Better outcomes for consumers at the centre of the Central Bank of Ireland's Final Report on the Differential Pricing Review

Introduction

On 21 July 2021, the Central Bank of Ireland (the "Central Bank") published its final report (the "**Final Report**") on its Differential Pricing Review (the "**Review**") with respect to both the private car and home insurance markets. The three stage Review confirmed the Central Bank's concern that differential pricing impacts negatively on certain consumers and leads to outcomes which are inconsistent with the Consumer Protection Code 2012 (the "**Code**"). In response to these findings, the Central Bank makes a number of proposals to address these impacts through increased requirements to be effected by amendments to the Code. The Final Report has been generally well received with for example, Insurance Ireland, the industry body for insurers in Ireland, describing it as "*balanced and proportionate*".

Key Terms

To better understand the Central Bank's findings and proposals, the definitions assigned by the Central Bank to the terms *differential pricing* and *price walking* should be noted:

- *differential pricing* is a practice whereby customers with a similar risk and cost of service are charged different premiums for reasons other than risk or cost of service.
- *price-walking* is a pricing practice where customers are charged higher premiums relative to the expected costs the longer they remain with an insurance provider, thereby imposing a 'loyalty' penalty on consumers who choose to stay with their insurance provider throughout subsequent premium renewals.

Findings

The Central Bank's findings, based on a comprehensive analysis of the relevant markets which involved 11 insurance providers, 44 inspections, quantitative analysis of almost 11 million individual policy records and a survey of 5,500 customers, can be summarised as follows:

- long-term customers, who stayed with their insurance provider for 9 years or more, are paying, on average, 14% more for private car insurance and 32% more on home insurance than the equivalent customer renewing for the first time;
- the percentage of policies that renew increases with tenure (that is, the longer a customer has been with an insurer the more likely they are to renew);

- acknowledgment that differential pricing can benefit consumers who engage in price walking year-on-year (no proposal to limit this – thus falling short of a blanket ban on price walking);
- the responsibility to avoid price walking and / or negotiate a better price for their annual premium rests firmly with the consumer. This, observes the Central Bank, is inconsistent with the Code as it is the responsibility of the insurance provider to act honestly, fairly and professionally in the best interests of their customers and the integrity of the market; and
- differential pricing can result in unfair outcomes for consumers who are unable, or less likely, to switch providers and that the premiums paid by certain policy holders deviate significantly from the expected costs of the policy to the insurer.

Proposals

In response to its' findings, the Central Bank has proposed a series of reforms which would largely take effect through amendments to the Code, these include:

- **Price Walking**: insurance providers cannot charge personal consumers who are on their second or subsequent renewal a premium higher than they would have charged them if they were a consumer renewing for the first time.
- **New Business Discount**: any offering of a lower price to new customers in an effort to attract their custom should be clearly labelled as representing a new business discount. The Central Bank anticipates that this would allow consumers to negotiate a better priced premium through switching provider, while removing any 'loyalty' penalty for those consumers who opt to stay.
- **Oversight of Pricing Practices**: the introduction of new provisions to the Code which require insurance providers to carry out an annual review of their motor and home pricing policies, processes and models, with a view to:

  (i) rectifying any deficiencies identified, and

  (ii) retaining a written record of the review and actions taken to rectify any deficiencies found.

It is envisaged by the Central Bank that the introduction of such requirements will increase adherence by providers with the proposed new pricing provisions.

- **Automatic Renewals**: the addition of a number of provisions to the Code in respect of automatic renewals in the non-life insurance market. These provisions require:

  (i) written consent from a personal consumer regarding entry into an automatic renewal process;

  (ii) a personal consumer to have the right to cancel the automatic renewal; and

  (iii) the issuance of a notification to a consumer in advance of an automatic renewal requiring that specific information pertaining to the renewal be apprised to that consumer.

The Central Bank hopes that these requirements will provide greater transparency around the practice of automatic renewals, allowing for greater clarity on the part of the consumer.

- **Review of the Code**: focus on **three key** areas:
  (i) Complaints Resolution: a commitment to enhance recording and logging of complaints and frequency of conducting complaints analysis;
  (ii) Vulnerable Customers: the introduction of proposals on improved processes and training surrounding consumers which may be categorised as vulnerable or requiring additional assistance; and
  (iii) Engagement and Transparency: the undertaking of further analysis to better understand customer engagement in the private car and home insurance markets.

Consultation Process

On the back of the Final Report, the Central Bank has launched a public consultation on its reform proposals which will run until **22 October 2021** (see section 6 of the Final Report). It is anticipated, following receipt of stakeholder submissions, that finalised measures will take effect and apply to insurance providers from **1 July 2022**. The Central Bank flags that its' proposed timeline for implementation may vary depending on the volume / complexity of stakeholder submissions received. As ever, engagement with the consultation process is key to ensuring that any issues with the proposals are highlighted to the Central Bank and we encourage clients to engage in the consultation process accordingly.

Next Steps

In terms of actions which providers should be taking now, the first port of call is continued adherence to the action points identified to industry by the Central Bank in its **September 2020** Dear CEO letter, which was issued following the publication of an interim report on the Review.

In respect of the proposals in the Final Report, the Central Bank stipulates that those impacted should take proactive steps to align their pricing models with the proposals and any guidance previously offered under the Code. Consequently, firms should not wait until the proposed effective date to begin work on this area. A gap analysis of the providers' practices and documentation as against the proposals would enable providers to identify their own next steps. In commenting on the Final Report, Minister of State for Financial Services, Seán Fleming, reiterated this point advising that "*while the consultation process is important, given the technical nature of this matter, we also expect that all insurers will now review and end these practices*".

Finally, firms can expect the Central Bank to continue monitoring this area in the course of its general supervisory work and that the Central Bank will intervene where they "*have reason to believe that unfair practices are occurring which take advantage of consumer behaviours and habits*".

Insurance (Restriction on Differential Pricing and Profiling) Bill 2021

On 14 January 2021, Deputy Pearse Doherty brought a private members bill before the Dáil, the Insurance (Restriction on Differential Pricing and Profiling) Bill 2021 (the "**Bill**"), with the aim of prohibiting / restricting discriminatory pricing and the use of profiling techniques of certain insurance premiums. During the second stage of the Bill (February 2021), a Government amendment was put forward that the second reading of the Bill be postponed for a period of nine months in order "*to allow for greater analysis of the complex issues concerned following the publication of the Central Bank's final report on differential pricing later this year; and for such considerations to be taken into account in further scrutiny of the Bill*". The amendment was passed on 3 March 2021, thus resulting in the second reading of the Bill being adjourned to **December 2021**.

How this Bill will now progress is not entirely certain. A Dáil debate on the merits of the Final Report and the proposals made will no doubt occur in December 2021. It may be argued that the Final Report does not address all the issues which the Bill seeks to deal with. Additionally, any argument that the Central Bank's proposals need to be put on a separate legislative footing is not accurate. The proposals can be effected by amendments to the Code, for which there is an existing legislative process. However, this of course, could be dealt with in a different manner in this case. We will continue to monitor this matter as it develops and update clients in due course.

Should you require further information in relation to the material contained in this article, please get in touch with a member of the team or your usual Matheson contact. Full details of Matheson's Financial Institutions Group together with further updates, articles and briefing notes written by members of the team, can be accessed at **www.matheson.com**

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