**Insurance: Conduct of Business** 

Chapter 3

Distance communications

■ Release 36 • May 2024 www.handbook.fca.org.uk

## Guidance on the UK provisions which implemented the Distance Marketing Directive

This Annex belongs to ■ICOBS 3.1.2 G

## O1. What is a distance contract?

To be a distance contract, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or otherwise) of one or more means of distance communication up to and including the time at which the contract is concluded.

## So:

- the *firm* must have put in place facilities designed to enable a *consumer* to deal with it exclusively at a distance; and
- there must have been no simultaneous physical presence of the *firm* and the *consumer* throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the internet, through a telemarketing operation or by *post*, will normally be *distance contracts*.
- Q2. What about a firm that normally operates face-to-face but occasionally uses distance means?

If a *firm* normally operates face-to-face and has no facilities in place enabling a *consumer* to deal with it customarily by distance means, there will be no *distance contract*. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*.

Q3. What is meant by "simultaneous physical presence"?

A consumer may visit the firm's local office in the course of the offer, negotiation or conclusion of a contract. Wherever, in the literal sense, there has been "simultaneous physical presence" of the firm and the consumer at the time of such a visit, any ensuing contract will not be a distance contract.

Q4. Does the mere fact that an intermediary is involved make the sale of a product or service a distance contract?

No.

Q5. When is a contract concluded?

A contract is concluded when an offer to be bound by it has been accepted. An offer in the course of negotiations (for example, an offer by an *insurer* to consider an application) is not an offer to be bound, but is part of a pre-contractual negotiation.

A consumer will provide all the information an insurer needs to decide whether to accept a risk and to calculate the premium. The consumer may do this orally, in writing or by completing a proposal form. The response by an insurer, giving a quotation to the consumer specifying the premium and the terms, is likely to amount to an offer of the terms on which the insurer will insure the risk. Agreement by the consumer to those terms is likely to be an acceptance which concludes the contract.

In other cases where the *insurer* requires a signed proposal form (for example, some *pure protection contracts*), the proposal form may amount to an offer by the *consumer* on which the *insurer* decides whether to insure the risk and in such cases the *insurer*'s response is likely to be the acceptance.

Q6. What if the contract has not been concluded but cover has commenced?

Where the parties to a contract agree that insurance cover should commence before all the terms

and conditions have been agreed, the consumer should be provided with information required to be provided before conclusion of the contract to the extent that agreement has been reached.

Q7. How do the UK provisions which implemented the Directive apply to insurance intermediaries' services?

The FCA expects the UK provisions which implemented the Distance Marketing Directive to apply to insurance intermediaries' services only in the small minority of cases where:

- the firm concludes a distance contract with a consumer covering its insurance distribution activities which is additional to any insurance contract which it is marketing; and
- that distance contract is concluded other than merely as a stage in the effecting or carrying out of an insurance contract by the firm or another person: in other words it has some continuity independent of an insurance contract, as opposed, for example, to being concluded as part of marketing an insurance contract.
- Q8. Can you give examples of when the UK provisions which implemented the Directive would and would not apply to insurance intermediaries' services?

The rules which implemented the Distance Marketing Directive will not apply in the typical case where an insurance intermediary sells an insurance contract to a consumer on a one-off basis, even if the insurance intermediary is involved in the renewal of that contract and handling claims under it.

Nor will the UK provisions which implemented the Directive apply if an insurance intermediary, in its terms of business, makes clear that it does not, in conducting insurance distribution activities, act contractually on behalf of, or for, the consumer.

An example of when the UK provisions which implemented the Distance Marketing Directive would apply would be a distance contract under which an insurance intermediary agrees to provide advice on a consumer's insurance needs as and when they arise.

O9. When would the exception for successive operations apply?

We consider that the renewal of a policy falls within the scope of this exception. So, the distance marketing disclosure rules would only apply in relation to the initial sale of a policy, and not to subsequent renewals provided that the new policy is of the same nature as the initial policy. However, unless there is an initial service agreement in place, the exclusion would only apply where the renewal takes place no later than one year after the initial policy was taken out or one year after its last renewal. If the policy terms have changed, firms will need to consider what information should be disclosed about those changes in accordance with the requirement to disclose appropriate information about a policy (see ICOBS 6.1.5 R), as well as ensuring their effectiveness under contract