consistent with their attitude to risk.

8. The intermediary must provide policy documentation to the consumer within 5 business days of receiving the policy documentation from an insurer. The 5 business day period begins on receipt of the documentation. However, there may be a need for the intermediary to act more quickly if the insurer was late in sending the policy documentation.
9. 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 consumer can be offered a choice of the following options:
 - to receive the premium rebate
 - to receive a reduction from a renewal premium or other premium currently due
 - to permit the regulated entity to make a donation of the rebate amount to a registered charity.



Answers to quick questions

1. Firms are required to have, and effectively employ, the resources, policies, procedures, systems, control checks (including compliance checks) and staff training necessary for compliance. This requirement prevents a firm from relying purely on just an intention to comply.
2. 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 client to volunteer the necessary information.
3. The answer is 'straight away'. The insurer was late in supplying the document to the intermediary and, although the intermediary has a theoretical time limit of 5 business days, the due date for receipt by the consumer should be no longer than 10 business days overall. Terms were agreed on 25 January. This means that the policy should be sent to John by 8 February.



Sample multiple-choice questions

1. If an insurer sends all policy documentation to the consumer through an intermediary, how many days at **most** may lapse between the policy inception 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:

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. Jetson, an incorporated body, has an annual turnover of €2.5 million. By how much, if any, would Jetson's turnover need to **increase** for it to be treated as a 'consumer' under the Central Bank Consumer Protection Code?

- A. Nil
- B. €600,000
- C. €1 million
- D. €2 million

Your answer:

Answers to sample multiple-choice questions

1. If an insurer sends all policy documentation to the consumer through an intermediary, how many days at **most** may lapse between the policy inception and the documentation being issued to the consumer?
- A. 5 calendar days.
 - B. 5 business days.
 - C. 10 calendar days.
 - D. 10 business days.

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.

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

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.

3. Jetson, an incorporated body, has an annual turnover of €2.5 million. By how much, if any, would Jetson's turnover need to **increase** for it to be treated as a 'consumer' under the Central Bank Consumer Protection Code?
- A. Nil
 - B. €600,000
 - C. €1 million
 - D. €2 million

Chapter reference: Chapter 4A1

Question type: A

Correct response: A

Learning outcome: Describe and apply the general principles and requirements of the Central Bank Consumer Protection Code.

Chapter

5

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
- the legal significance and the regulatory requirements for these documents.

The chapter identifies and explores the main documentation that supports the insurance process, namely quotations, proposal forms, policy documentation, motor insurance certificates and renewal invitations. As well as the legal and regulatory requirements, we will also examine the function and scope of these documents.

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	Quotations	Identify and apply the procedures, including the regulatory requirements, regarding general insurance quotations.
B	Proposal forms	Explain the methods by which material facts are established.
C	Policy documentation	Explain the insurance documentation required throughout the insurance process and demonstrate the legal requirements applying to insurers when issuing this documentation.
D	Renewals	

A

Quotations

An insurer's relationship with a customer typically begins with a request for a quotation. A person or company 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 customer (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 then 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 theft, the quotation may be 'subject to' deadlocks being fitted to all exit doors. In commercial insurance, the quotation may be subject to a satisfactory survey by the insurer.



A1 Regulatory requirements for quotations

The CPC states that when providing a quotation to a consumer, the following information must be included:

- the monetary amount of the quotation
- the length of time the quotation is valid
- the full legal name of the relevant underwriter.

The quotation must also state any warranties or endorsements that apply to the policy. Where the quotation is provided in writing or another durable medium, this information must not be in a smaller font size than other information in the document. Any discounts or loadings that have been applied in generating the quotation must also be set out.⁷⁵

There are also some special requirements for specific classes of insurance.

⁷⁵ 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

A1a Motor insurance

A regulated firm must set out clearly 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 road traffic accident, fire or theft.⁷⁶

The CPC also states that, where an insurer refuses to quote a consumer for motor insurance, it must advise the consumer within 5 business days of the refusal and provide its reasons in writing. It must also notify the consumer of their right to refer the matter to the Declined Cases Committee and the method for doing so.⁷⁷

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 they have approached at least **three** insurers and have not been able to obtain cover from any of them.

In general, the insurer first approached will be required to provide the individual with a quote. If the proposer 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 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.

When offering motor insurance to a consumer, where relevant, a firm must explain that in the event of a claim the insurer may appoint its own expert to conduct restitution work on a motor vehicle.⁷⁸

⁷⁶ Provision 4.33, CPC.

⁷⁷ Provision 4.38(a), CPC.

⁷⁸ Provision 4.38, CPC.

A1b Property insurance

An insurer who refuses to quote a consumer for property insurance must inform the consumer 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 (orally); however, the consumer must be told of their right to receive the information in writing should they request it.⁷⁹

In much the same way as for motor insurance, a firm 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 repairs or rebuilding work on a property.⁸⁰

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 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 the terms of this regulatory requirement?

This regulatory requirement emphasises the need to identify the repair and reinstatement options.

⁷⁹ Provision 4.39(b), CPC.

⁸⁰ Provision 4.38, CPC.

**proposal form**

type of questionnaire, asking questions 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 Sections B1 to B4, we will explore the content and legal significance of proposal forms, the regulatory requirements for proposal forms and some of the other methods that 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 form (personal and commercial) to see the variety in structure and style of questions. Examination of these forms will reveal that they contain both general and specific questions.

General questions are those that commonly appear on proposal forms across a range of insurances. General questions 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/convictions⁸¹
- 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.

⁸¹ Note previous convictions which 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

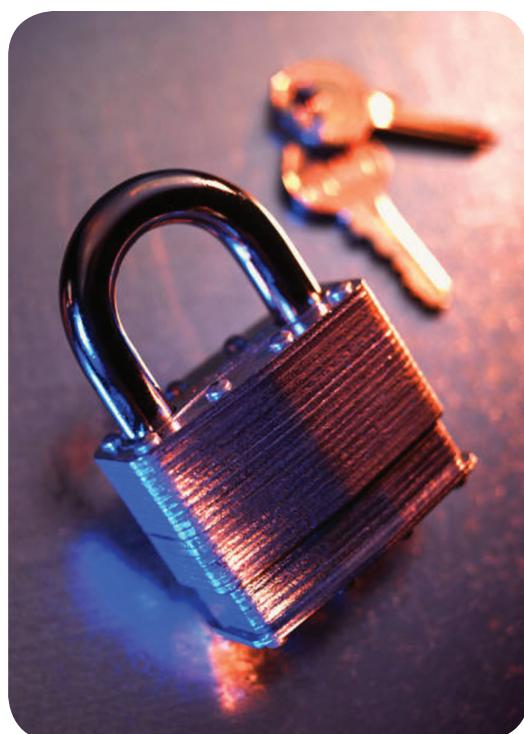
Class of business	Subject of question
Motor	Driver age Type of licence held, e.g. full, provisional, Irish, EU, international, etc. Previous driving experience Criminal prosecutions pending Previous accidents, claims, convictions and penalty points Details of the vehicle/trailer
Employers liability insurance	Machinery safeguards Noise risks Pollution hazards Working away from the premises Working at heights
Fire insurance	Manufacturing processes Storage arrangements Building construction Fire detection/protection measures
Theft insurance	Full breakdown of types of stock Security precautions (e.g. locks, alarms)
Personal accident	Occupation, hobbies

B1a Private health insurance application forms

A very restricted application form is used for gathering information in relation to private health insurance. The statutory principles outlined in Chapter 2D make many personal details irrelevant to the underwriting process.

The subject of the questions asked is as follows:

- proposer's name, address, age and gender
- details of previous insurance (for adjusting loadings and waiting periods)
- commencement of cover
- level of cover.



Quick question 2

Why isn't there a question regarding past claims experience on a private health insurance proposal form?

B2 Legal significance of proposal forms

The proposal form is a legal document that forms the basis of the insurance contract. Proposal forms contain a declaration that the policyholder must sign, declaring that, to the best of the proposer's knowledge and belief, the answers given on the form are true. This confirms the legal obligation on proposers to provide honest and accurate answers.

Students will be aware from previous studies (The Nature of Insurance and other modules) that failing to disclose material facts or providing inaccurate information on a proposal form can have serious consequences in the event of a claim.

B3 Regulatory requirements for proposal forms

The CPC sets out the regulatory requirements for proposal forms. The rules state that a firm must explain, at the proposal stage, the consequences of 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 they seek.

The explanation must include, where relevant, that failure to fully disclose relevant facts can result in:

- the policy being cancelled
- claims not being paid
- difficulty in trying to purchase insurance elsewhere
- in the case of property insurance, the failure to have property insurance in place (if the policy is cancelled) could lead to a breach of the terms and conditions attaching to any loan secured on that property.⁸²

As we will see in Chapter 6B, under the **General Data Protection Regulations 2016**, personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which those data are processed.⁸³ This means that insurers must assess the relevance of all data collected to ensure it is relevant and not overly intrusive relative to the product being underwritten.

In the UK, the **Insurance Act 2015** has replaced the pre-contract duty of disclosure with a new duty of fair presentation.⁸⁴ In January 2017, the Consumer Insurance Contracts Bill 2017 was introduced in Ireland.⁸⁵ Although the Bill is in the early stages, if passed in its current form, it will lead to huge changes to Irish consumer insurance contracts, including the duty of disclosure. Table 5.2 provides a summary of some of the key changes.

⁸² Provision 4.35, CPC.

⁸³ Article 5, GDPR.

⁸⁴ Jonathan Sacher, 'Insurance Act 2015: Quick Guide - What are the key changes?' online article, 18 May 2016, www.blplaw.com.

⁸⁵ Stephen Netherway, 'Ireland's Consumer Insurance Contracts Bill is a 'Win-Win Deal'', online article, 30 March 2017, www.lawyer.ie

Table 5.2 Summary – Consumer Insurance Contracts Bill 2017

Consumer	The duty of utmost good faith on a consumer is replaced by a pre-contractual/renewal duty of disclosure to answer specific questions from the insurer honestly and with reasonable care, without obligation to provide additional information.
Insurer	<p>The insurer's questions must be specific and intelligible, and the insurer must inform the consumer of their duty of disclosure. If the insurer fails to follow up on questions the consumer has not answered or incompletely answered, it waives the consumer of any further duty of disclosure (unless the consumer shows intention to fraud or intentional recklessness).</p> <p>On enactment of the bill, insurers will have 18 months to redraft their policy wordings and proposal forms.</p>
Remedies for misrepresentation	Proportionate remedies are introduced where a consumer's answer involves misrepresentation , depending on whether it was innocent, negligent or fraudulent.

If introduced, this legislation would apply to consumers within the definition of the Act (i.e. a natural person or a person or a group of persons having an annual turnover of €3 million or less and includes a proposer as well as an insured), but not (as with the Insurance Ireland Non-Life Insurance General Code) to commercial risks or to marine and aviation policies. Students should keep up to date on the progress of this Bill.

When applying for personal accident, critical illness and travel insurance, for example, medical details or history are vital in terms of disclosure. Medical history may also be relevant to other insurance contracts (e.g. payment protection insurance), where the policy may exclude the effects of pre-existing medical conditions. For these contracts, the adviser will need to alert the proposer to the impact of such 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 conditions.


misrepresentation

untrue statement of fact, either innocent or fraudulent, made during negotiations with another contracting party

B4 Alternatives to proposal forms

Although the proposal form is the traditional method for 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.

B4a Statement of fact, factsheets and telephone sales

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 (such as motor and household), but it is also becoming more common for some commercial insurance products (including shop, office and tradesperson's liability policies).

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 bonus) within a certain number of days. Alternatively, the insurer may simply state that any inaccuracies in the statement of fact are reported within seven days from the date of receipt (of the statement). The importance of disclosing material facts is highlighted in bold print and the proposer is reminded that the statement of fact is incorporated into, and forms the legal basis of, the insurance contract.

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, as the insured must confirm that the information provided online is true to the best of their knowledge and belief, and that they accept the factsheet as the legal basis of the insurance contract.

In the case of phone sales, the statement of fact may be dispensed with, as the digital **voice recording** of the phone call becomes the proposal information. However, the proposer must be made aware of the recording of information at the outset.⁸⁶

B4b 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 instead, 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 insured'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.



statement of fact

a statement provided by the insurer, after confirmation of cover by phone or online, clarifying the basis on which insurance is accepted and what conditions apply

factsheet

electronic form asking if the statements given onscreen are correct – to which the insured clicks Yes or No

voice recording

the record of a telephone call, which is timed and dated for future verification

⁸⁶ Provision 3.44, CPC.

Where an insurer needs more information than is provided, they can obtain this through:

- correspondence, telephone conversations or meetings with the proposer or intermediary
- supplementary questionnaires for some risks (in addition to the proposal form), which will 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?

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 concluded, 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 client.⁸⁷

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 not the contract itself. However, it ensures that both the insured and the insurer are clear as to the terms agreed between them. It is important proof in the event of a dispute over the terms agreed.



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 5.3. (Students should access a range of policy booklets to see the various presentations and structures.)



⁸⁷ Provision 3.44, CPC.

Table 5.3 Policy structure

Policy section	Content
Heading	Name of insurer, company logo and usually the address and other contact details
Recital clause/ preamble	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
Definitions	A list of frequently used terms or words with a particular meaning
Signature	Signed by the officer of the insurer (pre-printed)
Operative clause(s)	One or more clauses that describe the standard scope of cover for each section
Policy schedule	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
Information and facilities	Including, for example, information on customer helplines, service standards and complaints and claims procedures
General conditions	Standard conditions applied by all insurers to policies of a given type (see Section C1d)
General exclusions/ exceptions	Standard exclusions applied by all insurers to policies of a given type (see Section C1e)

**exclusion/exception**

policy provision that defines circumstances or types of loss that are not covered

**recital clause
(preamble)**

scene-setting clause that refers to the parties to the contract, premium, indemnity and proposal (if any) as the basis of the contract

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 clause also states that the proposal form is the basis of the contract, stating that it will be incorporated within 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 use the method of defining terms in the policy?

**operative clause**

clause(s) that describes the standard scope of cover of each section of an insurance 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 policy wordings, many insurers in Ireland have restyled their language, using the word ‘we’ instead of ‘the insurer’ and ‘you’ in place of ‘the insured’, to simplify previously complex wordings.

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 the case of motor and household policies), each dealing with a different aspect of the insurance cover. They usually contain exceptions, restrictions or conditions that are specific to each individual operative clause.

C1c Policy schedule

The policy schedule is an important component of the policy. For booklet-type policies, this is the place where the policy is made personal and specific to the insured.

Within the schedule are shown the variable details of the policy, as follows:



- 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, conditions or aspects of cover
- identification of the operative sections of the policy.

**territorial limits**

those countries or territories where the policy cover will operate

Examples of general conditions include:

- Due observance – All terms and conditions of the policy must be fulfilled 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 – This condition requires the insured to notify the insurer of any changes that increase the risk of damage during the currency of the policy. The effect is to extend the duty of disclosure so that it becomes a continuing one.
- Cancellation – This provides for cancellation during the currency (life) of the policy, usually by the insurer. In most cases, the insurer has to give 10 days’ notice by

C1d General conditions



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 with no apportioning of blame



Quick question 4

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

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 to 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:

- War and related perils – costs involving any kind of hostility (usually met by governments)
- Terrorism – loss or damage directly or indirectly caused by an act of terrorism
- Radioactive contamination – damage linked to nuclear fuel, waste or assemblies
- Sonic bangs – damage caused by pressure waves from aircraft travelling at sonic or supersonic speed
- Cyber risks – damage caused by a reduction in functionality, loss of information, failure of hardware or software or, more generally, date-recognition failure.

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 – a **cover note** can be used in this case. For example:

- An insurer has sufficient detail to price a property risk but wishes a surveyor to visit the premises and provide a survey report of the risk to establish any necessary 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, in the process of obtaining more information, it becomes aware that the risk is unacceptable. Intermediaries have a duty to clarify such issues on their client's behalf.



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

C3 Motor insurance certificates and discs

With regard to compulsory motor insurance, a **Certificate of Motor Insurance** acts as proof that the minimum cover set out in the **Road Traffic Acts** is provided under a policy. The motor insurance certificate is issued by the insurer 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 has been issued
- period of cover – from [date] to [date]
- 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 (www.nfd.ie).

The high incidence of uninsured driving prompted the government to introduce regulations 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 motor fleets of five or more vehicles, the policyholder's name)
- period of cover
- name of the 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.



blanket certificate

certificate of motor insurance that refers to classes of vehicle rather than specific registration numbers

fleet policy

a motor policy that covers a collection of vehicles owned by a corporate entity

D

Renewals

Most general insurance policies are issued for a period of twelve months. However, for general insurance policies, there is no obligation either on the insurer to offer to renew or on the insured to accept. There are two exceptions to this general rule:

- 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 **long-term agreements** 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.

**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. Two major reasons are that:

- the costs of renewing a policy are much less than those for 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, which is sent 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. The notice shows the premium payment required to renew the policy, together with any proposed changes to the terms. 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 to the class of insurance.

D1 Timing of insurance renewal advice

The renewal procedures for all general non-life insurance classes (excluding marine insurance) are dictated by the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007** with some specific additional requirements for motor insurance. These regulations require that an insurer must give written notification (including by email) not less than 15 working days before the renewal date, either inviting renewal or stating that it does not wish to renew the policy.

The 2007 Regulations also require insurers to provide more detailed information on the terms of a motor renewal invitation. These terms must include the following information:

- the registration number of each vehicle insured under the policy
- the name of the drivers insured or the classes of drivers
- policy cover (comprehensive; third party, fire and theft; third party only; or a combination of these)
- any portion of the premium that has been charged because of the client's claim(s) history or prior convictions
- the cost of any optional or ancillary (non-core) cover, e.g. legal expenses or breakdown assistance
- any separate fees or charges
- changes to the terms of the policy, e.g. restrictions or limitations introduced
- details of payment options
- any discounts applied, which may include the:
 - discount percentage and amount
 - point on the no-claims discount (NCD) scale
 - number of years in which no claim has been made against the policy.⁸⁸



The Regulations allow renewal notices to be sent through an intermediary. If so, the intermediary is responsible for making sure that the renewal notice is issued within the specific timeframes given in the Regulations.

The Central Bank published a consultation paper (CP114) to seek views from interested stakeholders on the following recommendations from the Cost of Insurance Working Group Action Plan:

- the provision of additional information regarding premium breakdown to consumers
- an extension of the current renewal notification period to make it easier for motorists to compare pricing when purchasing insurance. The Central Bank is also seeking views on whether this extended notification period should also apply in the case of other classes of non-life insurance.⁸⁹

If these changes are implemented, it will cause significant operational change requirements within insurance firms and intermediaries.



Just think

Is a consumer at a disadvantage when dealing with an intermediary because of the delay in receiving renewal documentation?

The 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 applied time period.

⁸⁸ This is usually presented as a separate document, which allows the client to use as evidence of their no claims entitlement if they should decide to transfer to another insurer or to another cover type of their policy renewal date.

⁸⁹ Central Bank, 'Consultation Paper CP114', online pdf, November 2017, www.centralbank.ie

E

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 the Irish insurance market operates in. Chapter 6 will look at other relevant legislation in areas such as financial crime, data protection and consumer protection.

E2 Study tips

It's 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, **Connect** has many online study supports that can help you as you study this module.

E3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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 situations where an insurer refuses to issue a quotation for property insurance.

2. Define a proposal form.

3. Outline the typical 'risk-specific' questions in a private motor insurance proposal form.

4. List **four** questions typically found in a private health insurance application form.

5. For personal insurances, identify the means available to an insurer to acquire information, other than by proposal form.

6. State the timing requirements for the issue of policy documentation once an insurance contract has been concluded.

7. State five pieces of information that typically appear on a policy schedule.

8. State the effect of a 'general exclusion' in an insurance policy.

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 **Road Traffic (Compulsory Insurance) Regulations 1962**).

10. List the specific information that must be included in a renewal invitation for a motor insurance policy under the terms of the **Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007**.

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 the consumer 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 (orally); 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 asking questions about the subject matter of insurance. It is a legal document that forms the basis of the contract.
3. Risk-specific questions would ask about the driver's details, e.g. age, full/provisional licence held and whether it is an EU or Irish licence, criminal prosecutions pending and previous accidents, claims, convictions and penalty points.
4. Any four of the following:
 - proposer's name, address, age and gender
 - details of previous insurance
 - 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 (or if an intermediary is involved, the intermediary has a further 5 business days to pass this on to the client).
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, conditions or aspects of cover
 - identification of the operative sections of the policy.
8. A policy exclusion states the events 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 risk-specific information (as per the **RTA 1962**):
 - period of cover – from [date] to [date]
 - 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.
10. Motor insurers must provide the following information:
 - the registration number of each vehicle insured under the policy
 - the name of the drivers insured or the classes of drivers
 - policy cover (comprehensive; third party, fire and theft; third party only; or a combination of these)
 - any portion of the premium that has been charged because of the client's claim(s) history or prior convictions
 - the cost of any optional or ancillary (non-core) cover, e.g. legal expenses or breakdown assistance
 - any separate fees or charges
 - changes to the terms of the policy, e.g. restrictions or limitations introduced
 - details of payment options
 - any discounts applied, which may include the:
 - discount percentage and amount
 - point on the no-claims discount (NCD) scale
 - number of years in which no claim has been made against the policy



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 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 sections of the policy are as follows:
 - a. the schedule
 - b. the operative clause.



Sample multiple-choice questions

1. 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:

2. 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:

3. George's motor insurance policy is due for renewal with Inca Insurance on 5 December. The **latest** date by which Inca must issue his renewal notice is:

- A. 7 November
- B. 14 November
- C. 20 November
- D. 28 November

Your answer:

Answers to sample multiple-choice questions

1. 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.

Chapter reference: Chapter 5C3

Question type: K

Correct response: C

Learning outcome: Explain the insurance documentation required throughout the insurance process and demonstrate the legal requirements applying to insurers when issuing this documentation.

2. 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

Chapter reference: Chapter 5B1

Question type: U

Correct response: D

Learning outcome: Explain the methods by which material facts are established.

3. George's motor insurance policy is due for renewal with Inca Insurance on 5 December. The **latest** date by which Inca must issue his renewal notice is:
- A. 7 November
 - B. 14 November
 - C. 20 November
 - D. 28 November

Chapter reference: Chapter 5D1

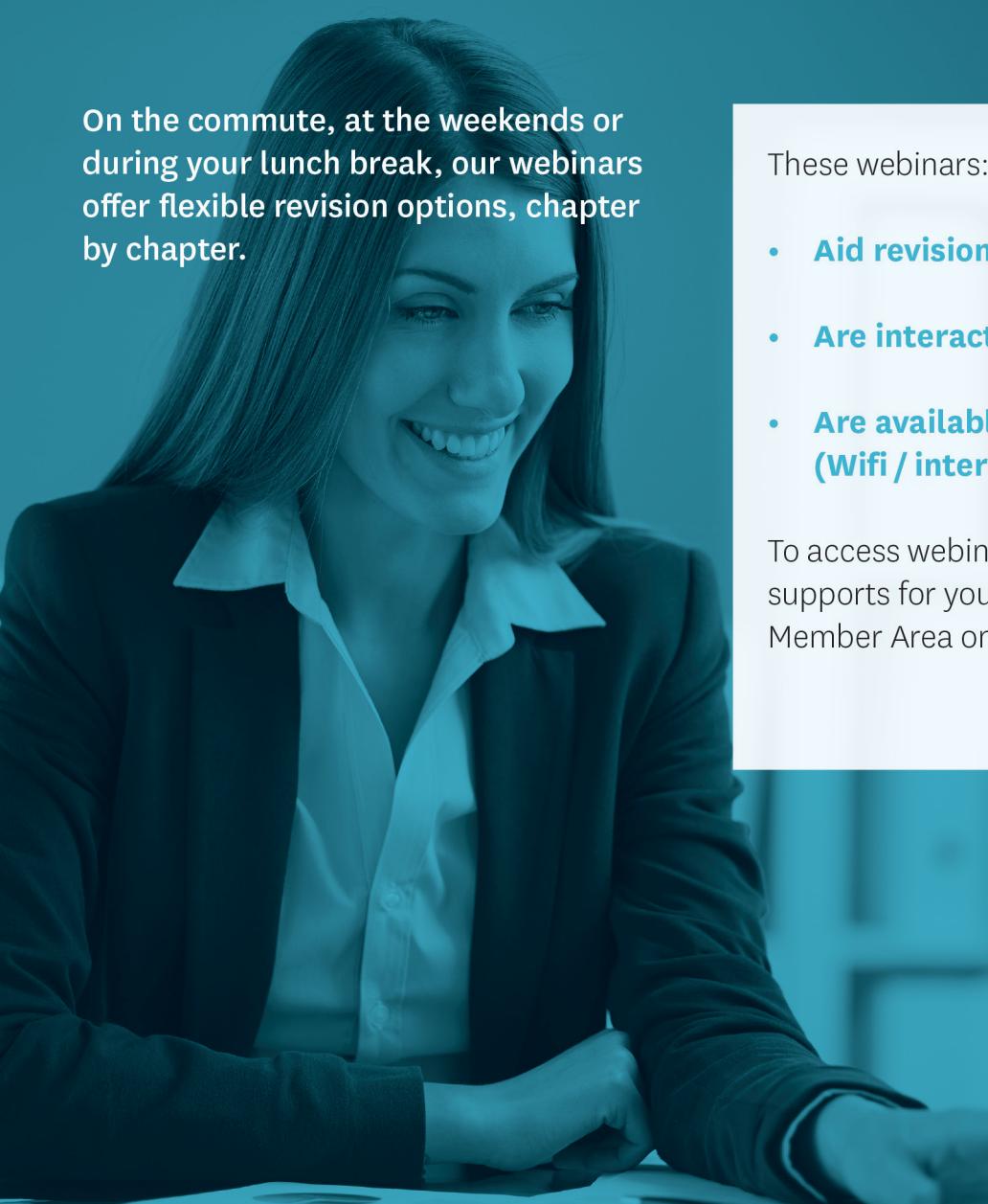
Question type: A

Correct response: B

Learning outcome: Explain the insurance documentation required throughout the insurance process and demonstrate the legal requirements applying to insurers when issuing this documentation.

Time to learn

Master the material with our webinars



On the commute, at the weekends or during your lunch break, our webinars offer flexible revision options, chapter by chapter.

These webinars:

- **Aid revision of your textbook**
- **Are interactive and easy to follow**
- **Are available on demand
(Wifi / internet access required)**

To access webinars (and other online study supports for your module) log in to the Member Area on our website.



The
Insurance
Institute

For more information visit our website www.iii.ie or call Member Services on **01 645 6670**.

Chapter

6

Other legal requirements

What to expect in this chapter

This chapter will consider some of the other important legislative influences on the insurance market. We will look at the impact of legislation on activities such as money laundering, data protection, equality and consumer protection.

This chapter introduces a range of legislation which, although not specific to the insurance sector, mostly applies to insurance practice. We will consider the obligations placed 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 customer information (i.e. personal data).

In addition, we will look at some key areas of consumer protection, including the **European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (as amended)** and the **European Communities Distance Marketing of Consumer Financial Services Regulations 2004 (as amended)**.

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 those that relate to money laundering, terrorist financing and their impact on the insurance sector.

**financial crime**

a wide term embracing money laundering, proceeds of crime, 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

For **money laundering** to occur, the funds involved must be the proceeds of criminal conduct. This includes all forms of handling or possessing funds which are known or believed to be or represent the proceeds of criminal conduct. It includes both possessing the proceeds of one's own crime and facilitating any handling or possession of such proceeds.

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 such as a pension, life policy, unit trust deposit account or travellers' cheques. Example 6.1 shows how money-laundering schemes might apply to the insurance sector.



Example 6.1

General insurance policies that may be used as part of a money-laundering process

Example A: An individual pays a large cash premium (using illegally obtained funds) and cancels 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 or an item of jewellery) and makes a claim under an insurance policy for a total loss. The loss may be false (e.g. the individual still has the item they said was lost or stolen) or deliberate (e.g. the individual intentionally damaged their own property).

There are three stages in the money-laundering process:

1. **Placement** – Putting money into the financial system and converting it into other financial assets
2. **Layering** – Concealing the origins of the money by creating a series of complex transactions
3. **Integration** – Gaining access to the money as apparently legitimate funds.

**placement**

first stage in the money-laundering process that involves putting cash into the financial system and converting it into other financial assets, e.g. cheques or property

layering

second stage in the money-laundering process involving concealing the origins of the money by creating a series of complex transactions, possibly including fund transfers overseas or trading in stocks

integration

third stage in the money-laundering process involving the gaining of access to the money as apparently legitimate funds



terrorist financing

involves the provision, collection or receipt of funds with the intent or knowledge that they will be used to carry out an act of terrorism or any act intended to cause death or serious bodily injury. This includes collecting or receiving funds to be used, or knowing that they will be used, for the benefit of a terrorist group

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 measures imposed on individuals or entities in an effort to curtail their activities and to exert pressure and influence on them; including, but not limited to, financial sanctions, trade sanctions, restrictions on travel or civil aviation restrictions



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 or jewellery and payment of the insurance premium was the placement stage. The layering stage was when the policy was incepted 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, as opposed to its source.

Under Part 4 of the **Criminal Justice Act (Money Laundering and Terrorist Financing) 2010** (CJA 2010), certain credit and financial institutions are obliged to take measures to prevent money laundering and the financing of terrorism such as carrying out **customer due diligence** (CDD), ongoing monitoring, reporting of suspicious transactions, training and having in place effective policies and procedures.

General insurers are exempt from carrying out (CDD), while life insurers must carry it out. However, general insurers do have obligations in relation to combating the financing of terrorism (CFT). These CFT measures are dealt with in the CJA 2010, including a specific obligation to comply with EU Council Regulations relating to **financial sanctions** measures.

To ensure compliance with the EU Council Regulations and to prevent the financing of terrorism, it is necessary to monitor customers and transactions against both the EU and UN Sanctions Committees' lists relating to terrorism.⁹⁰ The EU gives legal effect to UN targeted financial sanctions through EU Council Regulations. 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 its customer is 'one and the same person' as stated on the Financial Sanctions list. If this is the case, an immediate report must be made to the Central Bank (sanctions@centralbank.ie).

⁹⁰ The lists are regularly updated at the Central Bank of Ireland website (www.centralbank.ie) and must be frequently checked.



Quick question 1

You have discovered that one of your new clients is the subject of an EU Financial Sanction. You also notice a number of odd aspects to their application for commercial property insurance. Should you explain to the customer that you need to investigate matters further?

The answer is at the end of this chapter.



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) Act 2010**, who is given responsibility to guard the firm or organisation against being used for money laundering or terrorist financing

A3 Financial crime legislation

The **Criminal Justice Act 2013** amended existing anti-money laundering (AML) legislation to align it more closely with international standards. The Central Bank is the national competent authority in Ireland for the monitoring and supervision of regulated firms under the Acts. Credit and financial institutions are referred to as '**designated persons**' with specific obligations under the Act because their normal activities expose them to the risk that their businesses will be used by launderers to place, layer or integrate the proceeds of criminal conduct.

The **Fourth Anti-Money Laundering Directive 2015** extended and replaced the existing anti-money laundering regime. It was partly transposed into Irish law in November 2016 through the enactment of the **European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016**.

The most notable high-level changes are that it:

- provides for a more targeted and focused risk-based approach
- requires relevant entities to maintain a register of their beneficial owners
- clarifies and reinforces the rules on customer due diligence (CDD)
- brings into scope all persons dealing in goods for cash payment of €7,500 or more
- reinforces the enforcement powers of national competent authorities
- increases the range of sanctions for AML and counter-terrorist financing (CTF) breaches by designated persons (who will then be referred to as 'obliged persons')
- introduces risk assessments at EU and national level.

In light of the Bataclan attacks in Paris and the publication of the Panama Papers, the European Commission proposed further measures to strengthen the **Fourth Anti-Money Laundering Directive 2015**. If adopted, the **Fifth Anti-Money Laundering Directive** is expected to enter into force by late 2019. The most notable changes proposed by this Directive are:

- publicly accessible registers of the beneficial ownership details of companies and increased connectivity between national registers
- extending the scope of AML regulation to virtual currencies, tax-related services and works of art
- mandatory measures to be taken by firms in relation to customers from 'high risk' countries
- national registers of current accounts with banks and payment accounts with other institutions.⁹¹

As discussions regarding this Directive are ongoing, students are encouraged to keep up-to-date with AML related developments and information.

⁹¹ European Parliamentary Research Service, 'Revision of the Fourth Anti-Money-Laundering Directive', online pdf, June 2017, www.europarl.europa.eu.

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 measures include:

- establishing internal policies and procedures for all 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 privacy. In the context of insurance, it means safeguarding the security and confidentiality of information that private consumers give to insurers and intermediaries. It is therefore essential that advisers and other staff develop a full knowledge of data protection legislation.

The **General Data Protection Regulation 2016** (GDPR) comes into force on 25th May 2018. As an EU-wide Regulation (see Chapter 1C2), it does not require local transposition and should, in theory, reduce the level of national variation between EU member states. However, Ireland and other EU member states have indicated that they will introduce national implementing measures for GDPR. The Irish government has published the **Data Protection Bill 2018** to give effect to the GDPR. Prior to the adoption of the GDPR and the **Data Protection Bill 2018**, the main Irish legislation dealing with data protection was the **Data Protection Acts 1988 and 2003**. The **Data Protection Bill 2018** repeals previous data protection legislation except for those provisions relating to the processing of personal data for the purposes of national security, defence and the international relations of the State.

B1 Scope of GDPR

The GDPR introduces substantial changes to European data protection law and applies to non-EU organisations that offer goods or services to EU residents or monitor the behaviour of EU residents. Fines of up to €20 million (or 4% of total annual global turnover, whichever is greater) can be applied for breaches of the GDPR.

The **Data Protection Acts 1988 and 2003** and the GDPR are only concerned with the collection and storage 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'. Data protection legislation requires all insurers to register as **data controllers** and to comply with certain key responsibilities in relation to the information they process.

A data controller that wishes to appoint a **data processor** must use only processors that guarantee compliance with the GDPR. The controller must appoint the processor in the form of a binding written agreement.

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 6.1.

**personal data**

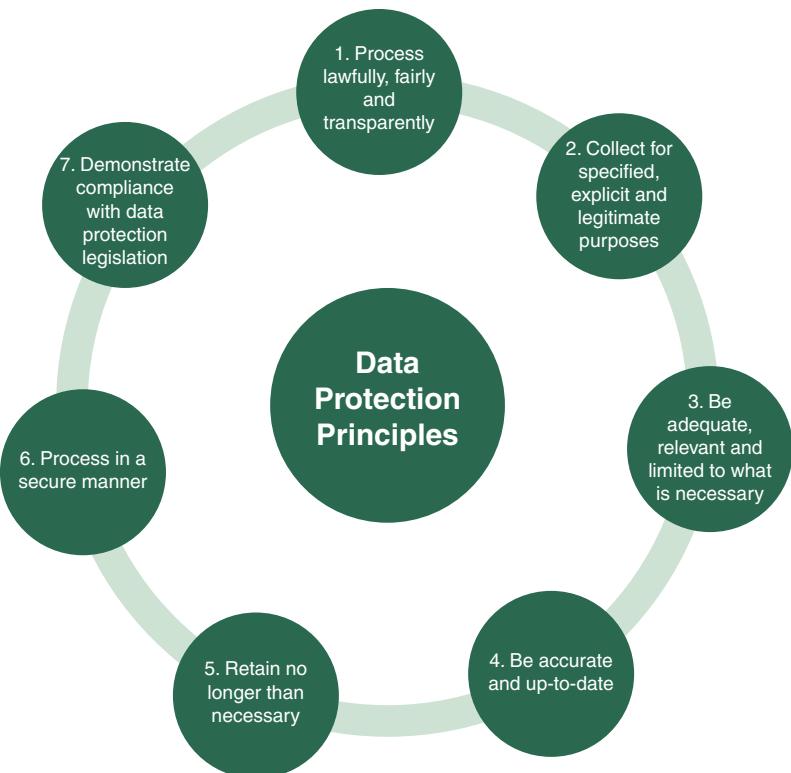
data relating to a living individual who can be identified from this data

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

data processor

a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller

Figure 6.1 Data protection principles⁹²

Data Protection Commissioner

Office established under the **Data Protection Act 1988**, which is responsible for enforcing obligations placed on data controllers regarding how they obtain and use personal data and information and upholding the rights of individuals as set out in the Act

The **Data Protection Commissioner** (DPC) is responsible for monitoring and enforcing the Data Protection Acts in Ireland. Under the Data Protection Bill 2018, the DPC is to be renamed the Data Protection Commission. The DPC publishes an annual report which, in certain cases, names those data controllers that were the subject of investigation or action. In 2013, FBD Insurance PLC paid High Court costs of €15,000 following a breach of data protection rights. Justice Kevin Feeney said that the Acts placed 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'.⁹³ 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 sixty-one counts of breaches of Section 22 of the **Data Protection Acts, 1988 and 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.⁹⁴

⁹² Adapted from Articles 5-11, GDPR.

⁹³ thejournal.ie, 'Insurer ordered to pay costs in data breach case', 18 March 2013.

⁹⁴ Data Protection Commissioner, 'Office of the Data Protection Commissioner Welcomes Another Successful Prosecution of a Private Investigator', online press release, www.dataprotection.ie

B3 Data protection requirements for organisations

In order to ensure compliance with GDPR, organisations must observe several requirements, including the following:

- **Notification of breach** – organisations must notify regulators of any data breach that may result in ‘physical, material or moral damage to individuals’ within 72 hours
- **Privacy by default and design** – organisations are required to build privacy into new products and services involving the processing of personal data
- **Data Privacy Impact Assessments (DPIAs)** – these are an integral part of a privacy-by-design approach. DPIAs allow firms to make informed decisions about the acceptability of data protection risks and to identify and mitigate against data protection risks
- **Regulation by Data Protection Authorities (DPAs)** – 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 DPA of that Member state
- **One-stop-shop provision** – for organisations established in multiple Member States, the DPA for its ‘main establishment’ (i.e., the place where its main processing decisions are taken) will be its ‘lead DPA’. The ‘lead DPA’ has the power to regulate that controller across all Member States. In most cases under the GDPR, such an organisation only interacts with its “lead DPA” on regulatory issues, and can avoid having to deal with multiple DPAs across the EU
- **Internal compliance** – these requirements include record keeping, appointment of a data protection officer and certification measures
- **Consent required for data processing** – this must be given explicitly by a clear affirmative act rather than assumed. Pre-ticked boxes will no longer be acceptable, there should be an ‘opt in’ process.
- **Identify verification** – the GDPR enables controllers to require data subjects to provide proof of identity before giving effect to their rights. This helps to limit the risk that third parties gain unlawful access to personal data.

B4 Data subjects' rights

Natural persons (individuals) are **data subjects**, and have rights in relation to their personal data which is processed by a person or organisation.

On the whole, the rights individuals have under the GDPR are the same as those they enjoyed under the Data Protection Acts, but with some significant enhancements. The main rights of a data subject under GDPR are set out briefly below:⁹⁵

1. The right to be informed - to be given “fair processing information” on how their personal data is to be used.
2. The right of access - to obtain confirmation that their personal data is being processed, to access their personal data and to verify the lawfulness of the processing. Such information in relation to any of the rights of data subjects must be provided by data controllers (free of charge) within one month of receipt of the request.
3. The right to rectification - to have personal data rectified if it is inaccurate or incomplete.



data subject

an individual who is the subject of personal data

⁹⁵ Adapted from Information Commissioner's Office: <https://ico.org.uk/> > For organisations > Guide to the General Data Protection Regulation (GDPR) > Individual rights

4. The right to erasure (also known as the 'the right to be forgotten') - to enable an individual to request the deletion or removal of personal data where there is no compelling reason for its continued processing.
5. The right to restrict processing - to 'block' or suppress the processing of their personal data.
6. The right to data portability - to receive personal data in a structured, commonly used and machine readable format.
7. The right to object - to processing based on legitimate interests or the performance of a task in the public interest/exercise of official authority (including profiling); direct marketing (including profiling); and processing for purposes of scientific/historical research and statistics.
8. Rights in relation to automated decision making and profiling. An individual may request that decisions about them are made by human input, rather than by a computer-based process.

An important exception to the right of individuals to access their personal data, of relevance to the insurance industry, is contained within the **Data Protection (Access Modification) (Health) Regulations 1989**. If a data access request relating to medical information is received, this information should not be made available to the data subject, if that would be likely to cause serious harm to their physical or mental health. 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 some other suitably qualified health professional.

Additionally, under Article 9 of the GDPR, the processing of personal data revealing:

- a. racial or ethnic origin, political opinions, religious or philosophical beliefs,
- b. trade union membership,
- c. genetic data, biometric data
- d. data concerning health or
- e. data concerning a natural person's sex life or sexual orientation is prohibited except in certain circumstances e.g where the data subject gives their explicit consent or where necessary under employment, social security or social protection law. These are called special categories of personal data.

B5 Electronic marketing and data protection

Specific rules apply to electronic marketing. These are covered generally by **ePrivacy Regulations 2011** which outline strict data protection rules when conducting direct marketing by phone, email, SMS and internet use. The basic rule that applies to direct marketing 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 of their personal data both at the time the data is collected (an 'opt-out') and, in the case of direct electronic marketing, on every subsequent marketing message. The 'opt-out' right must be free of charge.

In relation to telephone calls, individuals may choose to be listed on the National Directory Database (NDD). The effect of this is to prevent firms from using the

telephone number for direct marketing, since firms must check this database before making contact with any individual by telephone.⁹⁶

The draft e-Privacy Regulation (ePR), published by the European Commission in January 2017 is currently working its way through the EU legislative process. While the ePR was initially intended to come into force simultaneously with the GDPR, it is more likely that it will enter into force in late 2018 or early 2019. As a combined result of the GDPR and the increasing digitalisation of financial services, a review of the Consumer Protection Code will probably be undertaken in 2018 or 2019. Feedback on a Central Bank June 2017 discussion paper entitled 'Consumer Protection Code and digitisation' will inform any revisions made to the CPC.⁹⁷

B6 Code of Practice on Data Protection for the insurance sector

The Code of Practice was updated in 2013 by the DPC following public concern, arising from media reports, that personal information held by the Gardaí and by the Department of Employment Affairs and Social Protection, was being routinely accessed by private investigators, acting on behalf of insurance companies.⁹⁸ The office of the DPC looked into these allegations and found them to be true, as seen in Case Study 6.2.

This code provides, among other things, for:

- improvements in information and communication with customers regarding the use of their personal data – advising them what options are open to them, why their data is kept on file and how to exercise their discretion to refuse to have such data held
- insurers to use only licensed private investigators contractually engaged on the basis that the private investigator will comply with applicable data protection legislation
- specific periods for which customer data may be held and used
- the circumstances in which personal data may be shared with other bodies
- procedures for keeping data secure
- ensuring that only necessary information is sought by insurance companies.

The Code of Practice may be updated after the implementation of GDPR and students should keep up-to-date on developments in this area. Now, let's consider the scenario in Case study 6.2.



Quick question 2

What prompted the introduction of a specific code of practice on data protection for the insurance sector?

⁹⁶ For general guidance on direct marketing issues, go to the Data Protection Commissioner website: www.dataprotection.ie.

⁹⁷ Central Bank of Ireland, 'Discussion Paper: Consumer Protection Code and the Digitalisation of Financial Services', online pdf, www.centralbank.ie.

⁹⁸ Insurance Ireland, 'Code of Practice on Data Protection for the Insurance Sector', June 2013, online report pdf, www.insuranceireland.eu.

Case study 6.2

InsuranceLink

In 2010, the DPC undertook an investigation of a database of personal data known as InsuranceLink. This is a shared claims database developed in 1987 by the insurance sector as a facility to allow member organisations to share and cross-reference their insurance claims data. Members check the system for previous claims each time an individual makes an insurance claim. If a previous claims history exists, summary details will appear in the search results. Insurance fraud is a crime and offenders face a maximum fine of up to €100,000 and/or up to ten years in prison. Convictions are made under the **Civil Liability and Courts Act 2004**.

As of 12 November 2010, there were 2,441,838 claim records on InsuranceLink, containing information on a significant portion of the population. The investigation was prompted by significant concerns about the operation and legitimacy of InsuranceLink and its compliance with data protection legislation.

The DPC found that InsuranceLink lacked transparency outside of its immediate membership. He considered that the existence of a database needs to be clearly publicised by the insurance sector to allow members of the public to easily obtain more information on InsuranceLink, as the data is used to make decisions on individuals. The investigation also found that far too many individuals in insurance companies had access to the database, with little or no oversight. Some serious incidents of inappropriate access were identified.⁹⁹

⁹⁹ See 2010 Annual Report for further detail: Data Protection Commissioner: www.dataprotection.ie > Publications & forms > Annual Reports (by year).

C

Equality legislation

The **Equal Status Acts 2000–2015** and are designed to protect individuals against discrimination in non-workplace areas. They encourage the evaluation of people on their merits as individuals rather than by reference to the group to which they belong.

These Acts specifically prohibit discrimination on 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. The **Equal Status Act 2000** provided for this exemption to the general prohibition against discrimination, provided that the use of gender as a determining factor is based on actuarial or statistical data obtained from a reliable source, or other relevant factors.

A landmark development in this area occurred on 1 March 2011, when the European Court of Justice (ECJ) ruled in favour of the Belgian Consumer Association and two individuals who sued the Belgian government, claiming 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 **EU Gender Directive 2004**). This became known as the Test Achats case.¹⁰⁰ The ECJ ruled that ‘taking the gender of the insured individual into account as a risk factor in insurance contracts constitutes discrimination’. Accordingly, with effect from 21 December 2012, the exemption ceased to apply. The **Equal Status (Amendment) Act 2012** provided for the changes made necessary by this case.

The Test Achats judgment has a direct bearing on insurance premiums. Motor insurance is a clear example of this. Statistically, women produce fewer claims costs than men of an equivalent age, particularly at the younger end of the scale. It also impacts on life insurance products and on benefits received from, for example, an annuity. Traditionally, males received a higher sum per annum if the benefit was taken at the same time as a woman of the same age, as the life expectancy of a male is statistically less on average. It is no longer allowable to use this gender-specific statistic in rating insurance products.

¹⁰⁰ *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des Ministres 2011 ('Test-Achats')*.

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 places a restriction that prohibits a person from processing genetic (family) data in relation to a policy of insurance (including life assurance and health insurance policies).

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 the respondents (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 Act**. 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 advanced, 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 EU is currently working on a **Horizontal Anti-Discrimination Directive** aimed at implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.

The proposed Directive will deal with discrimination that occurs in public and private sectors, access to social protection, education and also in access to 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 proposed Directive, which may result in higher prices for some insurance products, with other products withdrawn from sale altogether. It is important to note that – although the Council has advised that this Directive remains a priority – further political discussions are needed before required unanimity can be reached by the EU bodies.

D

Consumer protection

Although the Consumer Protection Code (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 interactions with consumers. There are many examples of such legislation and most are beyond the scope of this textbook.

The following sections discuss the main CPC provisions relating to unfair terms in consumer contracts (Section D1) and distance marketing of consumer financial services (Section D2).

D1 European Communities (Unfair Terms in Consumer Contracts Regulations 1995) (as amended)

The **European Communities (Unfair Terms in Consumer Contracts)**

Regulations 1995 (as amended) aim to protect consumers in their contractual relationships, particularly standard-form contracts. The Regulations apply to most consumer contracts including (with some exceptions) contracts of insurance. The Regulations were issued to bring the **EU Unfair Terms Directive 1993** into Irish law.

The definition of a ‘consumer’ in this case is confined to a ‘personal consumer’ (i.e. a natural person acting outside their trade or profession) and therefore does not include small businesses.

The Regulations apply a fairness test to contracts the consumer does not individually negotiate, i.e. standard contracts drafted in advance. The main provision of the Regulations relate to:

- Plain language – Ordinary consumers should be able to plainly understand all the terms of a contract without the need for legal advice. If the terms are found to be ambiguous or confusing, the interpretation will favour the person or party that did not draw up the contract. This is known as the *contra proferentem* rule, i.e. against the offeror.
- Fairness – A term will be regarded as unfair if ‘contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer’.

The following points should be taken into account when making an assessment of good faith:

- the strength of the parties’ bargaining positions
- whether the consumer had an inducement to agree to the term
- whether the consumer specially ordered the particular contract term
- to what extent the insurer dealt fairly and reasonably with the policyholder.

As we noted in Chapter 5B3, the proposed **Consumer Insurance Contracts Bill 2017** may replace the duty of utmost good faith. Students should keep up-to-date on this legislation.



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)

In addition, an unfair term in an insurance contract will not be legally binding on the insured. However, if the contract can survive without the presence of the offending term, the contract will continue to be binding. Likewise, a non-core term (i.e. a term that is not essential) in an insurance contract will be void where:

- it causes an imbalance in the parties' positions
- the insurer did not deal with the consumer in a fair and open manner
- the insurer took advantage of the consumer's lack of knowledge or weak bargaining position.

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 this to the High Court, where a judgment can be made.

The European Communities (Unfair Terms in Consumer Contracts)

(Amendment) Regulations 2013 extended the Irish legislative framework governing unfair terms in consumer contracts. These Regulations extend the civil remedies available under the 1995 legislation. They also provide that an 'authorised body' – i.e. the CCPC, the Central Bank or a consumer organisation – may apply to the Circuit Court or High Court to have a term declared unfair. The court can, at its discretion, order a ban on the use of the term. In addition, the 2013 Regulations inserted new provisions that allow an authorised body to apply for an injunction (or interim injunction) against a seller or supplier using the term.

The legislative framework governing unfair terms in consumer contracts in Ireland was further updated by the **European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2014**, which extended the 'authorised body' to include the Commission for Communications Regulation.

D2 Distance selling of financial services

The **EC Distance Marketing of Consumer Financial Services Regulations 2004** and the **EC Distance Marketing of Consumer Financial Services (Amendment) Regulations 2005** came into effect in February 2005. The broad aim of the Regulations is to ensure that consumers who buy financial services via distance selling (without face-to-face contact) are no worse off than consumers using face-to-face contact. The Regulations were issued to bring the **EU Directive on the Distance Marketing of Consumer Financial Services 2002** into Irish law.

As in Section D1, the concept of a 'consumer' in these Regulations is that of a 'personal consumer' and does not therefore 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 of financial services (including insurance) are:

- internet sales
- telephone/call centre sales
- sales by email, letter or fax.

The Regulations specify the minimum information a consumer must be given 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'.

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.

D2a Cooling-off periods and cancellation

A consumer who enters into a distance non-life general insurance contract is entitled to a 14-day **cooling-off period**. During that time, the consumer can withdraw from the contract. However, no cooling-off period is available to a face-to-face consumer, or for short-term contracts (e.g. travel or baggage insurance) of less than one month's duration.

The consumer has the right to cancel certain contracts. In this case, the supplier is obliged to refund any monies paid by, or on behalf of, the consumer no later than 30 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.



cooling-off period

a period of time in which a consumer has a right to cancel an insurance contract without any penalty

D2b Enforcement

The Central Bank is the relevant authority that enforces the Regulations in Ireland. If the Central Bank brings an action against a supplier who provides one or more consumer financial services under distance contracts for breach of the Regulations, the burden of proof rests with the supplier to show they have 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.

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 requirements to keep personal data safe, secure, accurate and up to date, and to retain it for no longer than is necessary. Firms must therefore have a clear policy on 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 records should be retained by firms. While many of these record-keeping requirements make for good 'housekeeping' practices, their inclusion in the CPC makes them legally binding.

In summary, a regulated entity must record all of the following details:

- 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 in an up-to-date form:

- a copy of all documents required for consumer identification and profile
- the consumer's contact details
- all information and documents prepared in compliance with the CPC
- details of products and services provided to the consumer
- all correspondence with the consumer and details of any other information provided to the consumer



- all documents or applications completed or signed by the consumer
- copies of all original documents submitted by the consumer when applying for supply of a service or product
- all other relevant information and documentation concerning the consumer.¹⁰¹

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.¹⁰² If a regulated entity 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.¹⁰³

¹⁰¹ Provisions 11.1-11.5, CPC.

¹⁰² Provisions 11.6-11.7, CPC.

¹⁰³ Provision 11.10, CPC.

F

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 customers.

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 the Minimum Competency Code.

F2 Study tips

It's 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, **Connect** has many online study supports that can help you as you study this module.

F3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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.

2. Outline the three stages of the money-laundering process.

3. State the main distinction between money laundering and terrorist financing.

4. Outline the type of data the **General Data Protection Regulation** are concerned with.

5. Define the term 'data processor'.

6. List four data protection principles.

7. List five rights of a data subject.

8. Outline the main issue in *Ross v RSA 2003*.

9. Outline the effect of a term considered 'unfair' in an insurance contract with a consumer.

10. List four items of pre-contract information that must be provided to consumers under the **Distance Marketing of Consumer Financial Services Regulations**.

11. List the details the CPC requires insurers and intermediaries to record.

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/firm 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 and converting it into other financial assets, such as cheques or even property
 - Layering – concealing the origins of the money by creating a series of complex transactions
 - Integration – gaining access to the money as apparently legitimate.
3. For an act to be considered money-laundering the funds involved must be the proceeds of criminal conduct, but when we consider terrorist financing the source of the funds is irrelevant, i.e. the funds may not be the proceeds of criminal conduct. The key consideration is the intended use or destination of the funds, as opposed to its origin.
4. The **GDPR** is only concerned with personal data.
5. A 'data processor' is a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.
6. Any four of the following:
 - 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:
 - The right to be informed
 - The right of access
 - The right to rectification
 - The right to erasure (also known as the "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 backed up by actuarial or other statistics.
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:
 - 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. No, as this would 'tip off' the customer. The transaction must be stopped and additional identity checks carried out to verify that its customer is 'one and the same person' as stated on the Financial Sanctions list. If this is the case, an immediate report must be made to the Central Bank.
2. Media reports, found to be true, that personal information held by the Gardaí and by the Department of the Department of Employment Affairs and Social Protection was being routinely accessed by private investigators, acting on behalf of insurance companies.



Sample multiple-choice questions

1. What is the meaning of the *contra proferentem* rule under the **European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000**?
- A. In cases of ambiguous wording, the interpretation most favourable to the party that did not draw up the contract 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:

2. 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:

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

1. What is the meaning of the *contra proferentem* rule under the **European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000**?
- A. In cases of ambiguous wording, the interpretation most favourable to the party that did not draw up the contract 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.

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.

2. 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

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.

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.

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.

Chapter

7

Ethics and competency

What to expect in this chapter

In this chapter we will consider:

- the principles and rules governing those who work in insurance
- the importance of ethics
- the requirements for firms in ensuring proper standards of competency and behaviour.

The chapter looks at the regulatory requirements regarding the competence and behaviour of individuals who give advice to consumers. Our main focus will be 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 2017 Minimum Competency Code (MCC) and the Minimum Competency Regulations.

In our earlier studies, we highlighted how the practice of insurance takes place in a context that requires utmost good faith. For an adviser or practitioner, 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:
A	Fitness and probity	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) Regulations 2011 and the Central Bank minimum competency requirements.
B	Minimum competency	
C	Minimum competency standards	
D	Continuing professional development	
E	Responsibilities of the firm	
F	Ethics and conflicts of interest	Explain the importance of ethical standards in the insurance market, particularly in situations where conflicts of interest arise.

A

Fitness and probity

On 1 October 2010, Part 3 of the **Central Bank Reform Act 2010** created a harmonised system for regulating the performance of certain roles in the financial services industry. Persons performing **controlled functions** or **pre-approval controlled functions**, must have an appropriate level of fitness and probity. We will consider controlled functions and pre-approval controlled functions in Section A1.



controlled function (CF)

designated role for which the Central Bank requires regulated financial service providers 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

designated role, mainly to do with executive or senior roles, heading up significant functional areas or regulatory roles, where the Central Bank must approve the person for the function before they are appointed to the job

The Central Bank has wide-ranging powers across the financial services industry to:

- approve or refuse the appointment of people to certain positions
 - investigate and, where appropriate, remove or prohibit certain position holders
 - set statutory standards of fitness and probity across the financial services industry.
- 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** (referred to in this chapter as the '2011 Regulations')
 - the Central Bank Fitness and Probity Standards Code 2011 (referred to in this chapter as the 'F&P Standards')
 - the Central Bank Minimum Competency Code (MCC) 2017.
 - the Minimum Competency Regulations 2017.¹⁰⁴

These requirements aim to make sure that persons performing controlled functions or proposed for pre-approval controlled functions are:

- competent and capable
- honest, ethical and to act with integrity
- financially sound.

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. Section 3.1 of the 'F&P Standards' states that a person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.
- 'Probity' refers to a person's honesty, fairness and ethical attitude, based on past behaviour. Individuals performing a controlled function (see Section A1a) must be honest, diligent and independent-minded, and must act ethically and with integrity. Probity also means that individuals ensure they act without being affected by conflicts of interest.



Just think

In what circumstances might an individual be found to not be a person of probity?

¹⁰⁴ 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.

Dishonest, unethical or criminal behaviour are indicators that a person may not be suitable to perform a particular function in a regulated firm. As we will see in Section A1b, more stringent standards apply to persons who perform senior insurer or intermediary roles.

It is also worth noting that a person's behaviour outside the workplace will be taken into account when assessing their probity, particularly when a person holds or is proposed for a senior position in a regulated firm. Case Study 7.1 clearly illustrates this point. Although this example concerns a decision by the UK regulator, the principle it is based on is equally relevant to the Irish regulatory environment.

Case study 7.1

Fitness and probity

Fare dodger banned from senior roles by the UK Regulator

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, the UK regulator, said his behaviour demonstrated a 'lack of honesty and integrity'.

Jonathan Burrows, 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 Burrows had failed to purchase tickets at his rural home station in East Sussex, where there were no ticket barriers. On arriving in London, Mr Burrows 'tapped out' of fare gates using a travelcard, paying the maximum fare of £7.20, rather than the full ticket price of £21.50, according to the FCA notice.

Burrows agreed to pay the £43,000 to Southeastern railways after reaching an out-of-court settlement. The regulator acted after press reports in April that an unidentified fund manager had become the 'biggest fare dodger in history'.

The FCA's decision to act over fare dodging reflects the increased emphasis it is placing on personal integrity and honesty in the city — which had been hit by a fresh scandal over foreign exchange trading. Tracey McDermott, the FCA's director of enforcement and financial crime, said: 'Burrows 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.'¹⁰⁵

¹⁰⁵ Sam Fleming, *Financial Times* (Online), 15 December 2014. A summary of the FCA's decision is available at Financial Conduct Authority website: [> News> Former Blackrock Asset Management Managing Director Banned.](http://www.fca.org.uk)

Case study 7.2

Fitness and probity

In January 2017, a prohibition notice was issued in respect of Ms Colette Murphy, a sole trader insurance intermediary, who was prohibited from performing certain pre-approval controlled functions for a period of 2 years. Ms Murphy's infractions included the following:

- Her management and documentation of the petty cash box of a regulated financial service provider was not in accordance with good operational controls and good accounting practice and 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 judgment and an inability to discharge her duties.

In the opinion of the Central Bank, Ms Murphy 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 financial service provider;
- 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; and
- 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.

A1 Different controlled functions

The fitness and probity standards in the 2011 Regulations apply to two main groups:

1. pre-approval controlled functions (PCFs)
2. controlled functions (CFs)

We will now briefly consider the roles that fall within each category.

A1a Controlled functions

Eleven specific roles in regulated firms are identified as controlled functions. The eleven CFs are:

- an advising function likely to have a significant influence on the conduct of the firm's affairs
- 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
- acting in the direct management or supervision of those persons who provide a financial service
- adjudicating on any complaint
- insurance and reinsurance intermediaries who direct and manage an undertaking or are directly involved in insurance or reinsurance mediation dealing in, or having control over, the property of a customer of the regulated provider
- dealing in, or with, property on behalf of the regulated provider or giving instructions or directions relating to it.



due diligence

enquiries undertaken to assess the fitness and probity of an individual

Since December 2012, the Central Bank has required that regulated financial service providers (FSPs) identify and maintain a record of persons performing CFs, together with a record of **due diligence**. The record starts from the date the Fitness and Probity Standards are applied.

A1b Pre-approval controlled functions

PCFs are considered more significant than CFs, as they often involve top-tier 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' (IQ) to the Central Bank.

There are almost 50 functions (jobs) that fall within the PCF category. A small sample includes:

- Head of Claims
- Head of Compliance (with responsibility for anti-money laundering and counter-terrorist financing legislation)
- Head of Actuarial Function
- Chief Executive Officer (CEO)
- Chief Risk Officer
- Head of Retail Sales
- Head of Underwriting
- Head of Regulation
- Chief Operating Officer (COO).¹⁰⁶

The 2011 Regulations also make employers responsible for ensuring that staff meet the Fitness and Probity Standards, both when entering the financial services industry and throughout their careers. To comply with this obligation, employers must carry out due diligence to ensure that the standards are met. This due diligence focuses on ensuring that the person is competent and capable, acts honestly, ethically and with integrity and is financially sound. The due diligence process involves gathering appropriate documentation supported by clear internal assessment criteria and governance. The due diligence is higher for PCFs than for CFs.

Importantly, a regulated firm must not permit a person to perform a CF unless the firm has satisfied itself on reasonable grounds that the person complies with the 'Standards', e.g. by conducting an annual assessment, and must not appoint a person to perform a PCF role unless the Central Bank has approved the appointment in writing.



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.

¹⁰⁶ Central Bank, www.centralbank.ie > Financial Regulation > Our Business Processes > Fitness & Probity > Regulated Financial Service Providers > List of Preapproval Controlled Functions

B

Minimum competency

The Central Bank Minimum Competency Code (MCC) came into effect on 1 December 2011. The MCC 2011 set out minimum professional standards for persons providing financial services to consumers. The main aim of the MCC is to ensure that consumers of financial products receive a minimum standard of competency when they seek advice or other services. The MCC sets out the requirements that apply to regulated firms and to individuals working on their behalf.

The Central Bank's consultation paper CP106 sought feedback on the impact of recent EU developments in the area of professional knowledge and competence requirements (e.g. Mortgage Credit Regulations, MiFID II and the IDD) and this consultation resulted in the revision of the MCC 2011 and the introduction of the **Minimum Competency Regulations 2017** which came into effect on 3 January 2018.

**advice**

provision of a personal recommendation 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

The most visible difference arising out of the consultation is that the 'MCC' now consists of the **Minimum Competency Code 2017** (MCC 2017) and the **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1))**

Minimum Competency Regulations 2017. The MCC 2017 sets out the minimum competency standards to be met by those falling within the Code's scope when undertaking certain controlled functions. The MCC 2017 also contains details on the recognition of qualifications for MCC purposes. The obligations on regulated firms in respect of minimum competency have been removed from the MCC and are now contained in the **Minimum Competency Regulations 2017**.

For the purposes of simplicity and clarity, the MCC 2017 requirements are outlined in Sections B-D of this chapter, while the obligations imposed on regulated firms under the **Minimum Competency Regulations 2017** are outlined in Section E.

B1 Important terms

These competency requirements (**Minimum Competency Code 2017** and the **Minimum Competency Regulations 2017**) apply to regulated firms and persons carrying out controlled functions within those firms.

The MCC identifies the following activities as controlled functions:

- providing **advice** or **information** to consumers on retail financial products (this includes 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 are described in Summary extract 7.1.

7.1**Summary extract** Specified Functions, MCC

1. Assisting consumers in the making of a claim
2. Determining the outcome of claims by consumers
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 the claims functions in 1 or 2 above
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.¹⁰⁷

**Just think**

Would the management of a claims function (with no direct supervisory responsibility for those giving advice to consumers on retail financial products) be classed as a specified function under the MCC?

The answer is 'no'. It is only those directly managing or supervising those giving advice to consumers on retail financial products that perform a specified function.

You will no doubt have noticed that both the 2011 Regulations and the MCC use the term 'controlled function'. There is some overlap between the two definitions, i.e. the MCC controlled functions also fall within the CFs set out in the 2011 Regulations (see Section A1a). However, the MCC has a narrower scope, as it only applies to persons providing advice to consumers on retail financial products, or performing the specified functions identified in Summary extract 7.1.

B2 Giving advice

We have already noted that the MCC requirements apply to individuals carrying out a controlled function on behalf of a regulated 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 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.

¹⁰⁷ Appendix 2, MCC.

According to the MCC, '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, or in the context of the provision of MiFID services or activities'.

In this context, advice does **not** include any of the following:

- employees pointing out where information can be found
- providing information of a general nature
- providing a brochure or booklet or other information without giving additional information
- 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), where the purpose is not to assist a consumer with a retail financial product.



Quick question 2

An intermediary provides brochures or booklets to clients and only clarifies what certain questions or provisos mean. Under the MCC, is this excluded from the term 'information'?

C

Minimum competency standards

Parts 1 and 2 of the MCC set out the minimum competency standards and the relevant requirements for individuals. An individual may not carry out a controlled function **unless** they:

- a. have completed one or more recognised qualification(s), which are relevant to the function
- b. are grandfathered in respect of the function
- c. are a new entrant, taking part in a training process under the supervision of a **qualified person** or a **grandfathered person**
- d. are performing a **prescribed script function**, having met prescribed, more limited standards specified
and
- e. in the case of 1 and 2, are compliant with the Continuing Professional Development (CPD) requirement.

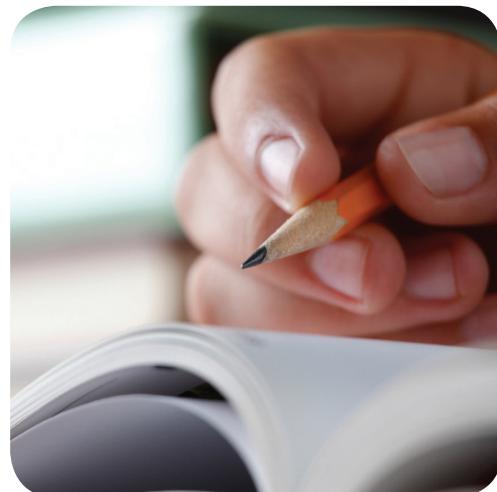
We will now consider each of these in turn.¹⁰⁸

C1 Completing a recognised qualification

Part 3 of the MCC 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. Recognised qualifications for personal general insurance and commercial general insurance 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 (such as assisting consumers in making a claim under an insurance contract).¹⁰⁹ These include Associate or Fellow of the Chartered Institute of Loss Adjusters, among others.



¹⁰⁸ For full details on the scope of the MCC requirements, go to: Central Bank of Ireland, 'Minimum Competency Code 2017', online report.

¹⁰⁹ Appendix 4, MCC 2017.



qualified person

person with one or more recognised qualification(s) which are relevant to the function to be exercised

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 (CPD) requirement

prescribed script function

a controlled function exercised within a narrow and rigid set of criteria and according to a prescribed script and routine

The Central Bank does not take part in developing education programmes. Its role is confined to setting and reviewing the minimum competency standards and deciding whether or not a particular professional qualification meets the MCC's minimum competency standards. 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. Grandfathering applies only if all of the following conditions are met:

- a. as of 1 January 2007, the person was dealing with the particular product or function in respect of which they were availing of the grandfathering arrangements
- b. the person has four years' experience of this in the period 1 January 1999 to 1 January 2007
- c. the firm carried out an assessment for grandfathering purposes and documented this
- d. the firm certified the person's compliance with the experience requirement
- e. the person complies with the CPD requirements on an ongoing basis, as of 1 January 2008.¹¹⁰

The final date for completion of a certificate of grandfathered status was 31 December 2012.

C3 New entrants

A new entrant in a regulated firm must participate in a training programme that includes the following:

- 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 four years in total.



Quick question 3

Why does the MCC adopt such a prescriptive set of rules for acquiring a recognised qualification?

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 two months – or a career break. This is provided so long as the

¹¹⁰ Section 1.5, MCC 2017.

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.¹¹¹

C4 Prescribed script function

Certain concessions exist for those carrying out call-centre type duties, but it is important to understand the scope of the regulations to ensure that the activities fall within the definitions of 'prescribed script function'. Where a person operates within a narrow and rigid set of criteria and according to a prescribed script and routine, they are considered to have complied with the MCC obligations if the following standards are met:

- 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 recognised qualification relevant to the function.
- The person must complete additional training relevant to the function on an ongoing basis, to keep their knowledge up to date.
- The person 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.¹¹²



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?

¹¹¹ Section 1.4, MCC 2017.

¹¹² Section 1.6, MCC 2017.

D

Continuing professional development

As stated in Section C, qualified and grandfathered persons must maintain their competency through continuing professional development (CPD). This involves structured learning activities designed to ensure that an individual's education and development continue throughout their career.



continuing professional development (CPD)

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 appendices to the MCC

ethics

practical analysis of objective standards of right and wrong (also known as 'moral philosophy')

Successful completion of the specific CPD requirement of a recognised professional qualification (e.g. ACII) automatically satisfies the MCC requirement. The Central Bank insists that all people holding controlled functions complete 15 hours **continuing professional development** each calendar year. To ensure compliance with IDD, staff of:

- insurance undertakings involved in insurance distribution activities dealing with customers falling outside of the definition of 'consumer' must undertake 15 hours annual CPD in relation to insurance.
- reinsurance undertakings involved in reinsurance distribution activities must undertake 15 hours annual CPD in relation to insurance/ reinsurance.
- insurance intermediaries involved in insurance distribution activities dealing with customers falling outside of the definition of 'consumer' must undertake 15 hours annual CPD in relation to IDD knowledge and competency requirements.

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 minimum of one hour of CPD each calendar year must be completed for each function falling within the Minimum Competency Standards.
- A person must complete at least one hour of CPD each calendar year relating to **ethics**.

Each year is treated separately and surplus hours in one year may not be carried into 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).

D1 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). 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 one-day course and an evening course on the same day, providing a total of ten hours' 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 is to participate in a CPD scheme operated by an external professional education body that provides a recognised qualification; the other is that a person may arrange their own CPD hours. If they choose the latter, they must retain written records 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.¹¹³

¹¹³ Section 1.7, MCC 2017.

E

Responsibilities of the firm

The obligation in the **Minimum Competency Regulations 2017** (Part 2(4)) that regulated firms ensure that a person performing a relevant function on its behalf has obtained the competence and skills appropriate to the relevant function, through experience or training gained in an employment context, brings the regulated firms' MCC obligations in line with the Fitness and Probity (F&P) Standards' requirement that a person be able to demonstrate that they have obtained the competence and skills appropriate to the relevant function (see Section A).

A firm's procedures must also ensure compliance with the CPD requirements on an ongoing basis (see Section D) including 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.¹¹⁴

Firms' obligations under the **Minimum Competency Regulations 2017** are described briefly below.

E1 Internet services

Where services are provided over the internet, a qualified or grandfathered person for the service provided must approve and sign off on the process for selection of the products and advice.¹¹⁵

E2 Outsourcing

Where a firm outsources activities, the provision of which are subject to this Code, the firm remains fully responsible for discharging all its obligations under the MCC.¹¹⁶

E3 Prescribed script function

In relation to the performance of a 'prescribed script function' 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.

¹¹⁴ Part 5, **Minimum Competency Regulations 2017**.

¹¹⁵ Part 2(5), **Minimum Competency Regulations 2017**.

¹¹⁶ Part 2(3), **Minimum Competency Regulations 2017**.

- 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.¹¹⁷

E4 Register of accredited persons



accredited person

a person who satisfies the Central Bank's minimum competency requirements

A firm must maintain a register of all **accredited persons** acting on its behalf which must be retained for a minimum period of 6 years after the date the person ceases to perform a relevant function on behalf of the firm.¹¹⁸ 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
- whether a new entrant
- date of commencement
- qualification 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, or hold a recognised qualification with no CPD requirement (see Example 7.1), 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 is a solicitor with a legal qualification which doesn't have a CPD requirement under the MCC. However, in the course of her work she litigates on a claims matter. This falls under the MCC and because she performs this specified function, Molly is required to undertake 15 hours annual CPD under the MCC. In 2014 and 2016, Molly doesn't fulfil this MCC CPD requirement and as a result, she is removed from her firm's register of accredited persons. Only when she is compliant with the MCC CPD requirements again, will Molly be put back on the firm's register.

Those removed from the register specifically for non-compliance with the CPD requirements must be restored promptly once they become compliant with the CPD requirements again.¹¹⁹

¹¹⁷ Part 2(6), **Minimum Competency Regulations 2017**.

¹¹⁸ Part 2(7), **Minimum Competency Regulations 2017**.

¹¹⁹ Part 2(7), **Minimum Competency Regulations 2017**.

E5 Grandfathered status

The **Minimum Competency Regulations 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.¹²⁰

E6 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 four-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 performance of the new entrant. This assessment must be documented and will consider a variety of factors such as the new entrant's previous experience, quality of performance (e.g. advice to consumers and number of complaints), as well as the nature and complexity of their role.

Each supervisor must supervise no more than seven new entrants. The regulated firm must maintain written records of the supervision (including assessments and records of meetings between the supervisor and each new entrant).¹²¹

E7 Annual review



Certificate of Competency

document issued to a consumer providing confirmation that the person providing advice meets the required standards of the firm

Regulated firms must hold an annual review of an employees' qualifications, development and experience needs.¹²² It is at the discretion of the regulated firm as to whether this new requirement is incorporated into an employee's annual training.

E8 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. When this happens, the firm must provide the consumer with a '**Certificate of Competency**' on the firm's headed stationery, in the format shown in Example 7.2.

¹²⁰ Part 4, **Minimum Competency Regulations 2017**.

¹²¹ Part 3, **Minimum Competency Regulations 2017**.

¹²² Part 5, **Minimum Competency Regulations 2017**.



Example 7.2

Certificate of Competency (reproduced from Schedule, MCR 2017)

I, _____ (name) _____ (job title)
certify that the undermentioned

_____ (name of accredited person)

meets the Minimum Competency Standards and is deemed competent in
respect of the following products/functions:

Example:

- *providing advice on and arranging:*
 - *housing loans*
 - *private medical insurance*
 - *pension products*
- *dealing with claims.*

This Certificate is valid from [insert date]

Signed by: _____

Job title: _____

Date of signing: _____

This Certificate remains the property of [the *regulated firm*].

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.¹²³

¹²³ Part 2(8), **Minimum Competency Regulations 2017**.

F

Ethics and conflicts of interest

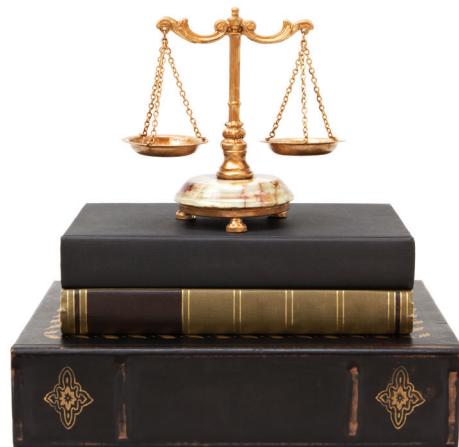
Ethics, in a business context, is concerned with moral issues and with ‘doing the right thing’. Ethical conduct involves acting in a fair and honest way and ensuring that the interests of the customer always take priority over the professional person’s own interests and the interests of the firm.

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. Insurers and intermediaries must also adopt, and operate by, high ethical standards and regard the law as the bare minimum required. Issues often arise that are not covered by specific rules, and in such circumstances, there is still an obligation to act ethically.

In insurance and financial services, the Consumer Protection Code (CPC) sets the Central Bank’s benchmark for good, ethical practice in dealing with all customers (including those who fall outside the Central Bank definition of ‘consumer’). The Code requires that a regulated entity must act honestly, fairly and professionally in the best interests of its customers and the integrity of the market.¹²⁴ However, compliance with statutory regulation does not, in itself, guarantee sound ethical conduct. For this reason, many firms also have mandatory codes of ethics/conduct stating the organisation’s core values and the standards expected of employees.

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 considered to be as important, or indeed more important 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.

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 of Ireland Code of Ethics, shown in Summary extract 7.2, sets out the key ethical values that determine its members’ standards of behaviour.¹²⁵



¹²⁴ Provision 2.1, CPC.

¹²⁵ The Insurance Institute of Ireland, Code of Ethics, www.iii.ie.

7.2**Summary extract** Insurance Institute of Ireland Code of Ethics

The key values which set the standards for the behaviour of all The 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 of Ireland Code 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.

F1 The importance of trust

The relationship between the adviser and client is one of trust, confidence and responsibility. This is known as a 'fiduciary relationship'. The principle of utmost good faith is central to ensuring an ethical relationship is established and maintained, and is binding on all parties to an insurance contract.

People expect high standards from those to whom they entrust their money and financial affairs. In the insurance sector, a firm's reputation relies much more on trust than on being a regulated entity. To put it simply: 'Trust is like oxygen – vital to human flourishing and unnoticed until it goes missing.'¹²⁶

Insurers provide an intangible service. Customers, particularly personal consumers, often have little or no expertise in such matters, so trust in those who manage and control firms and those who provide advice is paramount. It is arguably the single most important factor for the survival and growth of the firm and a loss of trust can lead to failure.

¹²⁶ Smith & Reeves, 'Papering over the cracks? Rules, regulation and real trust', *Provocation Series*, vol. 2(1), online report pdf, The Work Foundation, 2006.

F2 Conflicts of interest

Given that the insurance industry operates on the principle of 'utmost good faith', it could be argued that there has always been an ethically sound basis for the practice of insurance. However, it would be naïve to assume that there are no obstacles to an ethical approach. Market pressures can sometimes lead to situations where an adviser or a firm is tempted 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 conflict
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.
An overrider is available from an insurer.	The adviser may be directly influenced by remuneration levels in placing insurances for a client.
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.
'Entertainment' levels from an insurer are generous.	The adviser may be inclined to place business with the insurer that provides the most generous lunches or events.

F2a Regulatory requirements

Good ethical practice demands that the interests of the client are always more important than those of the adviser or the firm. This principle is at the core of the CPC requirements regarding conflicts of interest. Principle 4.7 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, conflicts of interest can often arise during the conduct of insurance business. Some of these are subject to specific rules (e.g. the structuring of remuneration systems) and others must be identified by the authorised firm. The CPC states that:

- There must be a written conflict of interest policy.
- The policy must be in operation.
- The policy must be appropriate to the nature, scale and complexity of the regulated activities.

Each firm is required to engage in a process to determine their own policy. A one-size-fits-all approach will not work. Example 7.3 shows a conflict of interest policy for an insurance broker that provides advice on the basis of a fair analysis of the market.



Example 7.3

Conflict of interest policy

[Name of firm] will strive to avoid any conflict of interest between the interests of the organisation on the one hand, and personal, professional, 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, and to protect the integrity and reputation of staff.

On appointment, each 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 it will be updated as appropriate.

In the course of meetings or activities, staff members will disclose any interests in a transaction or decision where there may be a conflict between the organisation's best interests and the committee member's best interests, or a conflict between the best interests of two organisations that the committee member is involved with.

Option 1: After disclosure, I understand that I may be asked to leave the room for the discussion and may not be able to take part in the decision, depending on the judgement of other staff.*

Option 2: After disclosure, I understand that I will be asked to leave the room for the discussion and will not be able to take part in the decision.*

Any such disclosure and the subsequent actions taken will be noted in the minutes.

This policy is meant to supplement good judgement, and staff and management members should respect its spirit as well as its wording.

Date adopted: _____

* Choose which option you prefer.

Where a conflict cannot reasonably be avoided, the nature of the conflict should be disclosed to the consumer. The consumer may 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.¹²⁷

Some specific rules apply to conflicts relating to agent or employee remuneration. Insurers must not require an intermediary to introduce a specified (or minimum) level of consumer business in order to retain an appointment. In addition, if commission is based on levels of consumer business introduced, the insurer must be able to demonstrate that these arrangements do not:

- impair the intermediary's duty to act in the best interests of consumers
- give rise to a conflict of interest between the intermediary and the consumer.

For all authorised firms, remuneration arrangements with employees acting in an advising role must not be structured in such a way that it potentially impairs the regulated entity's obligations to:

- act in the best interests of consumers
- satisfy the suitability requirements (as noted in Chapter 4E).¹²⁸

Where there is potential for conflict or abuse, the CPC requires that effective **Chinese walls** are in place between the different business areas. This arrangement must be supported by clear written procedures that include steps to be taken in the event of a breach. All relevant employees within a firm must be aware of the procedures.

Conflicts may also arise in relation to gifts and entertainment. There is no absolute rule about receiving or giving gifts or rewards. The key test is whether it is likely to conflict with the receiver's duty in regard to regulated activities; in particular, whether this would put the consumer at a disadvantage.¹²⁹ Most insurers and intermediaries ensure that limits for entertainment and gifts are restricted to amounts that are unlikely to create a potential conflict. Firms may maintain a register of gifts and hospitality, which records:

- gifts and hospitality (including travel costs) given (and by whom) and received (and by whom)
- who authorised acceptance of the gift &/or hospitality
- political donations
- charitable donations.

F3 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. However, this needs a conscious effort on the part of management and staff to maintain appropriate levels of competency and ongoing compliance with fitness and probity standards.

¹²⁷ Provisions 3.28-3.29, CPC.

¹²⁸ Provisions 3.30-3.32, CPC.

¹²⁹ Provision 3.35, CPC.



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 with whom it deals in the course of carrying on another part of its business

Good ethical practice within a firm delivers many benefits. In particular, it is a key element in:

- ensuring the ongoing trust of customers
- maintaining the firm's good reputation in the market
- reducing the number of complaints and the resources needed to investigate complaints
- demonstrating compliance with regulatory and statutory responsibilities.

Poor ethical practice, on the other hand, leads to a number of undesirable consequences. For example:

- The cost of doing business increases. It is always more cost-effective to do the full job 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 called into question. 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, which 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's approach to regulation is to hold the board and management fully accountable for the ethical conduct of the organisation. The board of each institution is responsible for the effective, prudent and ethical oversight of the regulated entity or institution. Senior management must lead by example and, in doing so, create a powerful culture of compliance and of 'doing the right thing'.

F4 Ethics scenarios

We will now look at how ethical principles may be tested in practice (Examples 7.4-7.7). Consider carefully the ethical scenarios outlined in this section. It may be helpful for you to note down the issues they raise, the dilemmas they pose and your own view of what would be the 'right thing to do' in each instance. This will enable you to compare your own assessments with those that we will make later in the chapter.



Example 7.4

Ethics 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 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 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

Ethics 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 they 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

Ethics scenario – influencing others

You work in the marketing department of an insurer and you want to expand the business your company receives through certain agencies. You wish to recognise what you will call your 'diamond' agents with a volume-related or profit-related commission. You recognise that the volume-based option is dubious and will give rise to obvious conflicts of interest. However, you wish to put forward a proposal to reward profitable accounts, perhaps linking this with a limited delegated authority to settle small claims.

The advantages are clear, but what are the ethical issues?



Example 7.7

Ethics 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 you know that, because of the very high business interruption sum insured, the client is not eligible for this scheme.

What should you do?

F5 Scenarios – considerations

We will now assess the issues involved in each scenario.

Ethics scenario

Ethics scenario – client trust – Assessment (Example 7.4)

It would be easy to say that the scenario should never materialise in the first place, and that a full 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:

- Don't keep quiet in the hope that no one will find out.
- Don't hide the matter. Admit your mistake.
- Put things right as far as possible, whatever stage the matter has reached.

In practical terms, at this stage the following 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 and perhaps the rectification would be more appropriate coming from that person.

This implies that, for an ethical culture to be operating effectively within a firm, there must be a culture of being able to admit when pressures are such that help is needed 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.

Ethics scenario

Ethics scenario – private health insurance – Assessment (Example 7.5)

There may be pressures to make sales, such as targets or incentives – maybe even keeping a job! However, this situation is relatively straightforward.

Whatever the conflicts of interest, the consumer's interests must be put first. The serious drawbacks of the waiting periods must be emphasised and cannot be glossed over just because they are likely to apply wherever the client places their insurance. All relevant waiting periods must be disclosed.

Ethics scenario

Ethics scenario – influencing others – Assessment (Example 7.6)

There may be good reasons for rewarding profitability. However, the intermediaries you sell your products through have obligations to act in the best interests of their clients.

You have dismissed the volume-based option (quite rightly) as it may inevitably produce a conflict for intermediaries. However, even the profitability option may have a similar potential; for example, is the intermediary encouraged to channel ‘poorer quality’ business to other insurers to try to maximise the profitability of the arrangement with your company?

Any resulting increased profitability would be an ideal outcome for your firm, and it could be argued that the ethical issue is largely a matter for the intermediary. However, it leaves us with the question: ‘Does an insurer have an obligation arising from the need to exercise good ethical practice, in this situation?’

On the whole, where these practices exist in the market, it is a matter for the intermediary, rather than the insurer, to demonstrate competence and fairness in the treatment of customers. Chinese walls and effective systems and procedures must be in place.

Ethics scenario

Ethics scenario – competitors – Assessment (Example 7.7)

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. Below 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 given to a client by others, 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.

In this situation, for example, you know that further down the line there may be problems for the client if the insurer becomes aware of 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.

G

Summary

In this chapter we have considered the practice of insurance with regard to three mutually dependent areas: fitness and probity, the precise requirements of the Central Bank for minimum standards of competency, and the importance of ethical behaviour. All three are vital elements in delivering competent, comprehensive and ethical advice and service.

G1 What's next?

In the next (and final) chapter, we will consider the regulatory provisions that apply to disputes between consumers and their financial services providers (FSPs).

G2 Study tips

It's 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, **Connect** has many online study supports that can help you as you study this module.

G3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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 7.

1. State what is meant by the term 'probity'.

2. With regard to pre-approval controlled functions (PCFs), briefly explain what is meant by the term 'pre-approval'.

3. List any four actions that are specifically excluded from the Central Bank's definition of 'providing information'.

4. State the three claims roles included in the Minimum Competency Code 2017 specified functions.

5. Briefly describe what a training process for new entrants must include if it is to comply with the Minimum Competency Code.

6. Briefly explain the requirements that need to be met for a role to qualify as a 'prescribed script function'.

7. Outline a person's position if they fail to complete the required number of CPD hours in a calendar year.

8. Identify the two requirements that must be satisfied by insurers if they wish to engage an intermediary on the basis of commission linked to sales achieved.

9. Outline the most effective solution to avoid conflicts that may otherwise arise for an intermediary that operates a delegated authority scheme.

10. Outline how most insurers and intermediaries handle potential conflicts of interest from gifts and entertainment.

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' is a matter of character. It refers to a person's honesty, fairness and ethical attitude
2. Pre-approval means that the Central Bank must, in writing, approve the person for the function before they are appointed to the job.
3. Any **four** from the following:
 - providing a brochure or booklet or other information without giving additional information
 - employees pointing out where information can be found
 - providing information of a general nature 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), where the purpose is not to assist a consumer with a retail financial product.
4. The three claims roles included in the MCC specified functions are:
 - assisting in the making of a claim
 - determining the outcome of claims
 - direct management or supervision of those in the firm who carry out the claims functions in the roles above.
5. To comply with the Minimum Competency Code, 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 four 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.
 - The person must complete additional training relevant to the function on an ongoing basis, to keep their knowledge up to date.
 - The person 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. If commission is based on levels of business introduced, the insurer must be able to demonstrate that these arrangements do not:
 - impair the intermediary's duty to act in the best interests of consumers
 - give rise to a conflict of interest between the intermediary and the consumer.
9. 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.
10. Most insurers and intermediaries ensure that entertainment and gift levels are restricted to amounts that are unlikely to create any potential conflict. A register of gifts and hospitality is maintained which records gifts, hospitality, political donations and charitable donations.

Answers to quick questions

1. Because 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 that can significantly influence the affairs of a financial services institution.
2. No, it is not excluded. The act of explaining or clarifying what is said in the material takes it beyond 'providing a brochure or booklet or other information without giving additional information'.
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, along with 'probity', is fundamental in 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 a qualified or grandfathered person 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 standards 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. Under the Central Bank Consumer Protection Code, in order for a firm to avoid remuneration conflicts with its employees or agents, 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. any financial arrangements do not impair an employee's or agent's duty to act in the best interests of consumers
 - D. its agents introduce a certain level of business from consumers in order to retain an appointment

Your answer:

3. Trisha is attending an accredited seminar that is being delivered by DataCon Consultancy. Six hours of the seminar are devoted to data protection and three 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:

Answers to 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 standards 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

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) Regulations 2011** and the Central Bank Minimum Competency Code.

2. Under the Central Bank Consumer Protection Code, in order for a firm to avoid remuneration conflicts with its employees or agents, 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. any financial arrangements do not impair an employee's or agent's duty to act in the best interests of consumers
 - D. its agents introduce a certain level of business from consumers in order to retain an appointment

Chapter reference: Chapter 7F2a

Question type: U

Correct response: C

Learning outcome: Explain the importance of ethical standards in the insurance market, particularly in situations where conflicts of interest arise.

3. Trisha is attending an accredited seminar that is being delivered by DataCon Consultancy. Six hours of the seminar are devoted to data protection and three 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

Chapter reference: Chapter 7D1

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) Regulations 2011** and the Central Bank Minimum Competency Code.

Chapter

8

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 services 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 received from consumers 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.

Contents

Section	Title	Learning outcome
A	Resolving errors and complaints	Demonstrate the effect of the Central Bank Consumer Protection Code on errors and complaint resolution.
B	Financial Services and Pensions Ombudsman	Explain the role of the Financial Services and Pensions Ombudsman in dispute resolution.
C	Insurance Compensation Fund	Explain the role of the Insurance Compensation Fund and the Investor Compensation Scheme and demonstrate the limitations of these schemes.
D	Investor Compensation Scheme	

A

Resolving errors and complaints

If an insurer or intermediary discovers an error in dealing with consumers, the Central Bank requires that it take 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 Consumer Protection Code (CPC) states that a regulated entity, in all its dealings with ‘customers’ must ‘correct errors and handle complaints speedily, efficiently and fairly’. It is therefore highly likely that both insurers and intermediaries will treat all customers/consumers with the same degree of fairness and apply the same procedures when dealing with errors and complaints.



Chapter 10 of the CPC sets out the requirements for regulated entities in their treatment of errors and complaints, but treats them as two separate issues.

A1 Errors

Errors can arise in a number of ways. For example:

- an error in interpreting the policy (and consequently the claims settlement) caused by inadequate training of claims staff
- a failure to issue terms of business documents
- a pricing error that causes a product or service to be overcharged.

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 isolated errors
- properly control the correction process
- escalate (refer) errors to compliance/risk functions and senior management.¹³⁰

¹³⁰ Provision 10.1, CPC.



Quick question 1

An insurer discovers, as part of an audit, that claims staff have misinterpreted the company's wording on private motor policies. 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 answer is at the end of this chapter.

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 impacted, or may impact, negatively on the cost of the service or the value of the product provided.¹³¹

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.¹³²

In December 2015, the Central Bank issued feedback on a desk-based review on 'Governance of Errors' processes within banks and insurers. Such feedback serves as a reminder of the Central Bank's surveillance work. In its feedback, the Central Bank reminded boards and senior management that they are key to setting:

- the tone and culture in an organisation, including overseeing the types of error being experienced by the firm
- governance processes around the handling of errors – in particular around assuring itself that there is continuous analysis of root causes and that appropriate follow up and action occurs.

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.

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.¹³³

¹³¹ Provision 10.2, CPC.

¹³² Provisions 10.3-10.4, CPC.

¹³³ Provisions 10.5-10.6, CPC

A2 Complaints

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 regulated entity
- the failure or refusal of a regulated entity to provide a product or service to a consumer.

Every regulated entity must have a written procedure for the proper handling of complaints. Whether a complaint is made orally or in writing, an offer must be made 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.¹³⁴

A2a Complaints handling procedures

There are very specific requirements about how a regulated entity should deal with a complaint from a consumer. At a minimum, the procedure must meet the following requirements:

- It must acknowledge each complaint on paper, or on another durable medium, within 5 business days of the complaint being received.
- It must provide the complainant with the name of one or more individuals appointed by the regulated entity 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 on paper, or other durable medium, on the progress of the complaint investigation, at intervals of not greater than 20 business days, starting from the date on which the complaint was made.
- It must attempt to investigate and resolve a complaint within 40 business days of having received the complaint.
- Where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the timeframe within which it hopes to resolve the complaint; must inform the consumer that they can refer the matter to the Financial Services and Pensions Ombudsman (FSPO); and must provide the consumer with the contact details of the FSPO.

Within 5 business days of the completion of the investigation, the regulated entity must advise the consumer on paper, or other durable medium, 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.¹³⁵

A regulated entity must maintain an up-to-date log of all complaints from consumers and details of the complaints procedure.



Quick question 2

In what timeframe must a regulated entity investigate and resolve a complaint once received?

¹³⁴ Provision 10.9, CPC.

¹³⁵ Provision 10.9, CPC.

A2b Complaints and record-keeping

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 the regulated entity'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.¹³⁶

Records for each complaint must be up to date and comprehensive.

An analysis of the patterns of complaints from consumers must be undertaken on a regular basis. This includes an investigation of whether complaints indicate an isolated issue or a widespread pattern. The analysis must be escalated to the firm's compliance/risk function and senior management.¹³⁷

The Central Bank places significant emphasis on the handling of complaints and, in this regard, we discussed the fine imposed on AXA Insurance Limited in Chapter 2 (see Case study 2.1). Example 8.1 looks at the settlement agreement between the Central Bank and Aviva Life and Pensions Limited in March 2012. The penalties imposed in this case reflect the importance the Central Bank places on consumer protection.

¹³⁶ Provision 10.10, CPC.

¹³⁷ Provision 10.12, CPC.



Example 8.1

In March 2012, the Central Bank reprimanded Aviva Life and Pensions Ltd and imposed a penalty of €245,000. In January 2011, the Central Bank conducted a thematic review of the firm's complaints handling procedures, which were found to be in breach of the requirements set out in Provision 46(a) to (e) of the CPC.

Out of a sample of 76 of the firm's individual customer complaint files, 50 were found to contain clear breaches of one or more complaints handling provisions of the CPC. These breaches included a failure to:

- acknowledge each complaint in writing within 5 business days of the complaint being received
- provide complainants with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact until the complaint was resolved or cannot be processed any further
- provide complainants with a regular written update on the progress of the investigation at intervals of no greater than 20 business days
- inform complainants of their right to refer their complaint to the FSO (now FSPO) and provide them with the contact details
- maintain an up-to-date record of complaints in accordance with the CPC.

These breaches showed the firm's failure to have adequate systems and control checks in place to ensure compliance with the complaints handling requirements of the CPC.

In order to prevent a recurrence, the firm took immediate measures to rectify the issues identified in the review. This included putting in place new systems and procedures and an enhanced training programme.¹³⁸



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 a senior level and appropriate action taken.

¹³⁸ Central Bank, www.centralbank.ie > Home > Press Area > Press Releases > 2012

B

Financial Services and Pensions Ombudsman

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. This will undoubtedly be disappointing for a consumer, but they may have another source of redress.

When an insurer or intermediary concludes their investigation of a complaint, they must issue a final response letter to the complainant. This letter must:

- contain a detailed account of the dispute in hand
- address all the issues outlined in the complaint form
- quote the policy conditions/terms of business that apply to the complaint
- give details of any redress offered to the complainant by the provider
- state that it is the firm's final response for the purpose of referral to the FSPO.



An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman



Financial Services and Pensions Ombudsman (FSPO)

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

In 2017, the Government decided to merge the offices of the Financial Services Ombudsman's Bureau and the Office of the Pensions Ombudsman to form the Financial Services and Pensions Ombudsman (FSPO). The FSPO was established by the **Financial Services and Pensions Ombudsman Act 2017** and opened for business on 1 January 2018.

The **Financial Services and Pensions Ombudsman (FSPO)** is 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. The FSPO office consists of an Ombudsman, a Deputy Ombudsman and any staff members appointed to the office. It is funded by levies from financial services providers (FSPs) and by a grant from the government.¹³⁹ The service is impartial and free to the complainant.

In relation to the scope of the FSPO's role currently, the term 'unresolved disputes' is important. The FSPO strongly encourages all parties to engage in a meaningful manner in the informal processes and to only rely on adjudication as a last resort. Part of the FSPO process requires consumers to first make the complaint to their

¹³⁹ For additional information, go to the Financial Services and Pensions Ombudsman website: www.fsfo.ie.

FSP, which must handle the complaint in accordance with its internal complaints procedure (see Section A).

The principal functions of the FSPO are to:

- deal with complaints made to the FSPO by eligible complainants about the conduct of regulated FSPs by **mediation**, and where necessary to
- investigate and adjudicate on the complaint.



An eligible complainant (consumer) may be any of the following:

1. a private individual
2. limited companies
3. a sole trader
4. trusts
5. clubs
6. charities
7. partnerships.

In the case of 2–7, the annual turnover must not exceed €3 million.

While the FSPO seeks to engage with both parties to reach an acceptable resolution to the dispute, a consumer may not be entitled to make a complaint to the FSPO if the conduct complained of:

- is or has been the subject of legal proceedings before a court or tribunal, or 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 FSP, or the FSP 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.
- There is, or was, available to the complainant an alternative and satisfactory means of redress in relation to the complaint.
- The complainant has no interest or an insufficient interest in the conduct complained of.
- The subject matter of the complaint is of such a degree of complexity that the courts are a more appropriate forum.
- The consumer fails within a reasonable period to comply with a request for further written particulars.

mediation

informal method of dispute resolution involving a neutral mediator, who helps the parties work out their own solutions with no apportioning of blame

Having investigated a complaint, the FSPO can direct the FSP 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 €250,000 lump sum or €26,000 annuity.¹⁴⁰
- take any other lawful action.

A preliminary decision will be sent to both parties after all the evidence has been reviewed. This preliminary decision 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 days of the legally binding decision.¹⁴¹

B1 Reporting on named financial service providers

Section 25 of the **Financial Services and Pensions Ombudsman Act 2017** gives the FSPO ‘naming and shaming’ powers. The FSPO may, if it is believed to be in the public interest, publish the names of those regulated FSPs they have made three or more adverse findings against in the previous year.

In February 2016, following a review, a new dispute resolution service was launched by the FSO (prior to its amalgamation with the Pensions Ombudsman) to resolve disputes through mediation and with the minimum formality necessary. Mediation, by telephone and email, is now the FSPO’s preferred option for resolving complaints. A total of 2,378 complaints were resolved through mediation between February and end of 2016.¹⁴²

Case studies 8.1 and 8.2 show examples of complaints that were considered by the FSO (prior to its amalgamation with the Pensions Ombudsman).

¹⁴⁰ Section 60, Financial Services and Pensions Ombudsman Act 2017.

¹⁴¹ Financial Services and Pensions Ombudsman: www.fspo.ie > Our services> How we deal with your complaint.

¹⁴² The FSO Annual Review is available in the archives section of www.fspo.ie.

Case study 8.1

Insurance on a holiday home – complaint not upheld

The complainant had a holiday home insured with the company. The policy was effective from April 2009 to April 2010. The insured property suffered water damage due to a burst pipe in November 2009.

The complainant submitted a claim in respect of the damage caused to the property by the escape of water.

The company declined the claim on the basis that the policy conditions were not met, namely that the complainant had not complied with the following policy provision:

Holiday home unoccupancy endorsement (used by you only)

Where the home is used as a holiday home used by you only

1. We will not cover loss or damage arising from freezing escape or overflow of water from within any plumbing or heating system, fixed water apparatus or fixed domestic appliance during the period 1 November to 31 March annually unless:
 - i. The water supply is turned off at the mains and all water is drained from the system or
 - ii. The central heating is left in full operation 24 hours a day to maintain a minimum temperature of 10°C/50°F throughout the home.

The Ombudsman found that the complainant had failed to comply with the terms, conditions, exclusions and endorsements of the policy, i.e. the water supply had not been turned off and drained from the system, and the central heating system had not been left in full operation 24 hours a day at a minimum temperature. Consequently the complaint was not upheld as the insurer had acted correctly in declining the claim.¹⁴³

¹⁴³ Financial Services and Pensions Ombudsman: www.fspo.ie > Archives > Financial Services Ombudsman > Annual Report 2011.

Case study 8.2

Motor insurance – complaint upheld

The complainant had a motor insurance policy and reported a claim following the attempted theft of her car in February 2011. The car was damaged during the attempted theft, so the insurer had her car removed to its repair centre for an estimate to be prepared. The car was 18 years old and was found to be uneconomical to repair. The insurer arranged for it to be crushed later in February 2011.

The insurer initially made an offer of €500 in respect of the damaged vehicle. This offer was subsequently increased to €1,000.

The complaint to the Ombudsman was that:

- the insurer wrongfully destroyed the complainant's car without her knowledge or consent
- the complainant did not receive the written repair estimate
- because the insurer destroyed the car without the complainant's consent, she was denied the opportunity to get her own engineer's report, or to make use of the government scrappage scheme
- the insurer's offer of €1,000 was not a fair assessment of the market value
- the complainant also wished to be reimbursed/paid back for the cost of parking permits destroyed with the car, the cost of her road tax, the cost of hiring a tow truck for a failed attempt to collect the car before she discovered that it had been destroyed, and for the cost of a replacement vehicle of similar condition and size (€4,500)
- the complainant also sought €1,300 for distress and inconvenience.

The insurer accepted that the complainant's claim was not handled in a satisfactory manner; that it did not communicate correctly with the complainant and that the car was destroyed before the complainant had an opportunity to recover it. In addition to the €1,000 representing the market value of the car, it offered an additional €1,500 for the inconvenience, delays and poor customer service.

The Ombudsman stated that under the terms of the insurance policy, the complainant is entitled to be paid the market value of her car at the date of loss. All things considered, the Ombudsman found that the insurer's offer of €1,000 was a generous one.

Nevertheless, the Ombudsman found that the insurer's overall settlement offer of €2,500 should be increased to €3,000 to reflect the particular circumstances of this complaint, the age and poor health of the complainant and the distress caused by the sudden and unexpected destruction of the insured vehicle. The finding stated: 'While I cannot award the level of compensation sought by the complainant principally on the grounds that the complainant is not entitled under the policy to be reimbursed more than the market value of the lost vehicle, I find it appropriate that the Provider should pay the complainant a sum of €3,000 in settlement of this matter and I direct accordingly. The complaint is upheld.'¹⁴⁴

¹⁴⁴ Financial Services and Pensions Ombudsman: www.fspo.ie > Archives > Financial Services Ombudsman > Annual Report 2012.

C

Insurance Compensation Fund

The Insurance Compensation Fund (ICF) was established under the **Insurance Act 1964** (later amended by the **Insurance (Amendment) Act 2011**). The ICF is maintained and administered under the control of the President of the High Court, acting through the Accountant of the High Court.

The purpose of the ICF is to facilitate payments to policyholders in situations where an Irish- or EU-authorised non-life insurer contributing to the scheme goes into liquidation or is unable to pay valid claims. The approval of the High Court is needed before the ICF can make compensation payments.¹⁴⁵

The ICF is an example of an insurance guarantee scheme. These schemes provide last-resort protection to consumers when insurers are unable to fulfil their contractual commitments. Ireland is one of just twelve EU member states to operate guarantee schemes.

The ICF is currently financed through contributions received from non-life insurance companies operating in Ireland. 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 and some marine and aviation risks.



The ICF will pay a maximum amount that shall not exceed 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. Following the Supreme Court's ruling in relation to the Setanta Insurance collapse, the Government has begun drafting the **Insurance (Amendment) Bill 2017**. This Bill proposes that the ICF be responsible for 100% of third party motor insurance claims specifically. For all other claims, the maximum amount recoverable by a claimant will remain at 65% of the claim or €825,000. It also proposes that insurers will be levied to meet the cost of boosting the compensation fund.¹⁴⁶

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
- whether the insured vehicles are registered in Ireland



Quick question 3

How is the ICF financed?

¹⁴⁵ 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.

¹⁴⁶ 'Proposed Legislation to Increase Liability of Insurance Compensation Fund for Third Party Motor Claims' William Fry, online article, 31 July 2017, www.williamfry.com.

- in the case of short-term travel insurance, whether the insurance was taken out in Ireland
- in most other cases, whether the normal residence of the policyholder is in Ireland.

Case Studies 8.3 and 8.4 show two recent events that resulted in applications to the ICF.

Case study 8.3

Collapse of Quinn Insurance Ltd, 2010

The well-publicised collapse of Quinn Insurance 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 places a special 2% levy on all insurance policies other than life assurance, all of which goes to the ICF. This levy is to cover solvency breaches at Quinn Insurance and will need to be applied to insurance policies for several decades to come.

By October 2014, the State's ICF had paid out over €1.158 billion to cover claims made by consumers insured by Quinn Insurance. The final bill is expected to exceed €1.65 billion.

The former auditors of Quinn Insurance, PricewaterhouseCoopers (PwC), are facing an €800 million damages claim for negligence from the Quinn administrators.¹⁴⁷ If this proves successful, the money will be used to repay the ICF.

Case study 8.4

Collapse of Setanta Insurance Company Ltd, April 2014

Setanta was a Dublin-based insurer, licensed and regulated in Malta by the Malta Financial Services Authority. The firm traded only in Ireland. However, responsibility for prudential supervision rested with the Maltese authorities.

The firm went into liquidation in April 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. This led to concerns about claims on the ICF if Setanta was unable to discharge its liabilities.

The liquidator advised that no more than 30% of the insurance claims could be met out of the Setanta's assets. In May 2017 after a legal battle between the ICF and the **Motor Insurers' Bureau of Ireland (MIBI)**, the Supreme Court ruled that the ICF would be liable for the claims of Setanta's policyholders (approximately 1,576 active claims, with an estimated liability of approximately €110 million). At the time of print, 573 claimants had been paid compensation from the ICF subject to the 65%/€825,000 limits.

Over and above the 65% ICF payment, it is expected that a proportion of the balance of money due to third party claimants will be met from the proceeds of the distribution of Setanta's assets on completion of the liquidation process. At the time of print, the liquidator estimated that he will not be in a position to meet more than 22% of the claims out of the assets of the liquidation.¹⁴⁸ It remains to be seen how the shortfall in compensation for affected claimants will be addressed.



Motor Insurers' Bureau of Ireland (MIBI)

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 (uninsured or untraced vehicles)

¹⁴⁷ Mary Carolan, 'PwC says Quinn court case will cost it €30m', *The Irish Times*, online article, 9 May 2016, www.irishtimes.com.

¹⁴⁸ Minister for Finance (Deputy Paschal Donohoe), 'Written Answer No. 247 – Insurance Compensation Fund', *Houses of the Oireachtas*, 7 November 2017, www.oireachtas.ie.

D

Investor Compensation Scheme

In 1997, the **EU Investor Compensation Directive** set out the basic requirements for a minimum level of investor protection across the European Union. This Directive was implemented in Ireland through the **Investor Compensation Act 1998** (the Act). The Investor Compensation Company Limited (ICCL) administers the **Investor Compensation Scheme** and is an independent body set up under the Act.

The scheme provides some protection to clients of insurance and investment intermediaries where:

- a member firm goes out of business and cannot return a consumer's money
- a Central Bank determination (decision) or court ruling has been made under the Act.

An investor's right to compensation is limited to 90% of their loss, to a maximum of €20,000 per investor.

The scheme is funded by way of a levy paid by all the participating firms authorised to conduct investment and/or insurance business. The levy to be paid 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.



Investor Compensation Scheme

scheme set up under the **Investor Compensation Act 1998** giving protection mainly for investors whose investments have failed in defined circumstances

Case study 8.5

Failure of Andrew Casey Life and Pensions

In October 1998 the Central Bank of Ireland made a determination under the ICA 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.

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 (unless the consumer was told that the intermediary no longer had authority to accept premium payments) any premium paid to an intermediary is automatically deemed to have been paid to the insurer. The insurer therefore accepts the credit risk, meaning the consumer suffers no financial loss.

Further information about the scheme, its open and closed cases and information on levy funding is available on the ICCL website.¹⁴⁹

¹⁴⁹ Investor Compensation Company Limited, www.investorcompensation.ie.

E

Summary

In this chapter, we completed our study of compliance and advice by considering the potentially contentious areas of complaints and errors. We also identified the financial protection available to consumers in the event of the failure of a regulated firm.

E1 How to reinforce what you have learned in this chapter

Well done on reaching the end of the book! It's now time to begin the final stages of your study and exam preparation.

E2 Study tips

It's 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, **Connect** has many online study supports that can help you as you study this module.

E3 Online learning supports

Connect includes a learning plan, an automated study planner, an exam countdown timer and study tips guide. These study 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 study supports, just log into the Member Area of 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 two business days.

3. State the main functions of the Financial Services and Pensions Ombudsman (FSPO)

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. Outline what is meant by the term 'unresolved complaints' and how significant it is.

7. Outline the action the FSPO can take against regulated FSPs it has made three or more adverse findings against in the previous year.

8. State the purpose of the Insurance Compensation Fund (ICF).

9. Outline the limitations on the amount of compensation payable under the ICF.

10. State the maximum amount of compensation available to an investor from the Investor Compensation Scheme (ICS).

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. As the complaint was 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 FSPs by mediation, and where necessary to
 - investigate and adjudicate on the complaint.
4. An eligible customer may be any of the following:
 1. a private individual
 2. limited companies
 3. sole trader
 4. trusts
 5. clubs
 6. charities
 7. partnerships.In the case of 2–7 above, the annual turnover must not exceed €3 million.
5. The maximum amount is a lump sum of €250,000 or €26,000 annuity.
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 financial service provider (FSP), who 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. The FSPO may, if it is believed to be in the public interest, publish the names of those regulated FSPs it has made three adverse findings against. These are also known as 'naming and shaming' powers.
8. The ICF facilitates payments to policyholders in situations where an Irish- or EU-authorised 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.
10. An investor's right to compensation is limited to 90% of their loss, to a maximum of €20,000 per investor.

?(Answers to quick questions)

1. The insurer must (where possible):
 - 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 any error that has impacted, or may impact, negatively on the cost of the service, or the value of the product provided
 - log the error in accordance with CPC requirements.
2. The complaint must be investigated and resolved within 40 business days.
3. The ICF is currently financed through contributions received from the non-life insurance companies on business written in Ireland.



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. Pat has submitted a complaint to the Financial Services and Pensions Ombudsman (FSPO). 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:

3. 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:

Answers to 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

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 complaint resolution.

2. Pat has submitted a complaint to the Financial Services and Pensions Ombudsman (FSPO). 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

Chapter reference: Chapter 8B

Question type: U

Correct response: C

Learning outcome: Explain the role of the Financial Services and Pensions Ombudsman in dispute resolution.

3. 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.

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 complaint resolution.



Referenced websites, legal cases and legislation

Websites

Anti-Money Laundering Compliant Unit
www.amlcu.gov.ie

Central Bank of Ireland
www.centralbank.ie

DAS Legal Expenses Insurance Company
www.das.ie

Data Protection Commissioner
www.dataprotection.ie

Department of Finance
www.finance.gov.ie

Department of Health
www.dohc.ie

European Commission
www.europa.eu

European Union
www.ec.europa.eu

FBD Insurance PLC
www.fbd.ie

Financial Conduct Authority
www.fca.org.uk

Financial Services and Pensions Ombudsman
www.fspo.ie

Financial Times
www.ft.com

Insurance Ireland
www.insuranceireland.eu

Investor Compensation Company Limited
www.investorcompensation.ie

National Fleet Database
www.nfd.ie

The Insurance Institute
www.iii.ie

The Irish Times
www.irishtimes.com

William Fry (Solicitors)
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 Act 1942

Central Bank and Financial Services Authority of Ireland Act 2004

Central Bank Reform Act 2010

Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulation 2011

Central Bank (Supervision and Enforcement) Act 2013

Civil Law (Miscellaneous Provisions) Act 2008

Civil Liability and Courts Act 2004

Companies Act 2014

Competition and Consumer Protection Act 2014

Consumer Credit Act 1995 (as amended)

Consumer Insurance Contracts Bill 2017

Criminal Justice (Corruption Offices) Bill 2017

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2013

Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

Criminal Justice Act 1994

Criminal Justice Act 2013

Data Protection (Access Modification) (Health) Regulations 1989

Data Protection Act 1988

Data Protection (Amendment) Act 2003

Data Protection Bill 2017

Disability Act 2005

Equal Status Act 2000	EU Unfair Terms Directive 1993
Equal Status Act 2000–2015	Financial (Miscellaneous Provisions) Act 2015
Equal Status (Amendment) Act 2012	First EU Motor Insurance Directive 1972
Equality Act 2004	Fourth EU Motor Insurance Directive 2000
European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011	Fourth EU Anti-Money Laundering Directive 2015
European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004	General Data Protection Regulation 2016
European Communities (Distance Marketing of Consumer Financial Services) (Amendment) Regulations 2005	Handbook of Prudential Requirements for Investment Intermediaries Health Insurance (Miscellaneous Provisions) Act 2009
European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008	Health Insurance Act 1994 (Minimum Benefit) Regulations 1996
European Communities (Insurance Mediation) Regulations 2005	Health Insurance Acts 1994–2016
European Communities (Non-Life Insurance) Framework Regulations 1994	Health Insurance (Miscellaneous Provisions) Act 2009
European Communities (Non-Life Insurance) Regulations 1976	Insurance (Amendment) Act 2011
European Communities (Reinsurance) Regulations 2006	Insurance (Amendment) Bill 2017
European Communities (Unfair Terms in Consumer Contracts) Regulations 2014	Insurance Act 2015 (UK)
European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (as amended)	Insurance Acts 1909–2009
EU (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016	Investment Intermediaries Act 1995
EU (Consumer Mortgage Credit Agreements) Regulations 2016	Investor Compensation Act 1998
EU Data Protection Directive 1995	Motor Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2002
EU Directive on the Distance Marketing of Consumer Financial Services 2002	Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007
EU First Non-Life Insurance Directive 1973	Privacy and Electronic Communications Directive 2002
EU Gender Directive 2004	Road Traffic Acts
EU (Insurance and Reinsurance) Regulations 2015	Road Traffic (Compulsory Insurance) Regulations 1962
EU Insurance Distribution Directive 2016	Road Traffic (Insurance Disc) Regulations 1984 and 1986
EU Insurance Mediation Directive 2002	Solvency I Directive 2002
EU Investor Compensation Directive 1997	Solvency II Directive 2009
EU Second Non-Life Insurance Directive 1988	Third EU Anti-Money Laundering Directive 2005
EU Third Non-Life Insurance Directive 1992	Fourth Anti-Money Laundering Directive 2015



Acronyms

Organisations/bodies/regions	
Competition and Consumer Protection Commission	CCPC
Consumers Association of Ireland	CAI
Consumer Protection Code	CPC
Data Protection Commissioner	DPC
European Court of Justice	ECJ
European Economic Area	EEA
European Insurance and Occupational Pensions Authority	EIOPA
European Union	EU
Financial Intelligence Unit (of An Garda Síochána)	FIU
financial service provider	FSP
Financial Services and Pensions Ombudsman	FSPO
Health Insurance Authority	HIA
Irish Financial Services Appeals Tribunal	IFSAT
Insurance Ireland	II (previously the Irish Insurance Federation (IIF))
Insurance Compensation Fund	ICF
Motor Insurers' Bureau of Ireland	MIBI
National Consumer Agency	NCA
National Directory Database	NDD
National Fleet Database	NFD
Terminology and legislation	
anti-money laundering	AML
Consumer Protection Code	CPC
Consumer Protection Outlook Report	CPOR
continuing professional development	CPD
controlled functions	CFs
counter-terrorist financing	CTF
customer due diligence	CDD
Declined Cases Agreement	DCA
electronic data interchange	EDI
fitness and probity	F&P
Investment Intermediaries Act	IIA
Insurance Distribution Directive	IDD
Insurance Mediation Directive	IMD

long-term agreements	LTAs
Minimum Competency Code	MCC
no claims discount	NCD
online reporting	ONR
pre-approval controlled functions	PCFs
Packaged Retail and Insurance-based Investment Products	PRIIPS
Probability Risk and Impact SysteM	PRISM
professional indemnity insurance	PII
Retail Intermediary Annual Return	RIAR
solvency capital requirement	SCR
Suspicious Transaction Report	STR
terms of business	TOB



Glossary of key terms

accredited person	a person who satisfies the Central Bank's minimum competency requirements
act of the Oireachtas	a Bill voted through the Dáil and Seanad (the Houses of the Oireachtas) and signed into law by the President
advice	provision of a personal recommendation 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
adviser (advisor)	an individual involved in the advising process
agent	one who is authorised by a principal to bring that principal into a contractual relationship with another, a third party
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
automated decision-making	a process by which computer programs analyse data and make judgements without human involvement
blanket certificate	certificate of motor insurance that refers to classes of vehicle rather than specific registration numbers
broker	an insurance intermediary that provides their principal regulated activities on the basis of a fair analysis of the market
business day	any day of the normal business working week, Monday to Friday inclusive, and excluding weekends, bank or public holidays
business interruption insurance	insurance that protects a commercial policyholder against loss of profits and other expenses following insured damage to their property
capital adequacy	the appropriate amount of capital required to support the insurance provider's operations
Certificate of Competency	document issued to a consumer providing confirmation that the person providing advice meets the required standards of the firm
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
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 with whom it deals in the course of carrying on another part of its business
client	a person, firm or organisation that has appointed a regulated entity to act on their behalf for insurance purposes
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
competence	a defined level of knowledge and ability necessary for the performance of a job

complaint	expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with: a. the provision or offer of the provision of a product or service to a consumer by a regulated entity b. the failure or refusal of a regulated entity to provide a product or service to a consumer
	Consumer Protection Code (Definitions)
conduct of business rules	rules relating to the firm itself, its structure and its interaction with its customers (the advising process)
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
consent	the most common means of creating an agency between a principal and an agent
consumer	any of the following: 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) b. incorporated bodies with an annual turnover of €3 million or less in the previous financial year (provided not part of a group with a combined turnover of more than €3 million). ... and includes a potential consumer
Consumer Protection Code	code issued by the Central Bank of Ireland setting out requirements that regulated firms must comply with in order to ensure a minimum level of protection for consumers
Consumer Protection Risk Assessment (CPRA) model	Central Bank model comprising of five modules: governance and controls; people and culture; product development; sales/transactions process; and post sales handling.
continuing professional development (CPD)	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 appendices to the MCC
controlled function	designated role for which the Central Bank requires regulated financial service providers to identify and maintain a record of: <ul style="list-style-type: none">• those persons performing CFs from the date of application of the Fitness and Probity Standards• due diligence undertaken in respect of those persons
cooling-off period	a period of time in which a consumer has a right to cancel an insurance contract without any penalty
cover note	document setting out details of temporary cover granted, usually in advance of permanent documentation being issued, e.g. policy or endorsement
customer	any person, firm or organisation to whom a regulated entity provides or offers to provide an insurance product or service (for an intermediary the terms 'client' and 'customer' are interchangeable) and any person who requests such a product or service

customer due diligence	the requirement to obtain a certain level of documentation to confirm identification in order to satisfy anti-money laundering laws
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
data processor	a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller
Data Protection Commissioner	office established under the Data Protection Act 1988 , which is responsible for enforcing obligations placed on data controllers regarding how they obtain and use personal data and information and upholding the rights of individuals as set out in the Act
data subject	an individual who is the subject of personal data
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
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
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
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) Act 2010 , who is given responsibility to guard the firm or organisation against being used for money laundering or terrorist financing
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)
due diligence	enquiries undertaken to assess the fitness and probity of an individual
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
engagement model	term that refers to the frequency and intensity of monitoring and visiting by the Central Bank to check capital adequacy and governance/management of the firms it regulates
ethics	practical analysis of objective standards of right and wrong (also known as 'moral philosophy')
EU Decision	decision that is binding in its entirety, but only on those EU member states to whom it is addressed, usually used in competition law clearances; may be addressed to member states or individuals
EU Directive	law 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 Recommendation/ EU Opinion	non-binding instruments of EU law and, though without any legal force, having political weight and persuasive value

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
exclusion/exception	policy provision that defines circumstances or types of loss that are not covered
factsheet	electronic form asking if the statements given onscreen are correct – to which the insured clicks Yes or No (reference also ‘statement of fact’)
fair analysis	providing of services on the basis of a sufficiently large number of contracts and insurers available on the market to enable the intermediary to make an informed recommendation Consumer Protection Code (Definitions)
fiduciary relationship	relationship that is recognised by the law as being based on trust and responsibility. In the insurance context, this means that legal duties and obligations are placed upon the agent as a result of having undertaken to perform certain activities on behalf of the principal
financial crime	a wide term embracing money laundering, proceeds of crime, bribery and corruption
financial sanctions	restrictive measures imposed on individuals or entities in an effort to curtail their activities and to exert pressure and influence on them; including, but not limited to, financial sanctions, trade sanctions, restrictions on travel or civil aviation restrictions
Financial Services and Pensions Ombudsman (FSPO)	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
firm	a regulated entity (used throughout this textbook to refer to regulated entities that provide financial services, including insurers and/or intermediaries)
fitness	the qualifications, experience, competence and capacity appropriate to the relevant function
fleet policy	a motor policy that covers a collection of vehicles owned by a corporate entity
four freedoms	founding principles of the EU: freedom of movement of goods, persons, services and capital
general good	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
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 (CPD) requirement
home country (state)	the country responsible for the supervision of authorised undertakings in their jurisdiction
host country (state)	the country that hosts relevant subsidiaries or branches ¹⁵⁰

¹⁵⁰ ‘Memorandum of Understanding on Cooperation between the Financial Supervisory Authorities...’, June 2008.

information	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, or in the context of the provision of MiFID services or activities Minimum Competency Code 2017
insurance distribution	the activities of advising on, proposing, or carrying out other work in preparation or conclusion of contracts of insurance, or of assisting in the administration and performance of such contracts, including the provision of information Insurance Distribution Directive 2016 (Definitions)
insurance intermediary	person/firm who, for remuneration, undertakes or purports to undertake insurance mediation
insurance mediation	any activity involved in proposing or undertaking preparatory work for entering into insurance contracts, or of assisting in the administration and performance of insurance contracts that have been entered into (including dealing with claims) EU Insurance Mediation Directive 2002
insurance undertaking	regulated entity, i.e. an insurer, holding an authorisation via the Central Bank
insurer	a risk-carrying regulated entity (product producer)
integration	third stage in the money-laundering process involving the gaining of access to the money as apparently legitimate funds
intermediary	generic term for firms of all types that give advice on insurance products (see also 'insurance intermediary')
Investor Compensation Scheme	scheme set up under the Investor Compensation Act 1998 giving protection mainly for investors whose investments have failed in defined circumstances
key information	any information that is likely to influence a consumer's actions with regard to a product or service
layering	second stage in the money-laundering process involving concealing the origins of the money by creating a series of complex transactions, possibly including fund transfers overseas or trading in stocks
liability insurance	insurance that protects the policyholder against the consequences of a policyholder being held financially responsible for a third party's injury, property damage or financial loss
lifetime community rating	the older a person is when they 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
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
loss adjuster	independent expert in processing claims from start to finish
material fact	any fact that would influence an underwriter/insurer in either accepting or rejecting a risk and in deciding what terms to impose
mediation	informal method of dispute resolution involving a neutral mediator, who helps the parties work out their own solutions with no apportioning of blame

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
Minimum Competency Regulations	regulations which in conjunction with the Minimum Competency Code impose certain obligations on regulated firms under Section 48 of the Central Bank (Supervision and Enforcements) Act 2013 .
misrepresentation	untrue statement of fact, either innocent or fraudulent, made during negotiations with another contracting party
money laundering	process by which criminals and terrorists convert money that has been obtained illegally into apparently legitimate funds
Motor Insurers' Bureau of Ireland	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 (uninsured or untraced vehicles)
open membership undertakings	the three commercial health insurers operating in the Irish private health insurance market, who must accept any customer seeking to take out cover with them
operative clause	clause(s) that describes the standard scope of cover of each section of an insurance policy
overrider	an extra commission linked to volume of sales or profitability
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
personal consumer	a consumer who is a natural person acting in their private capacity outside their business, trade or profession
personal data	data relating to a living individual who can be identified from this data
placement	first stage in the money-laundering process that involves putting cash into the financial system and converting it into other financial assets, e.g. cheques or property
policyholder/insured	a person/firm that is insured under an insurance policy
power of attorney	statutory authorisation given to an individual to act on behalf of another individual in specified, or all, legal or financial matters
principal	a person for whom another acts as agent
pre-approval controlled function	designated role, mainly to do with executive or senior roles, heading up significant functional areas or regulatory roles, where the Central Bank must approve the person for the function before they are appointed to the job
prescribed script function	a controlled function exercised within a narrow and rigid set of criteria and according to a prescribed script and routine
PRISM	Probability Risk and Impact System: a formal risk-based framework designed by the Central Bank to provide a structured approach to assessing financial services firms based on impact and probability
probity	a person's honesty, fairness and ethical attitude

product producer	any regulated entity 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
professional indemnity (liability) insurance	insurance that covers claims arising from the professional activities (including negligent or inadequate advice given) of advisers
proposal form	type of questionnaire, asking questions about the subject matter of insurance before an insurance contract is entered into
proposer	a person, firm or organisation applying for insurance (but not yet a policyholder/insured)
prudential regulation	a type of financial regulation that requires firms to control risks and hold adequate capital as defined by capital requirements
qualified person	person with one or more recognised qualification(s) which are relevant to the function to be exercised
recital clause (preamble)	scene-setting clause that refers to the parties to the contract, premium, indemnity and proposal (if any) as the basis of the contract
regulation	a principle, rule, or law designed to control or govern conduct
regulated entity	a financial services provider authorised, registered or licensed by the Central Bank or other EU or EEA member state, that is providing regulated activities in the State
reinsurance	insurance for an insurance company, e.g. against large losses
restricted membership undertakings	the health schemes restricted to a particular class of membership, usually established as 'friendly societies'
retail intermediary	a regulated firm that receives and supplies orders for certain financial products and/or gives advice about those products
risk equalisation	a process that aims to impartially neutralise differences in insurers' costs that arise from differences in the age profile of the persons that they insure
schedule	a single page incorporated into a policy booklet to personalise the policy
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 Agreement
solvency capital requirement	a level of eligible own funds that that Solvency II legislation requires insurers/reinsurers to hold to meet liabilities and absorb significant losses
statement of fact	a statement provided by the insurer, after confirmation of cover by phone or online, clarifying the basis on which insurance is accepted and what conditions apply
Statutory Instrument	a form of delegated legislation, which provides detailed rules that implement the more general provisions of a particular European Directives or Acts of the Oireachtas
structural regulation	regulation relating to how financial markets work, specifically geared towards maintaining competitiveness
systemic regulation	regulation designed to oversee the stability of the financial system as a whole

supervision	the act or function of overseeing something or somebody
technical provisions	reserves held so that assets are matched with known and estimated future claims liabilities and associated expenses, technical provisions are made up of three components – the claims provisions, the premium provisions and the risk margin
Terms of Business Agreement (Document)	document in which a regulated entity sets out the basis on which it will conduct business with consumers
territorial limits	those countries or territories where the policy cover will operate
terrorist financing	involves the provision, collection or receipt of funds with the intent or knowledge that they will be used to carry out an act of terrorism or any act intended to cause death or serious bodily injury. This includes collecting or receiving funds to be used, or knowing that they will be used, for the benefit of a terrorist group
tied agent	an agent under the full responsibility of only one investment firm on whose behalf it acts, promoting investment and/or ancillary services to clients (or prospective clients), communicating instructions from the client in respect of investment services or financial instruments, and advising accordingly
tied insurance intermediary	any person who undertakes insurance mediation on behalf of insurance undertakings for products that are not in competition, and who acts under the direction of those undertakings
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
underwriting	process of risk pooling, risk evaluation, risk selection and risk pricing
vulnerable consumer	a natural person who: <ol style="list-style-type: none"> has the capacity 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) 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)
voice recording	the record of a telephone call, which is timed and dated for future verification

