Aviva's response to the CESR consultation on Inducements under MiFID

Aviva plc
St Helen's, 1 Undershaft
London EC3P 3DQ
United Kingdom

www.aviva.com

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1 Introduction

Aviva welcomes the opportunity to comment on the CESR paper on Inducements.

The issues raised by the Commission are of great importance to us, since the Aviva group is engaged in a wide range of activities:

- Norwich Union Life is the UK's largest provider of life insurance and pensions products.
- Morley Fund Management, the UK institutional asset management business of Aviva, has £162 bn of funds under management.
- Aviva's continental European businesses, including the Netherland's Delta Lloyd and Poland's Commercial Union, provide a variety of savings, pensions and life insurance products.

We are happy to discuss any issues arising from this paper. To this end, our contact details are given in section 3.

2 Our Response

Question 1: Do you agree with CESR that Article 26 applies to all and any fees, commissions and non-monetary benefits that are paid or provided to or by an investment firm in relation to the provision of an investment or ancillary service to a client?

In principle we would agree with the definition in Article 26 that any fee, commission or non-monetary benefit paid or provided must meet a number of conditions in order that firms are seen to act honestly, fairly and in the best interests of the client. However, while the definition includes reference to fees or commission which are easily definable the reference to non-monetary benefits could potentially cover a wide scope of other services provided to intermediaries.

For example, many provider firms provide services such as training to intermediaries. Training is used as an example of a non-monetary benefit that must be valued and disclosed in the paper, however we do not agree that it is. In our view, the provision of training to distributors is fundamental for a product provider. This is best practice in its role as a product manufacturer and is not a 'non monetary benefit' at all. Without clarity, some firms may value such 'benefits' whereas others may not.

The reason why the EC has stated that non monetary benefits must be disclosed is so that firms cannot receive less commission (which has always been disclosable) but more benefits (which has not) and thus mislead customers over the total remuneration they are receiving. It is not an issue of customer concern that distributor firms will elect to receive more training. We therefore believe that benefits such as training should not be classed as a non-monetary benefit.

Question 2: Do you agree with our analysis of the general operation of Article 26 of the MiFID Level 2 Implementing Directive and of its interaction with Article 21?

We agree with this general approach. It is also sensible that the article requiring management of conflicts of interest includes reference to accepting inducements. We believe that this is compatible to the approach adopted for Article 26.

Question 3: Do you agree with CESR's view of the circumstances in which an item will be treated as a " fee, commission or non-monetary benefit paid or provided to or by … a person acting on behalf of the client"?

We agree with the circumstances explained.

Question 4: What, if any, other circumstances do you consider there are in which an item will be treated as a " fee, commission or non-monetary benefit paid or provided to or by the client or a person acting on behalf of the client"?

We cannot think of any other circumstances where the client or a person acting on their behalf would make payment of an item that would be considered as a fee, commission or other non-monetary benefit.

Question 5: Do you have any comments on the CESR analysis of the conditions on third party receipts and payments?

The paper states that items which are not proper fees or payments to and receipts from clients have to meet two conditions in order to be allowable. The item must be designed to enhance the quality of the relevant service to the client while not impairing the firm's duty to act in the client's best interests. Secondly there must be clear and prior disclosure to the client.

We agree with the general approach behind these two conditions. We do have some concerns however in the context of the enhancement to the service provided to clients. There may be some areas of non-monetary benefit where the enhancement of service to the customer is not as measurable as others. Although we consider that items such as training will have an immediate benefit, others may involve the building of a long term relationship between product providers and distributors. Such benefits may not have an immediate apparent 'value' to the customer but, over the long term, close working relationships between providers and distributors are in customers' best interests.

A close working relationship between provider and distributor firms is essential for many reasons. For instance, it will enable providers to support distributors (for instance in technical issues), it will facilitate speedy underwriting, resolve customer queries, facilitate customer feedback to improve product features and service. This relationship can only be fostered through regular contact, often in informal settings. The measurement of this benefit is clearly difficult.

Question 6: Do you have any comments on the factors that CESR considers relevant to the question whether or not an item will be treated as designed to enhance the quality of a service to the client and not impair the duty to act in the best interests of the client? Do you have any suggestions for further factors?

In explaining its examples, the CESR paper has provided useful explanations of situations where the new MiFID rules on inducements would apply. The examples set out clear practical situations and we would consider that these are in line with current United Kingdom regulatory guidance on indirect benefits.

As described above, there may be situations where, whilst firms manage any conflicts of interest, there is not an immediate measurable enhancement of the customer's service. The building of the relationship between product provider and distributor will ultimately enhance the service provided to their clients. We would consider that areas such as normal and reasonable entertainment or industry seminars would fall within this category.

Question 7: Do you agree that it would not be useful for CESR to seek to develop guidance on the detailed content of the summary disclosures beyond stating that: such a summary disclosure must provide sufficient and adequate information to enable the investor to make an informed decision whether to proceed with the investment or ancillary service; and, that a generic disclosure which refers merely to the possibility that the firm might receive inducements will not be considered as enough?

We have some concerns about CESR's position here. It would raise provider firms' costs enormously if they had to individually calculate and disclose the value of non-monetary benefits paid to their distributors. We do not think that such detailed disclosure would be in customers' interests either. Just as the CESR paper states that it would be a formidable task to provide guidance on the exact content of the summary due to the number of investment firms and their varying models, so it would be a formidable task for providers to provide exact disclosure for thousands of intermediaries, each of which may be receiving different benefits.

We would therefore prefer to use a simple 'summary form' statement about the types of non-monetary benefits that may be provided together with the option for the customer to request further information. If a customer does require further information, we would prefer a generic valuation based on the non-monetary services that may be provided rather than an intermediary specific one. As, by definition, such benefits are designed to enhance the service to the customer, we do not believe that detailed intermediary-specific disclosure is needed or relevant and such a requirement would be enormously expensive to implement. We believe this is a key issue for the industry.

Question 8: Do you agree with CESR´s approach that when a number of entities are involved in the distribution channel, Article 26 applies in relation to fees, commissions and non-monetary benefits that can influence or induce the intermediary that has the direct relationship with the client?

We would agree with this approach as the client's relationship is directly with the intermediary and any inducement will directly affect this relationship. From a client's perspective it is also transparent that the person dealing with them directly provides and explains the disclosure to them rather than from a detached third party.

There may be circumstances where business is introduced to an intermediary through a third party on a regular and active basis. This may be more prevalent in particular markets and we would propose that there is further clarification around whether this would come within the intermediary's disclosure.

Question 9: Do you have any comments on CESR's analysis of how payments between an investment firm and a tied agent should be taken into account under Article 26 of the Level 2 Directive?

We agree with this approach.

Question 10: Are there are any other issues in relation to Article 26 and tied agents that it would be helpful for CESR to consider?

There may be other commercial arrangements where intermediaries belong to a distribution group in order to benefit from lower compliance, audit and administration costs. In the United Kingdom these are referred to as Networks. In some cases these may be Appointed Representatives of a Principal but in others they may be directly authorised with the United Kingdom Financial Services Authority.

In these circumstances it would be usual for the Network group to take a defined percentage of fees or commission for providing these additional services to the intermediary firms within its group. We propose that it would also be helpful for the CESR to consider such arrangements as part of this consultation process.

Question 11: What will be the impact of Article 26 of the MiFID Level 2 Directive on current softing and bundling arrangements?

We have no comment upon these arrangements

Question 12: Would it be helpful for there to be a common supervisory approach across the EU to softing and bundling arrangements?

We have no comment upon these arrangements

Question 13: Would it be helpful for CESR to develop that common approach?

We have no comment upon these arrangements

3 Contact Us

If you have any queries or would like to discuss this response, please contact the authors :

Simon Grey / Kevin Ryan
Norwich Union Life
Wellington Row
York
YO90 1WR

Tel : 01904 452188
Email : simon.grey@norwich-union-life.co.uk

4 About Aviva

Aviva, the world's sixth largest insurer, is one of the leading pan-European insurance companies. Our main activities are long-term savings, fund management and general insurance.

Aviva: key facts and figures

- Number one insurer in the United Kingdom
- One of the leading providers of life and pensions products to Europe
- Operates in over 30 countries
- 90% of Aviva's worldwide business comes from Europe
- 60,000 employees
- 30 million customers

- Annual income of €48bn
- Managing €400bn of assets

Aviva: key brands

Aviva became the new name for the former CGNU in July 2002, bringing together more than 40 different trading names around the world. Today, the Aviva brand is trading in more than 20 countries.

Norwich Union is the largest insurer in the United Kingdom, with a market share of 12% in the life sector and 14% in the general insurance sector.

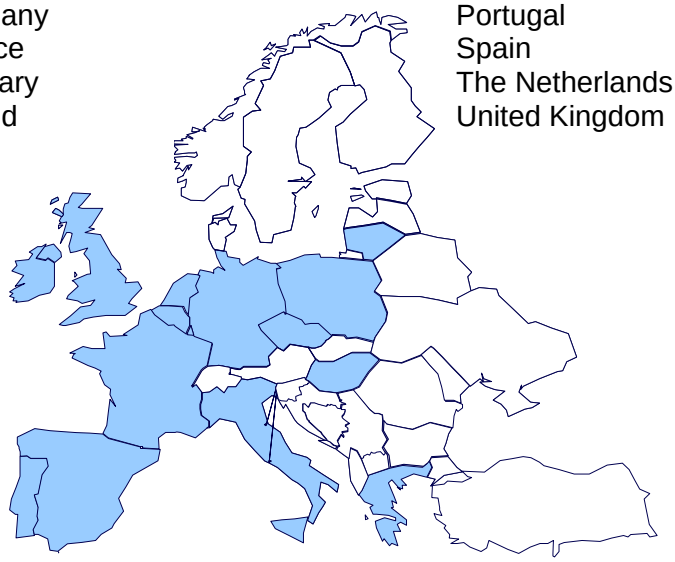
The RAC, recently acquired by Aviva, is one of the UK's leading providers of motoring and vehicle solutions to individual and business customers.

Morley Fund Management is the UK-based asset management arm of Aviva plc.

Hibernian is one of Ireland's largest financial organisations, ranked first for general insurance and top three for life and pensions.

Delta Lloyd is one of Europe's leading financial services groups, with operations in countries including the Netherlands, Belgium and Germany.

Commercial Union Poland is one of Poland's largest financial institutions and is the number one provider of private pensions.

Aviva: businesses in 15 EU Member States

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