



national consumer agency
gndomhaireacht náisiúnta tomhaltóirí

putting consumers first

Submission to the Investor Compensation Company Limited

Consultation Paper: Funding the Investor Compensation Scheme

The National Consumer Agency ('the Agency') welcomes the opportunity to provide comments to the Investor Compensation Company Limited's ('ICCL') consultation paper ('Paper') concerning the funding of the Investor Compensation Scheme ('Scheme').

In addition to providing observations on the questions posed, the Agency has a number of general comments relating to consumer awareness and understanding of the Scheme and also with regard to the compensation limit. The Agency notes from paragraph 70 of the Paper that representatives from the ICCL are available to meet with stakeholders, to discuss matters arising from the consultation. The Agency is happy to reciprocate this offer if it would be helpful for the ICCL's deliberations.

Awareness and understanding of the Scheme

The Agency queries whether the ICCL has ever conducted market research on the awareness or understanding of the Scheme amongst consumers? While awareness of the protection afforded by the Scheme is important in itself, the Agency has concerns that even where consumers do know of the Scheme, they may not understand its purpose and may be uncertain as to the precise circumstances under which they are entitled to compensation. For example there may be a misconception that compensation may be due in the event that an investment falls in value.

Research on the average claim and average investment

The Agency notes paragraph 12 of the Paper which provides data in relation to the average claim from the W&R Morrogh case (€3,000) and the Custom House Capital Limited ('CHC') case (€10,000). The Agency would suggest that an assessment of the current adequacy of the Scheme, primarily the fund reserve and compensation limit can only take place in the context of an analysis of previous average claims compared to the prevailing average investment at those times. If this is not available, the Agency suggests that research be conducted to establish this data.

In addition, to supplement the analysis of previous average claims and investments there is also merit in taking into account the number of investors who actually lost money as, at one level, it could be argued that it is this which really matters both to individual investors and on the confidence of investors in the industry generally.

The compensation limit

The Agency notes from paragraphs 35 and 36 of the Paper that the European Commission, Parliament and Council are currently reviewing the Investor Compensation Scheme Directive ('ICSD'). The Agency understands that any decision to increase the compensation limit of the Scheme will in all likelihood happen at European level. However, the Agency would draw the ICCL's attention to the section above and would recommend pursuing this analysis on investments in Ireland in order to ascertain the most appropriate compensation limit for consumers. This research will help to confirm whether the compensation limit proposed following the amendment to the European directive is sufficient. Also see Q6 below.

Q1. Do you agree with the target Fund Reserves for Fund A?

Q2. Do you agree with the target Fund Reserves for Fund B?

The Agency does not have any comments to make with regard to the specifics of the target Fund Reserves. In general the Agency would reiterate the point that analysis should be conducted on the average consumer claim, relative to funds invested, from all previous compensation claims and compared with the current average investment of consumers.

Q3. Do you support the continued placement of Excess of Loss Insurance for Fund A?

Q4. Do you support the continued placement of Excess of Loss Insurance for Fund B?

The Agency has no comments in this regard.

Q5. Do you support the current borrowing arrangements?

The Agency has no comments in this regard.

Q6. Do you have any observations on the proposals to amend the ICSD as outlined above?

Increasing the compensation limit

The Agency notes that any increase in the compensation limit will take place on an EU-wide basis. Furthermore it is noted that an increase to €30,000 is likely to take place in the short term and also that the cost to support any increase in the limit will ultimately be borne by consumers (as is the case with the current Deposit Guarantee Schemes). However, an increased limit should also improve investor confidence and this would be an indirect benefit to firms as well as consumers.

The Agency would point to a discrepancy between the maximum compensation limits of both the Scheme (€20,000) and the Deposit Guarantee Scheme (€100,000) in Ireland. The Agency recognises that deposit and investment products are different in many ways, not least of all the risk profiles of each and also the impact of the recent crisis events in relation to depositor confidence.

Opportunity to claim compensation where it has been determined bad advice was delivered

The EU Parliament report proposes that investors should be able to claim compensation where a court has determined that there has been bad advice. The Agency considers that this would have to be carefully considered in an Irish context due to the role of the Financial Services Ombudsman ('FSO') and the Central Bank. Where there are gaps in the FSO role then we would support the proposal for a court ordered compensation. For example:

- The FSO does not have jurisdiction for some reason (including the six year rule);
- Collective redress offers a more effective mechanism than tying up FSO resources with individual complaints; and /or
- The Central Bank does not have the necessary powers or historical reach to effect redress (as opposed to sanctions) in a particular context (for example the issue pre-dates the Consumer Protection Code).

Halve the time allowed to establish the target fund from 10 years to 5 years

The EU Parliament report also proposes to halve the time allowed to establish the target fund from 10 years to 5 years. The Agency would have concerns about how this will be implemented. The Agency assumes that the funding levy charged to firms will be increased. The funding levy charged to each firm must not be an unreasonable burden on the firms and should offer value for money to consumers who are protected by the Scheme. Table 3 and Table 4 of the Paper show that the current target reserves for Fund A and Fund B have not been achieved; therefore, the Agency would question whether an acceleration in the time frame for establishing the fund is a viable option.

Financial contributions to the Scheme should be risk weighted

Another recommendation from the EU Parliament report is that investment firms' financial contributions to the Scheme should be risk weighted. The Agency notes that currently investment firms under Fund A are charged a levy on a scale based on the number of their eligible clients. Insurance and investment intermediaries under Fund B are charged a levy on a scale based on their income from this business. There is merit in looking more closely at riskier products, as these can impact on the potential size of compensation claims (in addition to the strength of the firm itself). This would also be highly relevant in the context of any scheme that would include compensation for bad advice.

Q7. Do you support the implementation of E-invoicing?

The Agency would support any mechanism which will reduce costs to investment firms and therefore to consumers.

Q8. Besides the current payment methods, are there other methods that you believe merit consideration?

The Agency has no comments in this regard.

Q9. Do you believe the assumptions set out in paragraph 56 are reasonable? – Please state your reasons.

The Agency has no comments in this regard.

Q10. Do you support the implementation of Proposal A1 or A2?

The Agency has no comments in this regard.

Q11. Do you believe the assumptions set out in paragraph 65 are reasonable? – Please state your reasons.

The Agency has no comments in this regard.

Q12. Do you support the implementation of Proposal B1 or B2?

The Agency has no comments in this regard.

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