

Public Consultation: Impact of Sales Incentives on the Sale of  
Consumer Credit Products

**Response to Public Consultation received  
from Brokers Ireland**



**Brokers Ireland Submission on the FinCoNet  
Consultation Paper on the Impact of Sales Incentives  
on the Sale of Consumer Credit Products**

## **Introduction**

This submission outlines the views of Brokers Ireland in relation to the questions posed in the FinCoNet consultation paper on the Impact of Sales Incentives on the Sale of Consumer Credit Products.

Brokers Ireland is a co-operative structure between the Irish Brokers Association (IBA) and the Professional Insurance Brokers Association (PIBA) who together represent over 90% of full time professional brokers in the Irish market.

Outlined below are Brokers Ireland's responses to the individual questions posed in the Consultation paper.

## **Necessary Pre-conditions of the Regulatory Framework**

1. Do you agree that a. to c. above are necessary pre-conditions of the overarching regulatory framework if supervisory initiatives are to be effective in the field of sales incentives and responsible lending?

Yes, Brokers Ireland agrees in principle with the pre-conditions as outlined a-c.

2. Are there any other pre-conditions that you consider necessary for supervisory initiatives to be effective in the field of sales incentives and responsible lending?

The participation of all stakeholders in the market during consultation is vitally important and there needs to be meaningful engagement between relevant competent authorities and stakeholders before the introduction and implementation of any rules or regulations.

Brokers Ireland believes that it is important that impact analysis assessments are undertaken before making any significant legislative changes. These impact assessments should cover areas such as competition in the market place, consumers' access to impartial advice and the cost of advice and transparency of this cost between the various different sales channels.

3. Do you have any other comments related to these pre-conditions?

In relation to pre-condition (b) it is important that supervisors recognise the distinctions between the various different sales channels. Where providers distribute through the intermediary channel, it should be recognised that intermediaries are generally small to medium sized firms and any requirements that are introduced should be proportionate. We believe it is important to recognize the broad range of products and large variety of entities currently selling those products in differing circumstances. When guidance is being drafted it should take into account whether there are already consumer protection measures in place as described in some of our later responses.

## **Guidance on Appropriate Oversight**

4. Do you agree with this Guidance on Appropriate Oversight?

Brokers Ireland agrees in principle with the Guidance on Appropriate Oversight. It is important that any review of sales incentives is across the board, i.e. that direct sales costs are explored similarly to the cost of distribution through the Intermediary market. The same disclosure requirements should apply to all distribution channels.

5. If you do not agree with this Guidance on Appropriate Oversight, please identify the specific aspects you do not agree with and explain why.

Brokers Ireland would have concerns about a one size fits all approach across member countries. Supervisors need to recognise the differences in market conditions in respect of population, cultural differences (i.e. different attitude to ownership of houses) and norms in respect of remuneration models.

6. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Appropriate Oversight? We welcome in particular information based on your experience or examples.

In Ireland, the intermediary distribution channel plays an important role in ensuring that consumers have access to impartial advice where consumers can receive information on a wide range of products versus where they seek advice directly from one provider where they only receive advice on that particular providers products'.

The commissions system facilitates this distribution channel. The consumer benefits by not being required to pay a direct or upfront fee to the intermediary. Feedback from our members indicates that consumers are unwilling to pay fees, as many of whom do not have the financial ability to pay upfront fees. This is particularly beneficial at a time when outlays are high for Consumers when buying a house.

7. Do you have any other comments related to this Guidance on Appropriate Oversight?

No further comments.

## **Guidance on Cross Selling**

8. Do you agree with this Guidance on Cross Selling?

Yes Brokers Ireland Agree. In Ireland, restrictions are already in place as Provision 3.17 of the Consumer Protection Code (CPC) states that

“A regulated entity must not make the sale of a product or service contingent on the consumer purchasing another product or service from the regulated entity. This provision does not prevent a regulated entity from offering additional products or services to consumers who are existing customers which are not available to potential consumers”.

9. If you do not agree with this Guidance on Cross Selling, please identify the specific aspects you do not agree with and explain why.

No further comment.

10. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Cross Selling? We welcome in particular information based on your experience or examples.

Brokers Ireland agree that provisions restricting cross selling remains in place in order to protect consumers from been pressured into taking out other products with a provider in order to obtain credit. Feedback from members indicate that clients often felt pressured into taking out mortgage protection with the lender as it is often indicated that their mortgage applications would be looked at more favourably if they took out the required insurances directly.

11. Do you have any other comments related to this Guidance on Cross Selling?

No further comment.

## **Guidance on Consumer-focused Culture**

12. Do you agree with this Guidance on Consumer-focused Culture?

Brokers Ireland would have concerns in relation to the following point of oversight

“Variable remuneration arrangements which can encourage sales staff and credit intermediaries to focus on the achievement of sales volume at the expense of consumers’ best interests; and”

Currently in Ireland there are no volume targets for credit intermediaries with lenders to achieve certain commission rates. All lenders have a commission rate that is set regardless of levels of business, some differ the commission per mortgages depending on the Loan To Value. Also the Consumer Protection Code (CPC) states that lenders/product providers cannot cancel an intermediary appointment on the basis of volume. The code also requires intermediaries to comply with Knowing the Consumer and Suitability requirements which requires the intermediary to recommend the most suitable product for a client. This creates a clear audit trail

We believe that these requirements mitigate the risks associated with intermediaries receiving remuneration from lenders and we believe that this could be used in other countries to stem any associated risks.

13. If you do not agree with this Guidance on Consumer-focused Culture, please identify the specific aspects you do not agree with and explain why.

Brokers Ireland agrees in principle but it is important that supervisors acknowledge the very important role of the commission remuneration model. The role of the intermediary is a very important component of the economic and financial system, and its value needs to be recognised. The existence of the commission model facilitates availability of impartial advice to clients and creates competition which keeps the cost of advice down. It is important that these benefits are protected and regulation mitigates any risks.

14. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Consumer-focused Culture? We welcome in particular information based on your experience or examples.

In addition to the commentary above we believe that any guidance should not lose sight of the consumer needs. Any protections put in place should not make access to credit so difficult that consumers cannot avail of unsecured debt e.g. access to line of credit or overdraft facilities that provides necessary finance for insurance protection, school fees etc. Whilst taking into account a consumer’s lack of understanding and the potential for information asymmetry there should be a balanced approach that does not put insurmountable barriers in place that whilst providing protection to consumers denies them access to a choice credit products that would be beneficial in their particular circumstances.

15. Do you have any other comments related to this Guidance on Consumer-focused Culture?

No further comment.

## **Guidance on General Duties and Specific Responsibilities:**

### 16. Do you agree with this Guidance on General Duties and Specific Responsibilities?

Brokers Ireland would not agree with any form of a ban on commission. We believe once the remuneration method and amount is disclosed to the consumer, it should be up to the consumer to consider and decide upon which option (fee or commission) they wish to choose to remunerate an intermediary for the advice and services provided. Currently in Ireland, the remuneration amount and method is disclosed to the consumer prior to any transaction taking place through the entity's Terms of Business which states that the entity may receive up to x % (whatever maximum is applicable) of the loan for arranging mortgage finance. Following the introduction of the new Credit Directive a Brokers commission will also be disclosed in the ESIS given to clients.

### 17. If you do not agree with this Guidance on General Duties and Specific Responsibilities, please identify the specific aspects you do not agree with and explain why.

Brokers Ireland do not agree with the following provisions

- banning the payment of specific types of incentives where the risk(s) arising from the incentive cannot be managed in a manner that protects the best interests of consumers;
- placing limits or other restrictions on the types of incentives that can be granted;
- placing limits or other restrictions on the amounts that can be paid as incentives;
- limiting the variable component of an individual's remuneration (e.g. as a proportion of total remuneration); and

In Ireland, there are already many provisions in the Central Bank's Consumer Protection Code (CPC) that deal with conflicts of interest, acting in the consumer's best interests and suitable advice. Employee remuneration is covered by Section 3.32 of the CPC which states that

"A regulated entity must ensure that its remuneration arrangements with employees in respect of providing, arranging or recommending a product or service to a consumer, are not structured in such a way as to have the potential to impair the regulated entity's obligations:

- a) to act in the best interests of consumers; and
- b) to satisfy the suitability requirements set out in Chapter 5 of this Code."

Therefore, there is no regulatory gap in Irish mortgage intermediary regulation that could be served by a commission ban.

Brokers Ireland is of the opinion that every intermediary has the right to be fairly remunerated for his or her services. An exclusively fee-based market would, for example, exclude many people from access to any level of advice or assistance in relation to one of the biggest purchases they will make throughout their lives. The prohibition on remuneration by lenders would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to require lenders to pay them for the work they do.

In many cases, the Broker does not charge a fee for advice and assistance to consumers and, therefore, the cost of advice is subsidised by the lender. If commission is banned it will mean that the consumer will pay the same mortgage costs directly to the lender AND then the consumer will also have to pay an advice fee if they choose to obtain advice from someone other than the lender s/he is applying to. This would dis-incentivise choice and competition in the market and leave consumers more exposed to the marketing messages and power of major financial institutions.

Following the banking crisis competition between lenders has been stunted but a ban on commission would unnecessarily further inhibit competition in the market. Competition promotes choice, keen pricing, better customer service and product innovation. It is vital that intermediaries who encourage this competition have the right to be remunerated by commission and/or fee in a way that is agreed between them and consumers.

It is important to note that intermediaries are an integral part of the credit process. It is beneficial for consumers that an intermediary assesses their financial requirements and the appropriateness of credit for their personal circumstances prior to submitting an application for credit to a Lender. Without advice from an intermediary many consumers would not understand the various offerings available to them from all the lenders in the market.

Brokers Ireland believes that the current remuneration of intermediaries being principally commission-based with the possibility to agree fees in particular circumstances, works effectively. The current remuneration model has been and continues to be a major contributing factor in the success of ensuring that advice is available for those seeking to enter into a credit agreement to purchase a property. Changes to that model may only benefit lenders with consumers losing out with less competition overall in the mortgage market and higher charges when they seek advice from mortgage professionals, independent of the lender. Indeed, it is likely that the consumers most adversely affected are likely to be those on lower incomes.

18. What challenges and opportunities do you consider relevant for the implementation of this Guidance on General Duties and Specific Responsibilities? We welcome in particular information based on your experience or examples.

As above.

19. Do you have any other comments related to this Guidance on General Duties and Specific Responsibilities?

No further comments.

### **Guidance on Oversight of Different Sales Networks**

20. Do you agree with this Guidance on Oversight of Different Sales Networks?

Brokers Ireland agrees that there should be a consistent approach in supervision requirements across all channels in relation to sales incentives.

21. If you do not agree with this Guidance on Oversight of Different Sales Networks, please identify the specific aspects you do not agree with and explain why.

We do not believe in Ireland that there is a need for any additional requirements in relation to sales incentives for credit intermediaries.

22. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Oversight of Different Sales Networks? We welcome in particular information based on your experience or examples.

No comment.

23. Do you have any other comments related to this Guidance on Oversight of Different Sales Networks?

No further comments.

## **Guidance on Oversight and Governance**

24. Do you agree with this Guidance on Oversight and Governance?

Brokers Ireland agree that there should be a consistent approach in supervision requirements across all channels in relation to sales incentives.

25. If you do not agree with this Guidance on Oversight and Governance, please identify the specific aspects you do not agree with and explain why.

We do not believe in Ireland that there is a need for any additional requirements in relation to sales incentives for credit intermediaries.

26. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Oversight and Governance? We welcome in particular information based on your experience or examples.

No comments.

27. Do you have any other comments related to this Guidance on Oversight and Governance?

No further comments.

## **Guidance on Monitoring**

28. Do you agree with this Guidance on Monitoring?

Brokers Ireland agrees in principal but it is important that the nature and complexity of the firm is taken into account when imposing requirements. In Ireland, mortgage intermediaries are generally small to medium sized firms with between 1 and 5 advisors.

29. If you do not agree with this Guidance on Monitoring, please identify the specific aspects you do not agree with and explain why.

In Ireland, Credit intermediaries are remunerated at the same rate of commission regardless of how much mortgage applications they submit to lenders.

Where no such incentives exist within an organisation then no such procedures should be required to be in place.

30. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Monitoring? We welcome in particular information based on your experience or examples.

One important feature of the commission payments system in Ireland is that products incorporate a clawback element. This means that if a product is redeemed; commission is clawed back from the intermediary by the lender, for example within 3 years of inception of the policy/Mortgage.

31. Do you have any other comments related to this Guidance on Monitoring?

In Ireland lending is subject to strict Central Bank criteria in relation to loan to value ratios and affordability so it is very unlikely that intermediaries could misadvise in relation to loan amounts required.

## **Guidance on Disclosure**

32. Do you agree with this Guidance on Disclosure?

Brokers Ireland does not agree with the Guidance on Disclosure, in particular we don't agree with the following statement:

“the propensity for disclosure to have perverse behavioural effects such as inappropriately increasing the level of trust a consumer places in the salesperson, and giving the salesperson a sense of moral licence (having disclosed their conflict) to disregard their duty to continue acting in the best interests of the consumer.”

33. If you do not agree with this Guidance on Disclosure, please identify the specific aspects you do not agree with and explain why.

Brokers Ireland believes that proper disclosure is vitally important as it informs the consumer of what remuneration the intermediary is to receive and this information is provided via the firm's terms of business and before the intermediary commences advising. Consumers are free to “shop around” and compare costs with other intermediaries before selecting which intermediary to go to. When remuneration structures are totally transparent; intermediaries then have to demonstrate to the client that they are providing value for money as a provider of financial advice rather than a seller of product.

The Consumer Protection Code sets down requirements for acting in the consumer's best interest, duty to avoid conflicts of interest and knowing the customer and suitability requirements, we feel it would be incorrect to state that disclosure would encourage the intermediary to negate these requirements. Also, the Central Bank can inspect firms where a clear audit trail should be present to evidence compliance with these requirements.

34. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Disclosure? We welcome in particular information based on your experience or examples.

The role of the Intermediary is a very important component of the economic and financial system, and its value needs to be recognised and remunerated appropriately.

We believe that it would be inappropriate to require the disclosure of an individual's (advisers) salary or bonus to the general public (potential consumers). We believe that the full commission/fee paid on a product should be disclosed but not an individual's full salary (including or excluding bonuses)

Brokers Ireland feel that the newly introduced ESIS focuses on what is important to the client, such as the total cost of credit including the fees and commissions received by the intermediary or direct sales. Therefore there is no need for any additional disclosure documents as the important information may get lost in a vast array of documents.

35. Do you have any other comments related to this Guidance on Disclosure?

No further comments.

## **Guidance on Promotional Incentives to Consumers**

36. Do you agree with this Guidance on Promotional Incentives to Consumers?

Brokers Ireland agrees that the benefits and costs of the incentive should be explained clearly to consumers. We would not advocate for a ban on these incentives as it does promote competition which is to the benefit of consumers. We believe that warnings are included in all advertisements outlining what are the conditions and restrictions of the incentives and whether the cost of the incentive is incorporated in the cost of credit.

37. If you do not agree with this Guidance on Promotional Incentives to Consumers, please identify the specific aspects you do not agree with and explain why.

N/a

38. What challenges and opportunities do you consider relevant for the implementation of this Guidance on Promotional Incentives to Consumers? We welcome in particular information based on your experience or examples.

In Ireland, some providers provide offers such as upfront cashback or payment of legal fees. We feel it is very important that consumers are not swayed by these incentives without understanding the true cost of these offers which are incorporated in the cost of credit.

39. Do you have any other comments related to this Guidance on Promotional Incentives to Consumers?

No further comments.