

Insurance: Conduct of Business

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Chapter 1

Application

1.1 The general application rule

The general application rule

1.1.1 **R** This sourcebook applies to a *firm* with respect to the following activities carried on in relation to a *non-investment insurance contract* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

- (1) an *insurance mediation activity*;
- (2) *effecting and carrying out contracts of insurance*;
- (3) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (4) *communicating or approving a financial promotion*;

and activities connected with them.

Modifications to the general application rule

1.1.2 **R** The general application *rule* is modified in ■ ICOBS 1 Annex 1 according to the type of *firm* (Part 1), its activities (Part 2), and its location (Part 3).

1.1.3 **R** The general application *rule* is also modified in the chapters of this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

Guidance

1.1.4 **G** *Guidance* on the application provisions is in ■ ICOBS 1 Annex 1 (Part 4).

Application (see ICOBS 1.1.2 R)

Part 1: Who?

Modifications to the general application rule according to type of firm

1			Third party processors
1.1	R	(1)	This <i>rule</i> applies where a <i>firm</i> (or its <i>appointed representative</i>) ("A") has outsourced <i>insurance mediation activities</i> to a <i>third party processor</i> .
		(2)	Any <i>rule</i> in this sourcebook which requires the <i>third party processor</i> , when acting as such, to disclose its identity to a <i>customer</i> must be read as applying to the <i>third party processor</i> only to the extent that it applies to A and as requiring disclosure of A's identity.
2			Managing agents
2.1	R	(1)	References to an <i>insurer</i> apply equally to a <i>managing agent</i> unless the context requires otherwise.
		(2)	A <i>managing agent</i> must give effect to the policy that a <i>consumer</i> must, where required by this sourcebook, be offered cancellation rights.
		(3)	References to <i>managing agents</i> in this sourcebook relate to their functions in managing the obligations of a <i>member</i> in his capacity as such.
3			Authorised professional firms
3.1	R		This sourcebook (except for ICOBS 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:
		(1)	the provisions on communications to <i>clients</i> and <i>financial promotions</i> (see ICOBS 2.2);
		(2)	the e-commerce provisions (ICOBS 3.2);
		(3)	status disclosure requirements in relation to complaints procedures (see ICOBS 4.1); and
		(4)	provisions implementing articles 12 and 13 of the <i>Insurance Mediation Directive</i> (see ICOBS 4.1, ICOBS 5.2 and ICOBS 5.3.3 R), except to the extent that the <i>firm</i> is subject to equivalent rules of its <i>designated professional body</i> approved by the FCA.
3.2	G		Compliance with provisions of the <i>Distance Marketing Directive</i> is dealt with in the Professional Firms sourcebook (see PROF 5.4).
4			Appointed representatives
4.1	R	(1)	An <i>insurer</i> must ensure that its <i>appointed representative</i> complies with this sourcebook as it applies to an <i>insurance intermediary</i> .
		(2)	However, if the <i>appointed representative</i> is acting as the <i>insurer's third party processor</i> then:
		(a)	this <i>rule</i> is subject to the <i>third party processors rule</i> (see paragraph 1.1R); and
		(b)	the <i>insurer</i> is not required to ensure that the <i>appointed representative</i> complies with the <i>rules</i> in this sourcebook on commission disclosure (see ICOBS 4.4) or, unless they apply to an <i>insurer</i> , the <i>rules</i> on statements of demands and needs (see ICOBS 5.2).

Part 1: Who?

Modifications to the general application rule according to type of firm

4.2	G	The cancellation requirements in chapter 7 do not apply to a <i>distance contract</i> entered into by an <i>appointed representative</i> to provide mediation services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the <i>Distance Marketing Regulations</i> apply instead.
5		Service companies
5.1	R	This sourcebook does not apply to a <i>service company</i> , except for the provisions on communications to <i>clients</i> and <i>financial promotions</i> (see ICOBS 2.2).
6		Lloyd's
6.1	R	The <i>Society</i> must ensure that no <i>member</i> carries on <i>motor vehicle liability insurance business</i> at Lloyd's unless a claims representative has been appointed to act for that <i>member</i> in each <i>EEA State</i> other than the <i>United Kingdom</i> , with responsibility for handling and settling a claim by an <i>injured party</i> . Otherwise, this sourcebook does not apply to the <i>Society</i> .

Part 2: What?

Modifications to the general application rule according to activities

1		Reinsurance
1.1	R	This sourcebook does not apply to activities carried on in relation to a <i>reinsurance contract</i> . [Note: article 12(4) of the <i>Insurance Mediation Directive</i>]
2		Contracts of large risks
2.1	R	Subject to Part 3 of this Annex, this sourcebook does not apply to an <i>insurance intermediary</i> mediating a <i>contract of large risks</i> : (1) where the risk is located outside the <i>European Economic Area</i> ; or (2) for a <i>commercial customer</i> where the risk is located within the <i>European Economic Area</i> . [Note: article 12(4) of the <i>Insurance Mediation Directive</i>]
2.2	G	<i>Principle 7</i> continues to apply so a <i>firm</i> should provide evidence of cover promptly after inception of a <i>policy</i> to its <i>customer</i> . In respect of a <i>group policy</i> , a <i>firm</i> should provide information to its <i>customer</i> to pass on to other <i>policyholders</i> and should tell the <i>customer</i> that he should give the information to each <i>policyholder</i> .
2.3	R	ICOBS 6.2.3 R does not apply to <i>contracts of large risk</i> . [Note: article 184(1) of the <i>Solvency II Directive</i>]
3		Pure protection contracts: election to apply COBS rules
3.1	R	(1) This sourcebook (except for ICOBS 4.6) does not apply in relation to a <i>pure protection contract</i> to the extent that a <i>firm</i> has elected to comply with the Conduct of Business sourcebook (COBS) in respect of such business. (2) Within the scope of such an election, a <i>firm</i> must: (a) comply with the rest of the Handbook (except for COBS 6.1A, COBS 6.1B and COBS 6.1.9 R) treating the <i>pure protection contract</i> as a life policy and a <i>designated investment</i> , and not as a <i>non-investment insurance contract</i> ; and (b) if applicable, also comply with ICOBS 4.6. (3) A <i>firm</i> must make, and retain indefinitely, a record in a <i>durable medium</i> of such an election (and any reversal or amendment). The record must include the effective date and a precise description of the part of the <i>firm's</i> business to which the election applies.
4		Chains of insurance intermediaries

Part 2: What?

Modifications to the general application rule according to activities

- 4.1 R Where there is a chain of *insurance intermediaries* between the *insurer* and the *customer*, this sourcebook applies only to the *insurance intermediary* in contact with the *customer*.

Part 3: Where?

Modifications to the general rule of application according to location

- 1 EEA territorial scope rule: compatibility with European law
 - 1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for *guidance* on this).
 - (2) This *rule* overrides any other *rule* in this sourcebook.
 - 1.2 R In addition to the *EEA territorial scope rule*, the effect of the *E-Commerce Directive* on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 8 of Part 4 for *guidance* on this).

[**Note:** article 3(3) of, and Annex to, the *E-Commerce Directive*]
- 2 Exemption for insurers: business with non-EEA customers via non-UK intermediaries
 - 2.1 R This sourcebook does not apply to an *insurer* if:
 - (1) the intermediary (whether or not an *insurance intermediary*) in contact with the *customer* is not established in the *United Kingdom*; and
 - (2) the *customer* is not *habitually resident* in, and, if applicable, the *State of the risk* is outside, an *EEA State*.
- 3 Exemption for insurers: business with non-UK EEA customers
 - 3.1 R A *rule* in this sourcebook which goes beyond the minimum required by *EU* legislation does not apply to an *insurer* if the *customer* is *habitually resident* in (and, if applicable, the *State of the risk* is) an *EEA State* other than the *United Kingdom*, to the extent that the *EEA State* in question imposes measures of like effect.

Part 4: Guidance

- 1 The main extensions and restrictions to the general application rule
 - 1.1 G The general application *rule* is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.
 - 1.2 G The provisions of the *Single Market Directives* and other directives also extensively modify the general application *rule*, particularly in relation to territorial scope. However, for the majority of circumstances, the general application *rule* is likely to apply.
- 2 The Single Market Directives and other directives
 - 2.1 G This *guidance* provides a general overview only and is not comprehensive.
 - 2.2 G When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. The *EEA territorial scope rule* is unlikely to apply if a *UK firm* is doing business from a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *UK product*. However, if there is a non-UK element, the *firm* should consider whether:
 - (1) it is subject to the directive;
 - (2) the business it is performing is subject to the directive; and
 - (3) the particular *rule* is within the scope of the directive.

If the answer to all three questions is 'yes', the *EEA territorial scope rule* may change the effect of the general application *rule*.
 - 2.3 G When considering a particular situation, a *firm* should also consider whether two or more directives apply.

Part 4: Guidance

- 3 Insurance Mediation Directive: effect on territorial scope
- 3.1 G The *Insurance Mediation Directive's* scope covers most *firms* carrying on most types of *insurance mediation*. The *rules* in this sourcebook within the Directive's scope are those that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis (see ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 5.2 (Statement of demands and needs), ICOBS 5.3.3 R (Advice on the basis of a fair analysis), ICOBS 6 (Product information) and ICOBS 6A.1.4R (Ensuring the customer can make an informed decision)).
- 3.2 G The *rules* implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in ICOBS 4.1 (General requirements for insurance intermediaries), ICOBS 5.2 (Statement of demands and needs) and ICOBS 5.3.3 R (Advice on the basis of a fair analysis).
- 3.3 G In the *FCA's* view, the responsibility for these minimum requirements rests with the *Home State*, but a *Host State* is entitled to impose additional requirements within the Directive's scope in the 'general good'. (See recital 19 to and article 12(5) of the *Insurance Mediation Directive*.) Accordingly, the general *rules* on territorial scope are modified so that:
- (1) for a *UK firm* providing *passported activities* through a *branch* in another *EEA State* under the Directive, the *rules* implementing the Directive's minimum requirements apply, but the territorial scope of the additional *rules* within the Directive's scope is not modified;
 - (2) for an *EEA firm* providing *passported activities* under the Directive in the *United Kingdom*, the *rules* implementing the Directive's minimum requirements do not apply, but the additional *rules* within the Directive's scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect; and
 - (3) an *EEA firm* acting as the principal of an *appointed representative* is required to ensure that its *appointed representative* complies with this sourcebook as it applies to a *UK firm* that is an *authorised person*.
- 4 Solvency II Directive non-life business: effect on territorial scope
- 4.1 G The *Solvency II Directive's* scope covers *insurers* authorised under that Directive conducting *general insurance business*.
- 4.2 G The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the insurance contract (see ICOBS 2.2 (Communications to clients and financial promotions), ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 6 (Product information), ICOBS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOBS 8 (Claims handling) except those parts of ICOBS 8.2 (Motor vehicle liability insurers) implementing the *Consolidated Motor Insurance Directive*).
- 4.3 G The Directive specifies minimum information requirements and permits *EEA States* to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the *Solvency II Directive*).
- 4.4 G If the *State of the risk* is an *EEA State*, the Directive provides that the applicable information rules shall be determined by that state. Accordingly, if the *State of the risk* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the risk* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 156 and 180 of the *Solvency II Directive*).
- 5 Solvency II Directive life business: effect on territorial scope
- 5.1 G The *Solvency II Directive's* scope covers *long-term insurers* which are *Solvency II firms* conducting *long-term insurance business*.

Part 4: Guidance

- 5.2 G The *rules* in this sourcebook within the Directive's scope are the cancellation *rules* (see ICOBS 7) and those *rules* requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance* (see ICOBS 2.2 (Communications to clients and financial promotions), ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 6 (Product information) and ICOBS 8 (Claims handling) except ICOBS 8.2 (Motor vehicle liability insurers)).
- 5.3 G The Directive specifies minimum information and cancellation requirements and permits *EEA States* to adopt additional information requirements that are necessary for a proper understanding by the *policyholder* of the essential elements of the commitment.
- 5.4 G If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the commitment* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 156, 180, 185 and 186 of the *Solvency II Directive*).
- 6 Motor Insurance Directives: effect on territorial scope
- 6.1 G The scope of the *Consolidated Motor Insurance Directive* covers *insurers* conducting *motor vehicle liability insurance business*. The *rules* in this sourcebook within the Directive's scope are those regarding the appointment of claims representatives and handling of claims by *injured parties* (see ICOBS 8.2).
- 6.2 G The Directive requires a *motor vehicle liability insurer* to appoint a claims representative in each *EEA State* other than its *Home State*. It specifies minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by *injured parties*.
- 6.3 G The Directive's provisions apply to *motor vehicle liability insurers* for which the *United Kingdom* is the *Home State*. (See articles 21 and 22 of the *Consolidated Motor Insurance Directive*).
- 7 Distance Marketing Directive: effect on territorial scope
- 7.1 G In broad terms, a *firm* is within the *Distance Marketing Directive's* scope when conducting an activity relating to a *distance contract* with a *consumer*. The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information (see ICOBS 2.2 ((Communications to clients and financial promotions), ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 6 (Product information), and ICOBS 6A.1.4R (Ensuring the customer can make an informed decision)), the cancellation *rules* (see ICOBS 7) and the other specific *rules* implementing the Directive (see ICOBS 3.1).
- 7.2 G In the *FCA's* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a *branch*, in which case the responsibility rests with the *EEA State* in which the *branch* is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*)
- 7.3 G This means that relevant *rules* in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *United Kingdom* or of any other *EEA State* or *non-EEA state*).
- 7.4 G Conversely, the territorial scope of the relevant *rules* in this sourcebook is modified as necessary so that they do not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA State* if the *firm* is a national of the *United Kingdom* or of any other *EEA State*.
- 7.5 G In the *FCA's* view:

Part 4: Guidance

- (1) the 'country of origin' basis of the Directive is in line with that of the *E-Commerce Directive*; (see recital 6 to the *Distance Marketing Directive*)
- (2) for business within the scope of both the *Distance Marketing Directive* and the *Solvency II Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the *rules* requiring pre-contract information and cancellation rules derived from the *Solvency II Directive* apply on a 'country of origin' basis rather than being based on the *State of the commitment*; (see articles 4(1) and 16 of the *Distance Marketing Directive*.)
- (3) for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the *Home State*, but the minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)

8 Electronic Commerce Directive: effect on territorial scope

- 8.1 G The *E-Commerce Directive*'s scope covers every *firm* carrying on an *electronic commerce activity*. Every *rule* in this sourcebook is within the Directive's scope.
- 8.2 G A key element of the Directive is the ability of a *person* from one *EEA State* to carry on an *electronic commerce activity* freely into another *EEA State*. Accordingly, the territorial application of the *rules* in this sourcebook is modified so that they apply at least to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.
- 8.3 G Conversely, a *firm* that is a national of the *United Kingdom* or another *EEA State*, carrying on an *electronic commerce activity* from an *establishment* in another *EEA State* with or for a *person* in the *United Kingdom*, need not comply with the *rules* in this sourcebook. (See article 3(1) and (2) of the *E-Commerce Directive*)
- 8.4 G The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the *FCA* has adopted for this sourcebook. The derogation applies to an *insurer* that is authorised under, and carrying on an *electronic commerce activity* within, the scope of the *Solvency II Directive* and permits *EEA States* to continue to apply their advertising rules in the 'general good'.
- 8.5 G Where the derogation applies, the *rules* on *financial promotion* continue to apply for incoming *electronic commerce activities* (unless the *firm's* 'country of origin' applies rules of like effect), but do not apply for outgoing *electronic commerce activities*. (See article 3(3) and Annex, fourth indent of the *E-Commerce Directive*; Annex to European Commission Discussion Paper MARKT/2541/03)
- 8.6 G In the *FCA's* view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
- (1) is in line with the *Distance Marketing Directive*;
 - (2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
- 8.7 G The 'derogations' in the Directive may enable other *EEA States* to adopt a different approach to the *United Kingdom* in certain fields. (See recital 19 to the *Insurance Mediation Directive*, recital 6 to the *Distance Marketing Directive*, article 3 of, and the Annex to, the *E-Commerce Directive*)

Chapter 2

General matters

2.1 Client categorisation

Introduction

2.1.1 **G** Different provisions in this sourcebook may apply depending on the type of *person* with whom a *firm* is dealing:

- (1) A *policyholder* includes anyone who, upon the occurrence of the contingency insured against, is entitled to make a claim directly to the *insurance undertaking*.
- (2) Only a *policyholder* or a prospective *policyholder* who makes the arrangements preparatory to him concluding a *contract of insurance* (directly or through an agent) is a *customer*. In this sourcebook, *customers* are either *consumers* or *commercial customers*.
- (3) A *consumer* is any natural person who is acting for purposes which are outside his trade or profession.
- (4) A *commercial customer* is a *customer* who is not a *consumer*.

Customer to be treated as consumer when status uncertain

2.1.2 **R** If it is not clear in a particular case whether a *customer* is a *consumer* or a *commercial customer*, a *firm* must treat the *customer* as a *consumer*.

Customer covered in both a private and business capacity

2.1.3 **G**

- (1) Except where paragraph (2) applies, if a *customer* is acting in the capacity of both a *consumer* and a *commercial customer* in relation to a particular *contract of insurance*, the *customer* is a *commercial customer*.
- (2) For the purposes of **ICOBS 5.1.4 G** and **ICOBS 8.1.2 R**, if, in relation to a particular *contract of insurance*, the *customer* entered into it mainly for purposes unrelated to his trade or profession, the *customer* is a *consumer*.

Customer classification examples

2.1.4 **G** In practice, private individuals may act in a number of capacities. The following table sets out a number of examples of how an individual acting in certain capacities should, in the *FCA's* view, be categorised.

Customer classification examples	
Capacity	Classification
Personal representatives, including executors, unless they are acting in a professional capacity, for example, a solicitor acting as executor.	<i>Consumer</i>
Private individuals acting in personal or other family circumstances, for example, as trustee of a family trust.	<i>Consumer</i>
Trustee of a trust such as a housing or NHS trust.	<i>Commercial customer</i>
Member of the governing body of a club or other unincorporated association such as a trade body and a student union.	<i>Commercial customer</i>
Pension trustee.	<i>Commercial customer</i>
<i>Person</i> taking out a <i>policy</i> covering property bought under a buy-to-let mortgage.	<i>Commercial customer</i>
<i>Partner</i> in a <i>partnership</i> when taking out insurance for purposes related to his profession.	<i>Commercial customer</i>

2.2 Communications to clients and financial promotions

Application

- 2.2.1 **R** In addition to the general application *rule* for this sourcebook, this section applies to the *communication*, or *approval for communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *non-investment insurance contract* unless it can lawfully be *communicated* by an unauthorised communicator without *approval*.

Clear, fair and not misleading rule

- 2.2.2 **R** When a *firm* communicates information, including a *financial promotion*, to a *customer* or other *policyholder*, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.

Approving financial promotions

- 2.2.3 **R**
- (1) Before a *firm* approves a *financial promotion* it must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.
 - (2) If, subsequently, a *firm* becomes aware that a *financial promotion* is not clear, fair and not misleading, it must withdraw its *approval* and notify any *person* that it knows to be relying on its approval as soon as reasonably practicable.

Pricing claims: guidance on the clear, fair and not misleading rule

- 2.2.4 **G**
- (1) This *guidance* applies in relation to a *financial promotion* that makes pricing claims, including *financial promotions* that indicate or imply that a *firm* can reduce the *premium*, provide the cheapest *premium* or reduce a *customer's* costs.
 - (2) Such a *financial promotion* should:
 - (a) be consistent with the result reasonably expected to be achieved by the majority of *customers* who respond, unless the proportion of those *customers* who are likely to achieve the pricing claims is stated prominently;
 - (b) state prominently the basis for any claimed benefits and any significant limitations; and

-
- (c) comply with other relevant legislative requirements, including the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008.

2.3 Inducements

2.3.1

G

- (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under *Principles 1* and *6* to act with integrity and treat *customers* fairly.
- (2) An inducement is a benefit offered to a *firm*, or any *person* acting on its behalf, with a view to that *firm*, or that *person*, adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.

2.4 Record-keeping

2

2.4.1

G

- (1) The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) contains high-level record-keeping requirements (see ■ SYSC 3.2.20 R, ■ SYSC 9.1.1 R and ■ SYSC 9.1.1 AR).
- (2) This sourcebook does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.
- (3) *Firms* should bear in mind the need to deal with requests for information from the *FCA* as well as queries and complaints from *customers* which may require evidence of matters such as:
 - (a) the reasons for *personal recommendations*;
 - (b) what documentation has been provided to a *customer*; and
 - (c) how claims have been settled and why.

2.5 Exclusion of liability, conditions, warranties, and reliance on others

Exclusion of liability and conditions

- 2.5.1 **R** (1) A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or other *policyholder* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.
- (2) A *Solvency II firm* must ensure that general and special policy conditions do not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

[**Note:** article 187 of the *Solvency II Directive*]

- 2.5.2 **G** The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

Conditions and warranties in policies

- 2.5.2A **R** An *insurer* must ensure that any condition or warranty included in a *policy* with a *consumer*:
 - (1) has operative effect only in relation to the types of crystallised risk covered by the *policy* that are connected to that condition or warranty; and
 - (2) (for a warranty in a *pure protection contract*) is material to the risks to which it relates and is drawn to the *customer's* attention before the conclusion of the contract.

- 2.5.2B **R** ■ ICOBS 2.5.2AR(2) does not apply to a 'life of another' contract where the warranty relates to a statement of fact concerning the life to be assured.

- 2.5.2C **G** An *insurer* may choose to draft its conditions and warranties so that they clearly state the particular types of crystallised risks covered by the *policy* to which they are connected, for the purposes of ■ ICOBS 2.5.2AR(1). Alternatively the *insurer* may in practice have systems and controls which operate the conditions and warranties in a way that has the same effect.

Reliance on others

2.5.3

G

- (1) Where it is compatible with the nature of the obligation imposed by a particular *rule* and with the *Principles*, in particular *Principles 1* (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.

- (2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*. For example, where a *rule* imposes an absolute obligation (such as the requirement for an *insurer* to handle claims promptly and fairly) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

2

Chapter 3

Distance communications



3.1 Distance marketing

Application

- 3.1.1 **R** This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA* State.

Guidance on the Distance Marketing Directive

- 3.1.2 **G** *Guidance* on expressions derived from the *Distance Marketing Directive* and on the Directive's application in the context of *insurance mediation activity* can be found in ■ ICOBS 3 Annex 1 G.

The distance marketing disclosure rules

- 3.1.3 **R** A *firm* must provide a *consumer* with the distance marketing information (■ ICOBS 3 Annex 2 R) in good time before conclusion of a *distance contract*.
[**Note:** article 3(1) of the *Distance Marketing Directive*]
- 3.1.4 **G** The *rules* setting out the responsibilities of *insurers* and *insurance intermediaries* for producing and providing information apply to requirements in this section to provide information (see ■ ICOBS 6.1.1 R).
- 3.1.5 **R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.
[**Note:** article 3(2) of the *Distance Marketing Directive*]
- 3.1.6 **R** When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.
[**Note:** article 3(3)(a) of the *Distance Marketing Directive*]
- 3.1.7 **R** A *firm* must ensure that the information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law

presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

3.1.8

R

A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[Note: article 5(1) of the *Distance Marketing Directive*]

3.1.9

G

A *firm* will provide or communicate information or contractual terms and conditions to a *consumer* if another *person* provides or communicates it to the *consumer* on its behalf.

Commencing performance of the distance contract

3.1.10

R

The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[Note: article 7(1) of the *Distance Marketing Directive*]

Exception: distance contract as a stage in the provision of another service

3.1.11

R

This section does not apply to a *distance contract* to act as *insurance intermediary*, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[Note: recital 19 to the *Distance Marketing Directive*]

Exception: successive operations

3.1.12

R

In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

3.1.13

R

If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* will only apply:

- (1) when the first operation is performed; and
- (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

Exception: voice telephony communications

3.1.14

R

- (1) In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ ICOBS 3 Annex 3 R) needs to be provided during that communication.
- (2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure) a *firm* must still provide the distance marketing information (■ ICOBS 3 Annex 2 R) in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[Note: articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: Means of distance communication not enabling disclosure

3.1.15

R

A *firm* may provide the distance marketing information (■ ICOBS 3 Annex 2 R) and the contractual terms and conditions in writing or another *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any *distance contract*.

[Note: article 5(2) of the *Distance Marketing Directive*]

Consumer's right to request paper copies and change the means of communication

3.1.16

R

At any time during the contractual relationship the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

3.1.17

R

- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.
- (2) This *rule* does not apply to the tacit *renewal* of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]

Mandatory nature of consumer's rights

3.1.18

R

If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[Note: article 12 of the *Distance Marketing Directive*]

3.1.19 **R** If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States*.

[**Note:** articles 12 and 16 of the *Distance Marketing Directive*]

3.2 E-Commerce

Application

- 3.2.1 **R** This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom* or another *EEA State*.

Information about the firm and its products or services

- 3.2.2 **R** A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:
- (1) its name;
 - (2) the geographic address at which it is established;
 - (3) the details of the *firm*, including its e-mail address, which allow it to be contacted and communicated with in a direct and effective manner;
 - (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes its Firm Reference Number;
 - (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
 - (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the *E-Commerce Directive*]

- 3.2.3 **R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

- 3.2.4** **R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:
- (1) the commercial communication must be clearly identifiable as such;
 - (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
 - (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
 - (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

- 3.2.5** **R** An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders.....

- 3.2.6** **R** A *firm* must (except when otherwise agreed by parties who are not *consumers*):
- (1) give an *ECA recipient* the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
 - (2) indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically;
 - (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and

(4) make available to an *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

3.2.7

R

Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

3.2.8

R

The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the *E-Commerce Directive*]

Guidance on the Distance Marketing Directive

This Annex belongs to ■ ICOBS 3.1.2 G

Q1. 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 does the Directive apply to insurance intermediaries' services?

The FCA expects 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 mediation 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 Directive would and would not apply to insurance intermediaries' services?

The *rules* implementing 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 Directive apply if an *insurance intermediary*, in its terms of business, makes clear that it does not, in conducting *insurance mediation activities*, act contractually on behalf of, or for, the *consumer*.

An example of when 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.

Q9. 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 law.

Distance marketing information

This Annex belongs to ■ ICOBS 3.1.3 R

Distance marketing information

The firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *consumer's* EEA State of residence, the name of that representative and the geographical address relevant for the *consumer's* relations with the representative.
- (3) When the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant for the *consumer's* relations with that professional.
- (4) An appropriate statutory status disclosure statement (GEN 4), a statement that the firm is on the *Financial Services Register* and its FCA registration number.

The financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related *fees*, charges and expenses, and all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
- (10) The arrangements for payment and for performance.
- (11) Details of any specific additional cost for the *consumer* for using a means of distance communication.

The distance contract

- (12) The existence or absence of a right to cancel under the cancellation *rules* (ICOBS 7) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.

Distance marketing information

- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
 - (16) The *EEA State* or *States* whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the contract.
 - (17) Any contractual clause on law applicable to the contract or on the competent court, or both.
 - (18) In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.
- Redress
- (19) How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
 - (20) Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities, and information about any other applicable named compensation scheme.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

Abbreviated distance marketing information

This Annex belongs to ■ ICOBS 3.1.14 R

Abbreviated distance marketing information

- | | |
|-----|---|
| (1) | The identity of the <i>person</i> in contact with the <i>consumer</i> and his link with the <i>firm</i> . |
| (2) | A description of the main characteristics of the financial service. |
| (3) | The total price to be paid by the <i>consumer</i> to the <i>firm</i> for the financial service including all taxes paid through the <i>firm</i> or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the <i>consumer</i> to verify it. |
| (4) | Notice of the possibility that other taxes or costs may exist that are not paid through the <i>firm</i> or imposed by it. |
| (5) | The existence or absence of a right to cancel in accordance with the cancellation <i>rules</i> (ICOBS 7) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the <i>consumer</i> may be required to pay (or which may not be returned to the <i>consumer</i>) on the basis of those <i>rules</i> . |
| (6) | That other information is available on request and what the nature of that information is. |

[Note: article 3(3)(b) of the *Distance Marketing Directive*]

Chapter 4

Information about the firm, its services and remuneration

4.1 General requirements for insurance intermediaries

Application: who?

4.1.1 **R** This section applies to an *insurance intermediary*.

Status disclosure: general

4.1.2 **R** Prior to the conclusion of an initial *contract of insurance* and, if necessary, on its amendment or *renewal*, a *firm* must provide the *customer* with at least:

- (1) its name and address;
- (2) the fact that it is included in the *Financial Services Register* and the means for verifying this;
- (3) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
- (4) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing more than 10% of the voting rights or capital in the *firm*; and
- (5) the procedures allowing *customers* and other interested parties to register complaints about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *customers*.

[Note: article 12(1) of the *Insurance Mediation Directive*]

Status disclosure exemption: introducers

4.1.3 **R** A *firm* whose contact with a *customer* is limited to effecting introductions (see ■ PERG 5.6) need only provide its name and address and whether it is a member of the same *group* as the *firm* to which it makes the introduction.

4.1.4 **G** If a *firm* goes further than putting a *customer* in contact with another *person* (for example, by *advising* him on a particular *policy* available from the *firm*) the full status disclosure requirements will apply.

Status disclosure exemption: connected travel insurance

4.1.5 **R** In relation to a *connected travel insurance contract*, a *firm* need only provide the procedures allowing *customers* and other interested parties to register *complaints* about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court *complaint* and redress procedures available for the settlement of disputes between the *firm* and its *customers*.

Scope of service

4.1.6 **R** (1) Prior to the conclusion of an initial *contract of insurance* (other than a *connected travel insurance contract*) and, if necessary, on its amendment or *renewal*, a *firm* must tell the *customer* whether:

- (a) it gives advice on the basis of a fair analysis of the market; or
- (b) it is under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings*; or
- (c) it is not under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair analysis of the market.

(2) A *firm* that does not advise on the basis of a fair analysis of the market must inform its *customer* that they have the right to request the name of each *insurance undertaking* with which the *firm* may and does conduct business. A *firm* must comply with such a request.

[Note: article 12(1) of the *Insurance Mediation Directive*]

4.1.7 **R** Prior to conclusion of an initial *contract of insurance* with a *consumer* a *firm* must state whether it is giving a *personal recommendation* or information.

Guidance on using panels to advise on the basis of a fair analysis

4.1.8 **G** (1) One way a *firm* may give advice on a fair analysis basis is by using 'panels' of *insurance undertakings* which are sufficient to enable the *firm* to give advice on a fair analysis basis and are reviewed regularly.

(2) A *firm* which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a *firm* should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better *premium*, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market.

(3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the 'fair analysis' criteria. Selection should be based on product features, *premiums* and services offered to *customers*, not solely on the benefit offered to the *firm*.

4.1.9

R

Means of communication to customers

- (1) All information to be provided to a *customer* in accordance with this chapter must be communicated:
 - (a) on paper or on any other *durable medium* available and accessible to the *customer*;
 - (b) in a clear and accurate manner, comprehensible to the *customer*; and
 - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.
- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see ■ ICOBS 3.1.14 R).
- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[Note: article 13 of the *Insurance Mediation Directive*]



4.2 Additional requirements for protection policies for insurance intermediaries and insurers

Application: what?

- 4.2.1 **R** This section applies in relation to a *pure protection contract* or a *payment protection contract* for a consumer.

Ensuring customers can make an informed decision

- 4.2.2 **G** In considering a *customer's* information needs for the purposes of *Principle 7*, a *firm* should have regard to the importance of information for a *customer's* purchasing decision when deciding when and how to give it.

- 4.2.3 **G** If a *firm* provides elements of status disclosure information orally as part of an interactive dialogue, it should do so for all elements of the information. In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see **ICOBS 3.1.14 R**).

Disclosing the limits of the service provided

- 4.2.4 **R**
- (1) In a sale that does not involve a *personal recommendation*, a *firm* must take reasonable steps to ensure a *customer* understands he is responsible for deciding whether a *policy* meets his demands and needs.
 - (2) If this is done orally, the information must be provided to the *customer* in writing or any other *durable medium* no later than immediately after the conclusion of the contract.
 - (3) If a *firm* anticipates providing, or provides, information on any main characteristic of a *policy* orally during a non-advised sale, taking reasonable steps includes explaining the *customer's* responsibility orally.
 - (4) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

Status disclosure for insurers

4.2.5

R

- (1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or *renewal*, an *insurer* must disclose to the *customer* at least:
- (a) the statutory status disclosure statement (see ■ GEN 4);
 - (b) whose *policies* it offers; and
 - (c) whether it is providing a *personal recommendation* or information.
- (2) If this is done orally, the disclosure must be provided in writing or any other *durable medium* no later than immediately after the conclusion of the contract.

4.2.6

G

Insurers cannot carry on an *insurance mediation activity* in respect of a third party's products unless they can show a natural fit or necessary connection between their insurance business and the third party's products (see the restriction of business in ■ INSPRU 1.5.13 R and rule 9 of the PRA Rulebook: Solvency II firms: Conditions Governing Business).



4.3 Fee disclosure

4.3.1

R

- (1) A *firm* must provide its *customer* with details of the amount of any *fees* other than *premium monies* for an *insurance mediation activity*.
- (2) The details must be given before the *customer* incurs liability to pay the *fee*, or before conclusion of the contract, whichever is earlier.
- (3) To the extent that an actual *fee* cannot be given, a *firm* must give the basis for calculation.

4.3.2

G

The *fee* disclosure requirement extends to all such *fees* that may be charged during the life of a *policy*.

4.4 Commission disclosure for commercial customers

Commission disclosure rule

- 4.4.1 **R** (1) An *insurance intermediary* must, on a *commercial customer's* request, promptly disclose the *commission* that it and any *associate* receives in connection with a *policy*.
- (2) Disclosure must be in cash terms (estimated, if necessary) and in writing or another *durable medium*. To the extent this is not possible, the *firm* must give the basis for calculation.
- 4.4.2 **G** An *insurance intermediary* should include all forms of remuneration from any arrangements it may have. This includes arrangements for sharing profits, for payments relating to the volume of sales, and for payments from premium finance companies in connection with arranging finance.
- 4.4.3 **G** (1) The commission disclosure *rule* is additional to the general law on the fiduciary obligations of an agent in that it applies whether or not the *insurance intermediary* is an agent of the *commercial customer*.
- (2) In relation to *contracts of insurance*, the essence of these fiduciary obligations is generally a duty to account to the agent's principal. But where a *customer* employs an *insurance intermediary* by way of business and does not remunerate him, and where it is usual for the *firm* to be remunerated by way of *commission* paid by the *insurer* out of premium payable by the *customer*, then there is no duty to account but if the *customer* asks what the *firm's* remuneration is, it must tell him.

4.6 Commission disclosure for pure protection contracts sold with retail investment products

- 4.6.1** **G** The *rules* in this section:
- (1) address the risk that a *consumer* believes that a *firm's* remuneration for its *pure protection service* is included in its *adviser charge*, where this is not the case; and
 - (2) enable the *consumer* to evaluate a *firm's adviser charge* in the light of any additional remuneration received by the *firm* for the *pure protection service* it provides.
- 4.6.2** **R** A *firm* which agrees an *adviser charge* with a *consumer* and provides an associated *pure protection service* to that *consumer* must:
- (1) in good time before the provision of its services, take reasonable steps to ensure that the *consumer* understands:
 - (a) how the *firm* is remunerated for its *pure protection service*; and
 - (b) if applicable, that the *firm* will receive *commission* in relation to its *pure protection service* in addition to the *firm's adviser charge*;
 - (2) as close as practicable to the time that it makes the *personal recommendation* or *arranges* the sale of the *pure protection contract*, comply with the following disclosure requirements, substituting *pure protection contract* for references to *packaged product*:
 - (a) ■ COBS 6.4.3 R, or ■ COBS 6.4.4A R and ■ COBS 6.4.4B R; and
 - (b) ■ COBS 6.4.5 R.
- 4.6.3** **G** A *pure protection service* is unlikely to be associated with an *adviser charge* for the purposes of ■ ICOBS 4.6.2 R if the *firm* agreed the *adviser charge* with the *consumer* 12 months or more before the provision of the *pure protection service*.
- 4.6.4** **G** A *pure protection service* is not associated with an *adviser charge* for the purposes of ■ ICOBS 4.6.2 R if the *adviser charge* is agreed with the *consumer* by a *firm* or an *appointed representative* and the *pure protection service* is provided to that *consumer* by another *firm* or *appointed representative*. However, if a *firm* or an *appointed representative* refers a *consumer* with whom it is agreeing an *adviser charge* to another *firm* or *appointed*

representative for the provision of a *pure protection service*, it should consider its obligation to communicate with the *consumer* in a way that is clear, fair and not misleading in the context of the guidance in ■ ICOBS 4.6.1 G.

4.6.5

R

If a *firm* expects to provide, or provides, information about its *adviser charge* orally, it must also provide the information required by ■ ICOBS 4.6.2R (1)(a) and ■ ICOBS 4.6.2R (1)(b) orally.

Initial disclosure document [deleted]

Chapter 5

Identifying client needs and advising

5.1 General

Eligibility to claim benefits: general insurance contracts and pure protection contracts

- 5.1.1** **G**
- (1) In line with *Principle 6*, a *firm* should take reasonable steps to ensure that a *customer* only buys a *policy* under which he is eligible to claim benefits.
 - (2) If, at any time while *arranging a policy*, a *firm* finds that parts of the cover apply, but others do not, it should inform the *customer* so he can take an informed decision on whether to buy the *policy*.
 - (3) This *guidance* does not apply to *policies arranged* as part of a *packaged bank account*.

Eligibility to claim benefits: payment protection contracts

- 5.1.2** **R**
- (1) A *firm* *arranging a payment protection contract* must:
 - (a) take reasonable steps to ensure that the *customer* only buys a *policy* under which he is eligible to claim benefits; and
 - (b) if, at any time while *arranging the policy*, it finds that parts of the cover do not apply, inform the *customer* so he can take an informed decision on whether to buy the *policy*.
 - (2) This *rule* does not apply to *payment protection contract arranged* as part of a *packaged bank account*.

- 5.1.3** **G**
- (1) For a typical *payment protection contract* the reasonable steps required in the first part of the *eligibility rule* are likely to include checking that the *customer* meets any qualifying requirements for different parts of the *policy*.
 - (2) This *guidance* does not apply to *payment protection contracts arranged* as part of a *packaged bank account*.

Eligibility to claim benefits: policies arranged as part of a packaged bank account

- 5.1.3A** **R**
- A *firm* *arranging policies* as part of a *packaged bank account* must:
- (1) take reasonable steps to establish whether the *customer* is eligible to claim each of the benefits under each *policy* included in the *packaged bank account* which must include checking that the *customer* meets

any qualifying requirements to claim each of the benefits under each *policy*; and

- (2) inform the *customer* whether or not he would be eligible to claim each of the benefits under each *policy* included in the *packaged bank account* so that the *customer* can take an informed decision about the arrangements proposed.

5.1.3B **R** A *firm* must make a record of the eligibility assessment and, if the *customer* proceeds with the arrangements proposed, retain it for a minimum period of three years from the date on which the assessment was undertaken.

5.1.3C **R**

- (1) Throughout the term of a *policy* included in a *packaged bank account*, a *firm* must provide the *customer* with an eligibility statement, in writing, on an annual basis. This statement must set out any qualifying requirements to claim each of the benefits under the *policy* and recommend that the *customer* reviews his circumstances and whether he meets these requirements.
- (2) Where a *customer* has reached an age limit on claiming benefits under a travel insurance *policy* included in a *packaged bank account* (or will reach an age limit before the next annual statement is due), a *firm* must state this clearly and prominently in the statement and on an annual basis thereafter.
- (3) The statement (provided under ■ ICOBS 5.1.3C R (1)) must not:
 - (a) include any information other than that required under this *rule*; or
 - (b) form part of another *document* provided to the *customer* by the *firm*; or
 - (c) be included in the same mailing as any other *document* provided to the *customer* by the *firm*.

Disclosure

5.1.4 **G** A *firm* should bear in mind the restriction on rejecting claims (■ ICOBS 8.1.1R (3)). Ways of ensuring a *customer* knows what he must disclose include:

- (1) explaining to a *commercial customer* the duty to disclose all circumstances material to a *policy*, what needs to be disclosed, and the consequences of any failure to make such a disclosure;
- (2) ensuring that the *commercial customer* is asked clear questions about any matter material to the *insurance undertaking*;
- (3) explaining to the *customer* the responsibility of *consumers* to take reasonable care not to make a misrepresentation and the possible consequences if a *consumer* is careless in answering the *insurer's* questions, or if a *consumer* recklessly or deliberately makes a misrepresentation; and
- (4) asking the *customer* clear and specific questions about the information relevant to the *policy* being arranged or varied.

5.2 Statement of demands and needs

Application: who? what?

5.2.1

R

This section applies to:

- (1) an *insurance intermediary* in relation to any *policy* (other than a *connected travel insurance contract*); and
- (2) an *insurer* when it has given a *personal recommendation* to a *consumer* on a *payment protection contract* or a *pure protection contract*.

Statement of demands and needs

5.2.2

R

- (1) Prior to the conclusion of a contract, a *firm* must specify, in particular on the basis of information provided by the *customer*, the demands and the needs of that *customer* as well as the underlying reasons for any advice given to the *customer* on that *policy*.
- (2) The details must be modulated according to the complexity of the *policy* proposed.

[Note: article 12(3) of the *Insurance Mediation Directive*]

Means of communication to customers

5.2.3

R

- (1) A statement of demands and needs must be communicated:
 - (a) on paper or on any other *durable medium* available and accessible to the *customer*;
 - (b) in a clear and accurate manner, comprehensible to the *customer*; and
 - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.
- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see ■ ICOBS 3.1.14 R).

- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[Note: article 13 of the *Insurance Mediation Directive*]

Statement of demands and needs: non-advised sales.....

5.2.4

G

The format of a statement of demands and needs is flexible. Examples of approaches that may be appropriate where a *personal recommendation* has not been given include:

- (1) providing a demands and needs statement as part of an application form, so that the demands and needs statement is made dependent upon the *customer* providing personal information on the application form. For instance, the application form might include a statement along the lines of: "If you answer 'yes' to questions a, b and c your demands and needs are those of a pet owner who wishes and needs to ensure that the veterinary needs of your pet are met now and in the future";
- (2) producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy the product. For example, "This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future";
- (3) giving a *customer* a record of all his demands and needs that have been discussed; and
- (4) providing a *key features document*.

5.3 Advised sales

Suitability

5.3.1 **R** A *firm* must take reasonable care to ensure the suitability of its advice for any *customer* who is entitled to rely upon its judgment.

Suitability guidance for protection policies

5.3.2 **G**

(1) In taking reasonable care to ensure the suitability of advice on a *payment protection contract* or a *pure protection contract* a *firm* should:

- (a) establish the *customer's* demands and needs. It should do this using information readily available and accessible to the *firm* and by obtaining further relevant information from the *customer*, including details of existing insurance cover; it need not consider alternatives to policies nor *customer* needs that are not relevant to the type of policy in which the *customer* is interested;
- (b) take reasonable care to ensure that a *policy* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations and conditions; and
- (c) inform the *customer* of any demands and needs that are not met.

(2) This *guidance* does not apply to *payment protection contracts* or *pure protection contracts* included in a *packaged bank account*.

Suitability of advice on policies included in a packaged bank account

5.3.2A **R**

In taking reasonable care to ensure the suitability of advice on a *policy* included in a *packaged bank account*, a *firm* must:

- (1) establish the *customer's* demands and needs by using information readily available to the *firm* and by obtaining further relevant information from the *customer*, including details of existing insurance cover; it need not consider alternatives to *policies* nor *customer* needs that are not relevant to the type of *policy* in which the *customer* is interested;
- (2) take reasonable steps to establish whether each *policy* included in the *packaged bank account* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations, and conditions;

- (3) inform the *customer* of any demands and needs that are not met; and
- (4) explain to the *customer* its recommendation and the reasons for the recommendation.

5.3.2B **R** A *firm* must make a record of the suitability assessment, the recommendation given and the reasons for the recommendation and, if the *customer* proceeds with the recommendation, retain it for a minimum period of three years from the date on which the recommendation was made.

Advice on the basis of a fair analysis.....

5.3.3 **R** If an *insurance intermediary* informs a *customer* that it gives advice on the basis of a fair analysis, it must give that advice on the basis of an analysis of a sufficiently large number of *contracts of insurance* available on the market to enable it to make a recommendation, in accordance with professional criteria, regarding which *contract of insurance* would be adequate to meet the *customer's* needs.

[Note: article 12(2) of the *Insurance Mediation Directive*]

Chapter 6

Product Information



6.1 General

Responsibilities of insurers and insurance intermediaries

- 6.1.1 **R** An *insurer* is responsible for producing, and an *insurance intermediary* for providing to a *customer*, the information required by this chapter and by the distance communication *rules* (see ■ ICOBS 3.1). However, an *insurer* is responsible for providing information required on mid-term changes, and an *insurance intermediary* is responsible for producing price information if it agrees this with an *insurer*.
- 6.1.2 **R** If there is no *insurance intermediary*, the *insurer* is responsible for producing and providing the information.
- 6.1.3 **R** An *insurer* must produce information in good time to enable the *insurance intermediary* to comply with the *rules* in this chapter, or promptly on an *insurance intermediary's* request.
- 6.1.4 **R** These general *rules* on the responsibilities of *insurers* and *insurance intermediaries* are modified by ■ ICOBS 6 Annex 1 if one of the *firms* is not based in the *United Kingdom*, and in certain other situations.

Ensuring customers can make an informed decision

- 6.1.5 **R** A *firm* must take reasonable steps to ensure a *customer* is given appropriate information about a *policy* in good time and in a comprehensible form so that the *customer* can make an informed decision about the arrangements proposed.
- 6.1.6 **G** The appropriate information *rule* applies pre-conclusion and post-conclusion, and so includes matters such as mid-term changes and *renewals*. It also applies to the price of the *policy*.
- 6.1.6A **G** The appropriate information *rule* applies in the same way to any *policy*, regardless of whether that *policy* is sold on its own, in connection with another *policy*, or in connection with other goods or services.
- 6.1.7 **G** The level of information required will vary according to matters such as:
 - (1) the knowledge, experience and ability of a typical *customer* for the *policy*;

- (2) the *policy* terms, including its main benefits, exclusions, limitations, conditions and its duration;
- (3) the *policy's* overall complexity;
- (4) whether the *policy* is bought in connection with other goods and services;
- (5) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see ■ ICOBS 3.1.14 R)); and
- (6) whether the same information has been provided to the *customer* previously and, if so, when.

6.1.8 G In determining what is "in good time", a *firm* should consider the importance of the information to the *customer's* decision-making process and the point at which the information may be most useful. Distance communication timing requirements are also relevant (for example, the distance communication *rules* enable certain information to be provided post-conclusion in telephone and certain other sales (see ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R)).

6.1.9 G Cancellation rights do not affect what information it is appropriate to give to a *customer* in order to enable him to make an informed purchasing decision.

6.1.10 G A *firm* dealing with a *consumer* may wish to provide information in a *policy summary* or as a *key features document* (see ■ ICOBS 6 Annex 2).

Providing evidence of cover

6.1.11 G Under *Principle 7* a *firm* should provide evidence of cover promptly after inception of a *policy*. *Firms* will need to take into account the type of *customer* and the effect of other information requirements, for example those under the distance communication *rules* (■ ICOBS 3.1).

Group policies

6.1.12 G Under *Principle 7*, a *firm* that sells a *group policy* should provide appropriate information to the *customer* to pass on to other *policyholders*. It should tell the *customer* that he should give the information to each *policyholder*.

Renewals

6.1.12A R

- (1) This *rule* applies when a *firm* proposes to a *consumer* the renewal of a *general insurance contract*, which is not a *group policy*, and which has a duration of 10 months or more.
- (2) In this *rule*, 'renewal' means carrying forward a *policy*, at the point of expiry and as a successive or separate operation of the same nature

and duration as the *policy*, with the same *insurance intermediary* or the same *insurer*.

- (3) The *firm* must provide to the *consumer* the following information in good time before the renewal:
 - (a) the *premium* to be paid by the *consumer* on renewal;
 - (b) in a way that is consistent with the presentation of (a) so that they can be easily compared:
 - (i) except where (ii) applies, the *premium* for the *policy* which the *firm* proposes to renew, as set out at the inception of that *policy*;
 - (ii) where one or more mid-term changes were made to the *policy* which the *firm* proposes to renew, an amount calculated by annualising (or otherwise adjusting as appropriate to the duration of the proposed *policy*) the *premium* in effect following the most recent mid-term change, excluding all fees or charges associated with those mid-term changes;
 - (c) a statement alongside (a) and (b) indicating that the *consumer*:
 - (i) should check that the level of cover offered by the renewal is appropriate for their needs; and
 - (ii) is able, if they so wish, to compare the prices and levels of cover offered by alternative providers.
- (4) Where the proposed renewal will be the fourth or subsequent renewal the *consumer* has entered into in respect of the *policy*, the *firm* must include the following statement, to appear alongside the matters required by (3)(a), (b) and (c)(i) (but omitting (c)(ii)): "You have been with us a number of years. You may be able to get the insurance cover you want at a better price if you shop around."
- (5) The *firm* must communicate the information in (3) and (4):
 - (a) clearly and accurately;
 - (b) in writing or another *durable medium*; and
 - (c) in a way that is accessible and which draws the *consumer's* attention to it as key information.

6.1.12B

G

A *firm* should have regard to the record-keeping obligations referred to in ■ ICOBS 2.4.1G and ensure that it has appropriate systems and controls in place with respect to:

- (a) the adequacy of its records so it may fulfil its regulatory and statutory obligations; and
- (b) the sufficiency of its records to enable the *FCA* to monitor the *firm's* compliance with the requirements under the *regulatory system*.

Price disclosure: connected goods or services

6.1.13

R

- (1) If a *policy* is bought by a *consumer* in connection with other goods or services a *firm* must, before conclusion of the contract, disclose its

premium separately from any other prices and whether buying the *policy* is compulsory.

(2) In the case of a *distance contract*, disclosure of whether buying the *policy* is compulsory may be made in accordance with the timing requirements under the distance communication *rules* (see ■ ICOBS 3.1.8 R, ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R).

(3) This *rule* does not apply to policies bought in connection with other goods or services provided as part of a *packaged bank account*.

6.1.13A **G** *Firms* are reminded that when offering a *policy* as part of a *packaged bank account* the *firm* may be subject to the requirements of regulation 13 (payment accounts packaged with another product or service) of the *Payment Accounts Regulations*.

Exception to the timing rules: distance contracts and voice telephony communications

6.1.14 **R** Where a *rule* in this chapter requires information to be provided in writing or another *durable medium* before conclusion of a contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R).

6.2 Pre-contract information: general insurance contracts

Application: what?

6.2.1 **R** This section applies in relation to a *general insurance contract*.

Solvency II Directive disclosure requirements

6.2.2 **R** Before a *general insurance contract* is concluded, a *firm* must inform a *customer* who is a natural *person* of:

- (1) the law applicable to the contract where the parties do not have a free choice, or the fact that the parties are free to choose the law applicable and, in the latter case, the law the *firm* proposes to choose; and
- (2) the arrangements for handling *policyholders'* complaints concerning contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the *policyholders'* right to take legal proceedings.

[Note: article 183(1) to (2) of the *Solvency II Directive*]

6.2.3 **R** (1) An *EEA firm* must inform a *customer*, before any commitment is entered into, of the *EEA State* in which the head office or, where appropriate, the branch with which the contract is to be concluded, is situated.

(2) Any documents issued to the *customer* must convey the information required by this *rule*.

[Note: article 184(1) of the *Solvency II Directive*]

6.2.4 **R** An *EEA firm* must ensure that the contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, states the address of the head office, or, where appropriate, of the branch of the *firm* which grants the cover.

[Note: article 184(2) of the *Solvency II Directive*]

Disclosure of cancellation right

6.2.5 **R** (1) A *firm* must provide a *consumer* with information on the right to cancel a *policy*.

-
- (2) The information to be provided on the right to cancel is:
 - (a) its existence;
 - (b) its duration;
 - (c) the conditions for exercising it;
 - (d) information on the amount which the *consumer* may be required to pay if he exercises it;
 - (e) the consequences of not exercising it; and
 - (f) the practical instructions for exercising it.
 - (3) The information must be provided in good time before conclusion of the contract and in writing or another *durable medium*.

6.3 Pre- and post-contract information: pure protection contracts

Solvency II Directive disclosure requirements

- (1) Before a *pure protection contract* is concluded, a *firm* must communicate, at least, the information in the table below to the customer.
- (2) The information must be provided in a clear and accurate manner, in writing, and in an official language of the *State of the commitment* or in another language if the *policyholder* so requests and the law of the *State of the commitment* so permits or the *policyholder* is free to choose the applicable law.

Information to be communicated before conclusion

- (1) The name of the *insurance undertaking* and its legal form.
- (2) The name of the *EEA State* in which the head office and, where appropriate, the agency or branch concluding the contract is situated.
- (3) The address of the head office and, where appropriate, of the agency or *branch* concluding the contract.
- (3a) A concrete reference to the *firm's SFCR* allowing the *policyholder* easy access to this information.
- (4)* Definition of each benefit and each option.
- (5)* Term of the contract.
- (6)* Means of terminating the contract.
- (7)* Means of payment of *premiums* and duration of payments.
- (8)* Information on the *premiums* for each benefit, both main benefits and supplementary benefits, where appropriate.
- (9)* Arrangements for application of the cancellation period.
- (10) General information on the tax arrangements applicable to the type of *policy*.
- (11) The arrangements for handling complaints concerning contracts by *policyholders*, *lives assured* or *beneficiaries* under contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the right to take legal proceedings.
- (12) The law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the *firm* proposes to choose.

Note: The *rule* on mid-term changes applies to items marked with an asterisk (see ICOBS 6.3.3 R).

[Note: article 185 of the *Solvency II Directive*]

6.3.2 **G** If the contract is concluded with a *commercial customer* by telephone, the information in this section may be provided immediately after conclusion.

Mid-term changes

6.3.3 **R** A *firm* must keep a *customer* informed throughout the term of a *pure protection contract* of any change concerning the *policy* conditions, both general and special, and any change in the following information:

- (1) the name of the *firm*, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract; and
- (2) all the information marked '*' in the table of information to be communicated before conclusion, in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

[Note: article 185(3) and (5) of the *Solvency II Directive*]

6.3.4 **R** When a *firm* provides a *customer* with information in accordance with **ICOBS 6.3.3 R**, it must provide it in a clear and accurate manner, in writing, in an official language of the *State of the commitment*, or in another language if the *policyholder* so requests and the law of the *State of the commitment* so permits or the *policyholder* is free to choose the law applicable.

[Note: article 185(3), (5) and (6) of the *Solvency II Directive*]



6.4 Pre- and post-contract information: protection policies

Application: what?

6.4.1 **R** This section applies in relation to a *payment protection contract* or a *pure protection contract* except as otherwise stated.

Oral sales: ensuring customers can make an informed decision

6.4.2 **R**

- (1) If a *firm* provides information orally during a sales dialogue with a *customer* on a main characteristic of a *policy*, it must do so for all the *policy's* main characteristics.
- (2) A *firm* must take reasonable steps to ensure that the information provided orally is sufficient to enable the *customer* to take an informed decision on the basis of that information, without overloading the *customer* or obscuring other parts of the information.

6.4.3 **G**

- (1) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.
- (2) A significant exclusion or limitation is one that would tend to affect the decision of *customers* generally to buy. In determining what exclusions or limitations are significant, a *firm* should particularly consider the exclusions or limitations that relate to the significant features and benefits of a *policy* and factors which may have an adverse effect on the benefit payable under it. Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

Policy summary

6.4.4 **R** A *firm* must provide a *consumer* with a *policy summary* in good time before the conclusion of a contract.

Payment protection contracts: importance of reading documentation

6.4.5 **R**

- (1) A *firm* must draw a *consumer's* attention to the importance of reading *payment protection contract* documentation before the end of the cancellation period to check that the *policy* is suitable for the *consumer*.

- (2) This must be done orally if a *firm* provides information orally on any main characteristic of a *policy*.

Price information: general

6.4.6 **R** A *firm* must provide price information in a way calculated to enable the *customer* to relate it to a regular budget.

6.4.7 **G** Price information is likely also to include at least the total *premium* (or the basis for calculating it so that the *customer* can verify it) and, where relevant:

- (1) for *policies* of over one year with reviewable *premiums*, the period for which the quoted *premium* is valid, and the timing of reviews;
- (2) other *fees*, administrative charges and taxes payable by the *customer* through the *firm*; and
- (3) a statement identifying separately the possibility of any taxes not payable through the *firm*.

6.4.8 **G** Price information should be given in writing or another *durable medium* in good time before conclusion of the contract. This is in addition to any requirement or decision to provide the information orally. In the case of a *distance contract* concluded over the telephone, it may be provided in writing or another *durable medium* no later than immediately after conclusion.

Price information: premiums paid using a non-revolving credit agreement

6.4.9 **R**

- (1) This *rule* applies when a *premium* will be paid using a credit agreement other than a revolving credit agreement.
- (2) A *firm* must provide price information in a way calculated to enable the *customer* to understand the additional repayments that relate to the purchase of the *policy*, and the total cost of the *policy*.
- (3) Price information must reflect any difference between the duration of the *policy* and that of the credit agreement.
- (4) A *firm* must explain to a *customer*, as applicable, that the *premium* will be added to the amount provided under the credit agreement and that interest will be payable on it.

Price information: policies sold in connection with revolving credit arrangements

6.4.10 **G**

- (1) This *guidance* applies to *policies* bought as secondary products to revolving credit agreements (such as store cards or credit cards).
- (2) Price information should be given in a way calculated to enable a typical *customer* to understand the typical cumulative cost of taking out the *policy*. This does not require oral disclosure where there is a

sales dialogue with a *customer*. However, consistent with *Principle 7*, a *firm* should ensure that this element of price information is not undermined by any information given orally.

Mid-term changes

6.4.11

R

- (1) Throughout the term of a *policy*, a *firm* must provide a *customer* with information about any change to:
 - (a) the *premium*, unless the change conforms to a previously disclosed formula; and
 - (b) any term of the *policy*, together with an explanation of any implications of the change where necessary.
- (2) This information must be provided in writing or another *durable medium* in good time before the change takes effect or, if the change is at the *customer's* request, as soon as is practicable provided the *firm* explains the implications of the change before it takes effect.

6.4.12

G

- (1) When explaining the implications of a change, a *firm* should explain any changes to the benefits and significant or unusual exclusions arising from the change.
- (2) *Firms* will need to consider whether mid-term changes are compatible with the original *policy*, in particular whether it reserves the right to vary *premiums*, charges or other terms. *Firms* also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) or the *CRA*.

Responsibilities of insurers and insurance intermediaries in certain situations

This annex belongs to ■ ICOBS 6.1.4 R

The table in this annex modifies the general *rules* on the responsibilities of *insurers* and *insurance intermediaries* for producing and providing to a *customer* the information required by this chapter.

Situation	<i>Insurance intermediary's</i> responsibility	<i>Insurer's</i> responsibility
(1) <i>Insurance intermediary</i> operates from UK establishment <i>Insurer</i> does not operate from UK establishment	Production and providing	None
(2) <i>Insurance intermediary</i> does not operate from UK establishment, is not <i>authorised</i> , is selling <i>connected contracts</i> or is <i>authorised professional firm</i> carrying on <i>non-mainstream regulated activities</i> <i>Insurer</i> operates from UK establishment <i>Customer</i> habitually resident in the EEA	None	Production and providing (but no <i>policy summary</i> is required unless the <i>insurance intermediary</i> does not operate from a UK establishment)
(3) As (2) but <i>customer</i> habitually resident outside the EEA and <i>insurer</i> not in contact with the <i>customer</i>	None	None
(4) As (2) but <i>customer</i> habitually resident outside the EEA and <i>insurer</i> in contact with the <i>customer</i>	None	Production and providing
(5) <i>Insurance intermediary</i> does not operate from UK establishment <i>Insurer</i> does not operate from UK establishment	None	Production and providing
(6) Where ICOBS 6.1.12AR applies	Production and providing, as appropriate, where dealing with a <i>consumer</i> on renewal	Production and providing, as appropriate, where dealing with a <i>consumer</i> on renewal

Policy summary for consumers

This annex belongs to ■ ICOBS 6.1.10 G and ■ ICOBS 6.4.4 R

1	Format	
1.1	R	(1) A <i>policy summary</i> must be in writing or another <i>durable medium</i> . (2) A <i>policy summary</i> must be in a separate document, or within a prominent separate section of another document clearly identifiable as containing key information that the <i>consumer</i> should read.
1.2	G	The quality and presentation standard of a <i>policy summary</i> should be consistent with that used for other <i>policy</i> documents.
2	Content	
2.1	R	A <i>policy summary</i> must contain the information in the table below and no other information. Policy summary content
		<ul style="list-style-type: none"> • Key facts logo in a prominent position at the top of the <i>policy summary</i>. Further requirements regarding the use of the logo and the location of specimens are set out in GEN 5.1 and GEN 5 Annex 1 G. • Statement that the <i>policy summary</i> does not contain the full terms of the <i>policy</i>, which can be found in the policy document. • Name of the <i>insurance undertaking</i>. • Type of insurance and cover. • Significant features and benefits. • Significant or unusual exclusions or limitations, and cross-references to the relevant policy document provisions. • Duration of the <i>policy</i>. • A statement, where relevant, that the <i>consumer</i> may need to review and update the cover periodically to ensure it remains adequate. • Price information (optional). • Existence and duration of the right of cancellation (other details may be included). • Contact details for notifying a claim. • How to complain to the <i>insurance undertaking</i> and that complaints may subsequently be referred to the <i>Financial Ombudsman Service</i> (or other applicable named complaints scheme). • That, should the <i>insurance undertaking</i> be unable to meet its liabilities, the consumer may be entitled to compensation from the <i>compensation scheme</i> (or other applicable compensation scheme), or that there is no compensation scheme. Information on the extent and level of cover and how further information can be obtained is optional.
2.2	G	A <i>policy summary</i> should properly describe the <i>policy</i> but, in line with <i>Principle 7</i> , should not overload the <i>consumer</i> with detail.
3	Significant or unusual exclusions or limitations	
3.1	G	(1) A significant exclusion or limitation is one that would tend to affect the decision of <i>consumers</i> generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts.

		<p>(2) In determining what exclusions or limitations are significant, a <i>firm</i> should, in particular, consider the exclusions or limitations that relate to the significant features and benefits of a <i>policy</i> and factors which may have an adverse effect on the benefit payable under it.</p> <p>(3) Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.</p> <p>Examples of significant or unusual exclusions or limitations</p> <ul style="list-style-type: none"> • Deferred payment periods • Exclusion of certain conditions, diseases or pre-existing medical conditions • Moratorium periods • Limits on the amounts of cover • Limits on the period for which benefits will be paid • Restrictions on eligibility to claim such as age, residence or employment status • Excesses
4		Key features document as an alternative to a policy summary
4.1	R	A <i>firm</i> may provide a document that has the contents of a <i>key features document</i> instead of a <i>policy summary</i> . The document must include contact details for notifying a claim but need not include the title 'key features of the [name of product]'.

Chapter 6A

Product specific rules



6A.1 Guaranteed asset protection (GAP) contracts

Application

6A.1.1 **R** This section applies to a *firm* which sells a *GAP contract* to a *customer* in connection with the sale of a *vehicle* by:

- (1) the *firm*; or
- (2) a *person* connected to the *firm*.

6A.1.2 **G** There is a sufficient connection between the *GAP contract* and the sale of a *vehicle* if the *GAP contract* is sold in connection with other goods and services, for example a *credit agreement*.

6A.1.3 **G** A *person* connected with a *firm* includes acting as an *introducer* or *appointed representative* for that *firm* or if, regardless of *authorisation* status, it has a relevant business relationship with the *firm*.

Ensuring the customer can make an informed decision

6A.1.4 **R**

- (1) Before a *GAP contract* is concluded, a *firm* must give the *customer* the following information:
 - (a) the total *premium* of the *GAP contract*, separate from any other prices;
 - (b) the significant features and benefits, significant and unusual exclusions or limitations, and cross-references to the relevant policy document provisions;
 - (c) whether or not the *GAP contract* is sold in connection with *vehicle finance*, that *GAP contracts* are sold by other distributors;
 - (d) the duration of the *policy*;
 - (e) whether the *GAP contract* is optional or compulsory;
 - (f) when the *GAP contract* can be concluded by the *firm*, as described in ■ ICOBS 6A.1.6R and ■ ICOBS 6A.1.7R; and
 - (g) the date the information in (a) to (f) is provided to the *customer*.
- (2) This information must be communicated in a clear and accurate manner and in writing or another *durable medium*, and made available and accessible to the *customer*.

(3) This information must be drawn to the *customer's* attention and must be clearly identifiable as key information that the *customer* should read.

6A.1.5 **G** A *firm* must also comply with the *rules* in ■ ICOBS 6 (Product Information).

Deferred opt-in for GAP contracts

6A.1.6 **R** Except as specified in ■ ICOBS 6A.1.7R, a *GAP contract* cannot be concluded by a *firm* until at least 2 clear *days* have passed since the *firm* complied with ■ ICOBS 6A.1.4R.

6A.1.7 **R** A *firm* can conclude a *GAP contract* the *day* after providing the information in ■ ICOBS 6A.1.4R to a *customer* if the *customer*:

- (1) initiates the conclusion of the *GAP contract*; and
- (2) consents to the *firm* concluding the *GAP contract* earlier than provided for in ■ ICOBS 6A.1.6R, and confirms that they understand the restriction in ■ ICOBS 6A.1.6R.

6A.1.8 **G** Before concluding a *GAP contract*, a *firm* should have regard to the information needs of its *customers* and consider whether it would be in the *customer's* interest to receive the information in ■ ICOBS 6A.1.4R again, for example, if a long time has passed between providing the information and the conclusion of the contract.



6A.2 Optional additional products

Restriction on marketing or providing an optional product for which a fee is payable

6A.2.1

R

- (1) A *firm* must not enter into an agreement with a *customer* under which a charge is, or may become, payable for an optional additional product unless the *customer* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *customer* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *customer* has actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *customer* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
 - (a) a contravention of (1) or (2) will take place with respect to the product; or
 - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *customer* is not to be regarded as an active election for the purpose of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.
- (6) A charge includes a financial consideration of any kind whether payable to the *firm* or any other *person*.
- (7) An optional additional product is a good, service or right of any description, whether or not financial in nature, that a *customer* may obtain (or not, as the case may be) at his or her election in connection with or alongside a *non-investment insurance contract*.
- (8) If the *customer* is required to obtain an additional product as a condition for the purchase of the *non-investment insurance contract* then that product is an optional additional product if the *customer* is given a choice:
 - (a) as to the seller or supplier from whom to obtain the product; or
 - (b) which specific product to obtain.

- (9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or another *person*.
- (10) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *customer* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.
- (b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).
- (c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.
- (11) A *customer* may make an active election for the purposes of this rule through an intermediary in the sales process or through a *person* acting on behalf of the *firm*.

- 6A.2.2 G An example of an omission by a *customer* which is not to be regarded as an active election is the failure by the *customer* to change a default option such as a pre-ticked box on a website.
- 6A.2.3 G *Firms* are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.
- 6A.2.4 G *Firms* are reminded that they must ensure that their *appointed representatives* comply with this section ■ ICOBS 6A.2.

Chapter 7

Cancellation



7.1 The right to cancel

The right to cancel

7.1.1

R

A consumer has a right to cancel, without penalty and without giving any reason, within:

- (1) 30 days for a *contract of insurance* which is, or has elements of, a *pure protection contract* or *payment protection contract*; or
- (2) 14 days for any other *contract of insurance* or *distance contract*.

[**Note:** article 6(1) of the *Distance Marketing Directive* in relation to a *distance contract* and article 186 of the *Solvency II Directive* in relation to a *pure protection contract*]

7.1.2

G

A firm may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the consumer as those in this chapter, unless the differences are clearly explained.

Exceptions to the right to cancel

7.1.3

R

The right to cancel does not apply to:

- (1) a travel and baggage *policy* or similar short-term *policy* of less than one *month's* duration;
- (2) a *policy* the performance of which has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel;
- (3) a *pure protection contract* of six *months'* duration or less which is not a *distance contract*;
- (4) a *pure protection contract* effected by the trustees of an *occupational pension scheme*, an employer or a *partnership* to secure benefits for the *employees* or the *partners* in the *partnership*;
- (5) a *general insurance contract* which is neither a *distance contract* nor a *payment protection contract*, sold by an intermediary who is an *unauthorised person* (other than an *appointed representative*); and
- (6) a *connected contract* which is not a *distance contract*.

[**Note:** articles 6(2)(b) and (c) of the *Distance Marketing Directive* and article 186(2) of the *Solvency II Directive*]

7.1.4 **G** A 'similar short-term *policy*' is any *policy* where the event or activity being insured is less than one *month's* duration. 'Duration' refers to the period of cover rather than the period of the contract.

Start of the cancellation period

7.1.5 **R** The cancellation period begins either:

- (1) from the day of the conclusion of the contract, except in respect of a *pure protection contract* where the time limit begins when the *customer* is informed that the contract has been concluded; or
- (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[**Note:** article 186(1) of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

Exercising a right to cancel

7.1.6 **R** If a *consumer* exercises the right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if on paper or another *durable medium*, is dispatched before the deadline expires.

[**Note:** article 6(1) and (6) of the *Distance Marketing Directive*]

7.2 Effects of cancellation

Termination of contract

- 7.2.1 **R** By exercising the right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

- 7.2.2 **R**
- (1) When a *consumer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract.
 - (2) The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and
 - (b) in any case be such that it could be construed as a penalty.
 - (3) A *firm* must not require a *consumer* to pay any amount:
 - (a) unless it can prove that the *consumer* was duly informed about the amount payable; or
 - (b) if it commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.
 - (4) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *pure protection contract*.
 - (5) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *payment protection contract* unless a claim is made during the cancellation period and settlement terms are subsequently agreed.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive*]

- 7.2.3 **G** The amount payable may include:
- (1) any sums that a *firm* has reasonably incurred in concluding the contract, but should not include any element of profit;
 - (2) an amount for cover provided (i.e. a proportion of the *policy's* exposure that relates to the time on risk);

- (3) a proportion of the *commission* paid to an *insurance intermediary* sufficient to cover its costs; and
- (4) a proportion of any *fees* charged by an *insurance intermediary* which, when aggregated with any *commission* to be repaid, would be sufficient to cover its costs.

7.2.4 **G** In most cases, the *FCA* would expect the proportion of a *policy's* exposure that relates to the time on risk to be a pro rata apportionment. However, where there is material unevenness in the incidence of risk, an *insurer* could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred.

7.2.5 **G** An *insurer* and an *insurance intermediary* should take reasonable steps to ensure that double recovery of selling costs is avoided, particularly where the contract for the *insurance intermediary's* services is a *distance contract*, or where both *commission* and *fees* are recouped by the *insurer* and *insurance intermediary* respectively.

Firm's obligation on cancellation

- 7.2.6** **R**
- (1) A *firm* must, without any undue delay and no later than within 30 *days*, return to a *consumer* any sums it has received from him in accordance with the contract, except as specified in this section.
 - (2) This period shall begin from the day on which the *firm* receives the notification of cancellation.

[Note: article 7(4) of the *Distance Marketing Directive*]

Consumer's obligation on cancellation

- 7.2.7** **R**
- (1) A *firm* is entitled to receive from a *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 *days*.
 - (2) This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[Note: article 7(5) of the *Distance Marketing Directive*]

7.2.8 **G** If an *insurer* has made a charge for services provided, the sums and property to be returned by a *consumer* should not include any money or property provided in settling a claim.

Set off

7.2.9 **R** Any sums payable under this section are owed as simple contract debts and may be set off against each other.

Automatic cancellation of an attached distance contract

7.2.10

G

A *consumer's* notice to cancel a *distance contract* may also operate to cancel any attached contract which is also a distance financial services contract. This is unless the *consumer* gives notice that cancellation of the contract is not to operate to cancel the attached contract. (See the *Distance Marketing Regulations*.) Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

Chapter 8

Claims handling

8.1 Insurers: general

8.1.1

R

An *insurer* must:

- (1) handle claims promptly and fairly;
- (2) provide reasonable guidance to help a *policyholder* make a claim and appropriate information on its progress;
- (3) not unreasonably reject a claim (including by terminating or avoiding a *policy*); and
- (4) settle claims promptly once settlement terms are agreed.

Cases where rejection of consumer’s claim is unreasonable: contracts before 1 August 2017

8.1.2

R

For contracts entered into or variations agreed before 1 August 2017, a rejection of a *consumer policyholder's* claim is unreasonable, except where there is evidence of fraud, if it is :

- (1) in relation to contracts entered into or variations agreed on or before 5 April 2013, for:
 - (a) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably be expected to have disclosed; or
 - (b) non-negligent misrepresentation of a fact material to the risk; or
- (2) in relation to contracts entered into or variations agreed on or after 6 April 2013, for misrepresentation by a *customer* and the misrepresentation is not a qualifying misrepresentation (see ■ ICOBS 8.1.3R); or
- (3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a *pure protection contract*):
 - (a) under a ‘life of another’ contract, the warranty relates to a statement of fact concerning the life to be assured and, if the statement had been made by the life to be assured under an ‘own life’ contract, the *insurer* could have rejected the claim under this *rule*; or
 - (b) the warranty is material to the risk and was drawn to the *customer's* attention before the conclusion of the contract.

Cases where rejection of consumer’s claim is unreasonable: contracts on or after 1 August 2017

- 8.1.2A** **G** (1) Cases in which rejection of a *consumer’s* claim would be unreasonable (in the *FCA’s* view) include, but are not limited to rejection:
- (a) for misrepresentation, unless it is a qualifying misrepresentation (see ■ ICOBS 8.1.3R);
 - (b) where the claim is subject to the Insurance Act 2015, for breach of warranty or term, or for fraud, unless the *insurer* is able to rely on the relevant provisions of the Insurance Act 2015; and
 - (c) where the *policy* is drafted or operated in a way that does not allow the *insurer* to reject.
- (2) The Insurance Act 2015 sets out a number of situations in which an *insurer* may have no liability or obligation to pay. For example:
- (a) section 10 provides situations in which an *insurer* has no liability under a *policy* due to a breach of warranty;
 - (b) section 11 places restrictions on an *insurer’s* ability to reject a claim for breach of a term where compliance is aimed at reducing certain types of risk; and
 - (c) sections 12 and 13 provide for the extent to which a *firm* is entitled to reject fraudulent claims.

8.1.2B **R** For contracts entered into or variations agreed on or after 1 August 2017, a rejection of a *consumer policyholder’s* claim for breach of a condition or warranty (that is not subject to and within section 10 or 11 of the Insurance Act 2015) is unreasonable unless the circumstances of the claim are connected to the breach.

Definition of a qualifying misrepresentation

- 8.1.3** **R** In this section, a “qualifying misrepresentation” is one made by a *consumer* before a consumer insurance contract was entered into or varied if:
- (1) the *consumer* made the misrepresentation in breach of the duty set out in section 2(2) of the Consumer Insurance (Disclosure and Representations) Act 2012 to take reasonable care not to make a misrepresentation to the *insurer*; and
 - (2) the *insurer* shows that without the misrepresentation, that *insurer* would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms.

[Note: section 4 of the Consumer Insurance (Disclosure and Representations) Act 2012.]



8.2 Motor vehicle liability insurers

Application: who? what?

8.2.1

R

- (1) This section applies to a *motor vehicle liability insurer*.
- (2) The *rules* in this section relating to the appointment of claims representatives apply:
 - (a) in relation to claims by *injured parties* resulting from accidents occurring in an *EEA State* other than the *injured party's EEA State* of residence which are caused by the use of *vehicles* insured through an establishment in, and normally based in, an *EEA State* other than the *injured party's EEA State* of residence; and
 - (b) in relation to claims arising out of events occurring, and risks situated, in the *United Kingdom*, and covered by an *incoming EEA firm* on a services basis.
- (3) The *rules* in this section relating to claims handling apply in respect of claims arising from any accident caused by a *vehicle normally based* in the *United Kingdom*.

[Note: article 20(1) of the *Consolidated Motor Insurance Directive* and article 152 of the *Solvency II Directive*]

Requirement to appoint claims representatives

8.2.2

G

[deleted]

8.2.2A

R

A *person* carrying on, or seeking to carry on, *motor vehicle liability insurance business* must have a claims representative in each *EEA state* other than the *United Kingdom*.

8.2.2B

R

An *incoming EEA firm* carrying on motor vehicle liability insurance business and covering *UK risks* on a services basis must have a claims representative in the *United Kingdom* to deal with claims arising out of events occurring in the *United Kingdom*.

[Note: article 152 of the *Solvency II Directive*]

Conditions for appointing claims representatives

8.2.3

R

A *firm* must ensure that each claims representative:

- (1) is responsible for handling and settling a claim by an *injured party*;
- (2) is resident or established in the *EEA State* where it is appointed;
- (3) collects all information necessary in connection with the settlement of a claim and takes the measures necessary to negotiate its settlement;
- (4) possesses sufficient powers to represent the *firm* in relation to an *injured party* and to meet an *injured party's* claim in full; and
- (5) is capable of examining cases in the official language(s) of the *EEA State* of residence of the *injured party*.

[Note: article 21(1), (4) and (5) of the *Consolidated Motor Insurance Directive* and article 152 of the *Solvency II Directive*]

8.2.4

G

The requirement to possess sufficient powers does not prevent a claims representative from seeking additional authority or instructions if needed. It does prevent it from declining to deal with, or transferring responsibility for, claims properly referred to it by an *injured party*, or their representative.

Notifying the appointment of claims representatives

8.2.5

R

(1) A *firm* must notify to the *information centres* of all *EEA States*:

- (a) the name and address of the claims representative which they have appointed in each of the *EEA States*;

[Note: article 23(2) of the *Consolidated Motor Insurance Directive*]

- (b) the telephone number and effective date of appointment; and
 - (c) any material change to information previously notified.
- (2) Notification must be made within ten *business days* of an appointment or of a material change.

Motor vehicle liability claims handling rules

8.2.6

R

Within three *months* of the *injured party* presenting his *claim* for compensation:

- (1) the *firm* of the *person* who caused the accident or its claims representative must make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified; or
- (2) the *firm* to whom the claim for compensation has been addressed or its claims representative must provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

[Note: article 22 of the *Consolidated Motor Insurance Directive* and article 3 of the *Consolidated Motor Insurance Directive*]

- 8.2.7 **R** (1) If liability is initially denied, or not admitted, within three *months* of any subsequent admission of liability, the *firm* must (directly, or through a claims representative) make a reasoned offer of settlement, if, by that time, the relevant claim for damages has been fully quantified.
- (2) If an *injured party's* claim for damages is not fully quantified when it is first made, within three *months* of the subsequent receipt of a fully quantified claim for damages, the *firm* must (directly, or through a claims representative) make a reasoned offer of damages, if liability is admitted at that time.

8.2.8 **R** A claim for damages will be fully quantified for the purpose of this section when the *injured party* provides written evidence which substantiates or supports the amounts claimed.

Interest on compensation

- 8.2.9 **R** (1) If the *firm*, or its claims representative, does not make an offer as required by this section, the *firm* must pay simple interest on the amount of compensation offered by it or awarded by the court to the *injured party*, unless interest is awarded by any tribunal.
- (2) The interest calculation period begins when the offer should have been made and ends when the compensation is paid to the *injured party*, or his authorised representative.
- (3) The interest rate is the Bank of England's base rate (from time to time), plus 4%.

[Note: article 22 of the *Consolidated Motor Insurance Directive*. Regulation 6 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 makes this *rule* actionable under section 138D of the Act (Actions for damages) by any person who suffers loss as a result of its contravention]

8.2.10 **R** A *firm* will be taken to have received a claim, or a fully quantified claim, for damages when the claim is delivered to it, or a claims representative, by any *person* by any method of delivery which is lawful in the *firm's*, or its claims representative's, respective State of residence or establishment.

8.2.11 **G** The provisions in this section are not intended to, and do not, restrict any rights which the *injured party*, or its *motor vehicle liability insurer*, or any other *insurer* acting on its behalf, may have and which would enable any of them to begin legal proceedings against the *person* causing the accident or that *person's*, or the *vehicle's*, *insurers*.



8.3 Insurance intermediaries (and insurers handling claims on another insurer's policy)

Application: who?

8.3.1 **G** This section applies to an *insurance intermediary*, and to an *insurer* handling a claim on another *insurance undertaking's policy*.

Interaction with the general law

8.3.2 **G** A *firm* is expected to comply with the general law on the duties of an insurance intermediary. This section does not seek to set out the full extent of those duties.

Conflicts of interest

8.3.3 **G**

- (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly.
 - SYSC 10 also requires an *insurance intermediary* to take all reasonable steps to identify conflicts of interest, and maintain and operate effective organisational and administrative arrangements to prevent conflicts of interest from constituting or giving rise to a material risk of damage to its *clients*.
- (2) [deleted]
- (3) If a *firm* acts for a *customer* in *arranging a policy*, it is likely to be the *customer's agent* (and that of any other *policyholders*). If the *firm* intends to be the *insurance undertaking's agent* in relation to claims, it needs to consider the risk of becoming unable to act without breaching its duty to either the *insurance undertaking* or the *customer* making the *claim*. It should also inform the *customer* of its intention.
- (4) A *firm* should in particular consider whether declining to act would be the most reasonable step where it is not possible to manage a conflict, for example where the *firm* knows both that its *customer* will accept a low settlement to obtain a quick payment, and that the *insurance undertaking* is willing to settle for a higher amount.

Dealing with claims notifications without claims handling authority

8.3.4

G

A *firm* that does not have authority to deal with a claim should forward any claim notification to the *insurance undertaking* promptly, or inform the *policyholder* immediately that it cannot deal with the notification.



8.4 Employers' Liability Insurance

Application

8.4.1

R

- (1) The general application *rule* in ■ ICOBS 1.1.1 R applies to this section subject to the modifications in (2).
- (2) This section applies to:
 - (a) any *firm* solely with respect to the activities of:
 - (i) *carrying out contracts of insurance*; or
 - (ii) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
 in relation to *general insurance contracts* and, in either case, including business accepted under *reinsurance to close*;
 - (b) all *incoming EEA firms* or *incoming Treaty firms* falling within (a) including those providing *cross border services*.
- (3) In this section references to:
 - (a) an '*employers' liability register*' are to the employers' liability register referred to in ■ ICOBS 8.4.4R (1)(a);
 - (b) a '*director's certificate*' are to a statement complying with the requirements in ■ ICOBS 8.4.4R (1)(b);
 - (c) *employers' liability insurance* include business accepted under *reinsurance to close* covering *employers' liability insurance* (including business that is only included as *employers' liability insurance* for the purposes of this section);
 - (d) a '*qualified director's certificate*' are to the statement complying with the requirements in ■ ICOBS 8.4.4R (1)(b)(ii); and
 - (e) a '*historical policy*' are to a *United Kingdom* commercial lines *employers' liability insurance policy* or other evidence of cover issued or renewed before 1 April 2011.

8.4.2

G

■ ICOBS 8.4 does not generally apply to activities carried out in relation to a *reinsurance contract* (see ■ ICOBS 1.1.2 R and ■ ICOBS 1 Annex 1 Part 2 1.1 R) but it does apply to business accepted under *reinsurance to close*.

Purpose

8.4.3

G

The purpose of ■ ICOBS 8.4 is to assist individuals with claims arising out of their course of employment in the *United Kingdom* for employers carrying on, or who carried on, business in the *United Kingdom*, to identify an *insurer*

or insurers that provided employers' liability insurance (other than certain co-insurance and excess cover arrangements) by requiring insurers to produce an employers' liability register and to conduct effective searches for historical policies. In particular it aims to assist ex-employees whose employers no longer exist or who cannot be located.

Principal obligation to produce an employers' liability register and supporting documents

8.4.4

R

- (1) A firm carrying out contracts of insurance, or a managing agent managing insurance business, including in either case business accepted under reinsurance to close, which includes United Kingdom commercial lines employers' liability insurance, must:
 - (a) produce an employers' liability register complying with the requirements in (2) and ■ ICOBS 8 Annex 1;
 - (b) obtain and submit to the FCA a written statement, by a director of the firm responsible for the production of the employers' liability register, that to the best of the director's knowledge the firm in its production of the register is either:
 - (i) materially compliant with the requirements of ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1, including (where necessary) how the firm has used and continues to use its best endeavours in accordance with ■ ICOBS 8 Annex 1 1.1CR; or
 - (ii) not materially compliant with the provisions referred to in (i), in which case the statement must also set out, to the best of the director's knowledge, the information required by ■ ICOBS 8.4.4A R; and
 - (c) obtain and submit to the FCA a report satisfying the requirements of ■ ICOBS 8.4.4C R, prepared by an auditor satisfying the requirements of ■ SUP 3.4 and ■ SUP 3.8.5 R to ■ 3.8.6 R, and addressed to the directors of the firm.
- (1A) For the purposes of ■ ICOBS 8.4.4R (1)(b):
 - (a) 'materially compliant' means that in relation to at least ninety-nine percent of policies for which information is required to be included, the information in the register does not contain any inaccuracy or lack faithful reproduction (as relevant) that would affect the outcome of a search when compared to a search carried out with fully accurate and/or faithfully reproduced information; and
 - (b) the firm must ensure that the director's certificate includes the description of 'materially compliant' referred to in (a).
- (2) For the purposes of (1)(a) the employers' liability register is required to:
 - (a) include the date upon which the register was produced;
 - (b) include a database which:
 - (i) reliably stores information required by ■ ICOBS 8 Annex 1;
 - (ii) in relation to information required by ■ ICOBS 8 Annex 1 1.1R(1), contains accurate information and, in relation to information required by ■ ICOBS 8 Annex 1 1.1R(2),

contains information which faithfully reproduces the information that the *firm* has; and

- (iii) has an effective search function which allows a person inputting data included on the register relating to a particular employer over a particular period to retrieve information on the register relating to a potential employers' liability claim corresponding to that employer and period;
 - (c) allow for requests for information or searches relating to a potential claim to be made by:
 - (i) individuals with the potential claim, or their authorised representative, or
 - (ii) any employer to whom the potential claim relates; or
 - (iii) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
 - (iv) a relevant *insurance intermediary* acting for an *insurer* in (iii);
 - (d) allow for requests by a tracing office which meets the conditions in ■ ICOBS 8.4.9R relating to the use of information on the *firm's* register to the extent that the information is necessary, and used solely, to enable the tracing office to provide comprehensive searching facilities to its users; and
 - (e) allow for responses to requests or searches in (c) to be provided without delay.
- (3) For the purposes of (1)(b) and (c) the *director's* certificate and report prepared by an auditor must:
- (a) relate to a version of the register as at a date no later than 12 *months* after it is first produced in accordance with (1)(a); and
 - (b) be obtained and submitted to the *FCA* within four *months* of the date in (a).
- (4) For the purposes of (1):
- (a) *United Kingdom commercial lines employers' liability insurance* means commercial lines *employers' liability insurance* where both the employer's business was or is carried on, and the employees' course of employment was or is, in the *United Kingdom*; and
 - (b) commercial lines business comprises *contracts of insurance* carried out in relation to *persons whose employers' liability insurance* relates to a business or profession they carry on.

8.4.4A

R

The information referred to in ■ ICOBS 8.4.4R (1)(b)(ii) is:

- (1) a description of the ways in which the *firm*, in its production of the register, is not materially compliant;
- (2) the number of *policies*, in relation to which, either:
 - (a) the *firm* is not able to include any information in the register; and/or
 - (b) information is included in the register but information may be incorrect or incomplete;

in each case as a proportion of the total number of *policies* required to be included in the register;

- (3) where the *firm* is only practicably able to provide an estimate of the numbers in (2), the basis of each estimate; and
- (4) a description of the systems and controls used in the production of the register and of the steps, together with relevant timescales, that the *firm* is taking to ensure that the *firm* will be materially compliant as soon as practicable.

8.4.4B

G

In relation to the written statement referred to in ■ ICOBS 8.4.4R (1)(b):

- (1) ■ ICOBS 8.4.4R (1)(b) does not preclude the relevant *director* from, in addition, including in the *director's* statement any of the following as relevant:
 - (a) if a *firm's* employers' liability register is more than materially compliant, a statement to this effect, and/or a statement of the extent to which the *director* considers, to the best of his knowledge, the *firm* to be compliant in its production of the register;
 - (b) reasons for the level of any non-compliance; and/or
 - (c) information relating to *policies* which are not required to be included in the register;
- (2) the statement regarding the *firm's* level of compliance with requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1, and, in relevant cases, the steps the *firm* is undertaking to ensure material compliance as soon as practicable, does not alter the underlying requirement that the *firm* has to comply fully with the relevant requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1 (that is, not just to a material extent). So, it is possible that a *firm* will be able to comply with ■ ICOBS 8.4.4R (1)(b) but continue to not fully comply with the underlying requirements, for example, in respect of the *policies* falling outside the ninety-nine percent threshold. In relation to these *policies*, as well as those identified in any qualified *director's* certificate, the *firm* will need to remedy errors or omissions as soon as practicable, and have systems and controls in place to give effect to this on an ongoing basis.

8.4.4C

R

The report referred to in ■ ICOBS 8.4.4R (1)(c) must:

- (1) be prepared on the basis of providing an opinion under a *limited assurance engagement* confirming whether the auditor has found no reason to believe that the *firm*, solely in relation to the *firm's* extraction of information from its underlying records, has not materially complied with the requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1 in the production of its employer's liability register, having regard in particular to the possible errors and omissions referred to in (3) below;
- (2) use the description of material compliance as referred to in ■ ICOBS 8.4.4R (1A)(a) adapted as necessary to apply solely to the *firm's* extraction of information from its underlying records;

- (3) address, in particular, the following risks:
 - (a) information relating to certain *policies* issued or renewed on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
 - (b) information relating to certain *policies* in respect of which claims were made on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
 - (c) relevant information required to be included in the register, and which is included in the *firm's* underlying records, is omitted from, or is inaccurately entered on to, the register; and
 - (d) information relating to *policies* which do not provide *employers' liability insurance* are included in the register.

8.4.5

G

- (1) For the purposes of ■ ICOBS 8.4.4R (2)(c) and ■ ICOBS 8.4.4R (2)(d), a *firm* may put in place appropriate screening on its employers' liability register to monitor:
 - (a) requests for information and searches to ensure that they are being made for a legitimate purpose by persons falling into one of the categories in ■ ICOBS 8.4.4R (2)(c); and
 - (b) requests from tracing offices to ensure that the information is necessary, and will only be used by the tracing office, for the purposes of providing users of the tracing service with the same information as the *firm* itself would have provided had the inquirer approached the *firm* directly.

If a *firm* has any reason to suspect that the information is, or may be, being misused then it may restrict the use of the information provided or request its return.

- (2) For the purposes of ■ ICOBS 8.4.4R (2)(e) the *FCA* expects that, in the ordinary course, a person searching or making an information request will be provided with a response within one *business day* of the initial request.
- (3) In the *FCA's* view, commercial lines business does not include *employers' liability insurance* provided for retail consumers, for example, in relation to insurance taken out to cover liability in relation to domestic arrangements such as home help.

FCA notification requirements

8.4.6

R

A *firm* must:

- (1) notify the *FCA*, within one *month* of falling within ■ ICOBS 8.4.1R (2), as to whether or not it, or, if relevant, a member of the *syndicates* it manages, carries on business falling within ■ ICOBS 8.4.4R (1) and, if it does, include in that notification:
 - (a) details of the internet address of the *firm* or tracing office at which the employers' liability register is made available;
 - (b) the name of a contact person at the *firm* and their telephone number or postal address, or both; and

- (c) the period over which the *firm* or *syndicate* member provided cover under relevant *policies* or, if still continuing, the date that cover commenced; and
 - (d) the *firm's* Firm Reference Number; and
- (2) ensure that the notification in (1):
- (a) is approved and signed by a *director* of the *firm*; and
 - (b) contains a statement that to the best of the *director's* knowledge the content of the notification is true and accurate.

8.4.6A

R

A *firm* with potential liability under an excess *policy* and which satisfies the requirements in ■ ICOBS 8 Annex 1 1.1B R must notify the *FCA* before the date upon which it first seeks to rely upon that *rule* and ensure that the requirements of ■ ICOBS 8.4.6R (2) are satisfied in respect of this notification.

Requirement to make employers' liability register and supporting documents available

8.4.7

R

- (1) A *firm* must make available:
- (a) the information on the employers' liability register either:
 - (i) on the *firm's* website at the address notified to the *FCA* in ■ ICOBS 8.4.6R (1); or
 - (ii) by arranging for a tracing office which meets the conditions in ■ ICOBS 8.4.9 R to make the information available on the tracing office's website; and
 - (b) the latest *director's* certificate and the latest report prepared by an auditor for the purposes of ■ ICOBS 8.4.4R (1)(c), to a tracing office which has obtained information from the *firm* for the purposes of providing comprehensive tracing information, in accordance with ■ ICOBS 8.4.4R (2)(d), provided that the tracing office has agreed with the *firm* not to disclose confidential information in the certificate and the report to third parties, save as required by law.
- (2) If a *firm* arranges for a tracing office to make information available for the purposes of (1)(a)(ii) the *firm* must:
- (a) send to the tracing office copies of its latest *director's* certificate and report prepared by the *firm's* auditor provided that the tracing office has agreed with the *firm* not to disclose confidential information in the certificate and the report to third parties, save as required by law;
 - (b) maintain records of all the tracing information and copies of all documents it has provided to the tracing office;
 - (c) retain all legal rights in relation to the ownership and use of the information and documents provided to the tracing office to enable the *firm* to provide that information or documentation to another tracing office or to make it available itself; and
 - (d) send to the tracing office its Firm Reference Number.

- 8.4.8** **E** For the purposes of ■ ICOBS 8.4.4R (2)(d) and ■ ICOBS 8.4.7R (1)(a)(ii) the existence of published and up-to-date versions of both a certificate from the *directors* of the tracing office, stating that the tracing office has complied in all material respects with the requirements in ■ ICOBS 8.4.9R (1) to ■ (6), and a report under a *reasonable assurance engagement*, addressing the accuracy and completeness of the tracing office's database, may be relied upon as tending to establish that a *firm* has satisfied the requirement to use a tracing office which meets the conditions in ■ ICOBS 8.4.9R (1) to ■ (6).

Qualifying tracing offices

- 8.4.9** **R** The conditions referred to in ■ ICOBS 8.4.4R (2)(d) and ■ ICOBS 8.4.7R (1)(a)(ii) are that the tracing office is one which:
- (1) maintains a database which:
 - (a) accurately and reliably stores information submitted to it by *firms* for the purposes of complying with these *rules*;
 - (b) has systems which can adequately keep it up to date in the light of new information provided by *firms*;
 - (c) has an effective search function which allows a person inputting data included on the database relating to a particular employer over a particular period to retrieve information on the database relating to a potential employers' liability claim corresponding to that employer and period;
 - (2) maintains adequate records of the *director's* certificates and reports prepared by an auditor sent to it by *firms* for the purposes of complying with these *rules*;
 - (3) has effective arrangements for information security, information back up and business continuity and to prevent the misuse of data;
 - (4) accepts search requests in relation to information in (1) relating to a potential claim from:
 - (a) individuals with the potential claim, or their authorised representative; or
 - (b) the employer to whom the potential claim relates; or
 - (c) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
 - (d) a relevant *insurance intermediary* acting for an *insurer* in (c);
 - (5) provides responses to requests in (4) without delay;
 - (6) has adequate arrangements for providing to a *firm*, upon request and without delay, a full copy of the information on the database that the *firm* has provided to it;
 - (7) includes in its published annual report:
 - (a) a certificate from the *directors* of the tracing office stating whether the tracing office has complied with the requirements in (1) to (6) in relation to the period covered by the annual report; and

- (b) an independent report commissioned under a *reasonable assurance engagement* satisfying the requirement in
 - ICOBS 8.4.9A R, addressing the accuracy and completeness of the database, prepared by an auditor satisfying the requirements of
 - SUP 3.4 and ■ SUP 3.8.5 R to ■ SUP 3.8.6 R, and addressed to the *directors* of the tracing office; and
- (8) provides to a *firm* making use of the tracing office for the purposes of ■ ICOBS 8.4.7R (1)(a)(ii):
 - (a) a copy of its annual report promptly after publication; and
 - (b) upon request and without delay a full copy of the information on the database that the *firm* has provided to it.

8.4.9A R The requirement referred to in ■ ICOBS 8.4.9R (7)(b) is that the report must include an opinion from the auditor confirming whether, in all material respects, the tracing office maintains a database which accurately and reliably stores information submitted to it by *firms* for the purpose of complying with relevant requirements in ■ ICOBS 8.4 and that it has systems which can adequately keep it up to date in the light of new information provided by *firms*.

- 8.4.10** G
- (1) ■ ICOBS 8.4.4R (2)(b) and ■ ICOBS 8.4.9R (1) require a *firm*, or a tracing office used by a *firm*, to have an effective search function in relation to the employers' liability register database. In the *FCA's* view an effective search function is one which finds all matches in the register to any specified whole word.
 - (2) For the purposes of ■ ICOBS 8.4.9R (5) the term 'without delay' should have the same meaning as in ■ ICOBS 8.4.5G (2).
 - (3) In order to assist *firms* with their obligations under these *rules* the *FCA* has agreed to publish on its website at www.fca.org.uk/consumers/employers-liability-insurance a list of *persons* providing tracing office facilities which have published the *directors'* certificate and independent assurance report referred to in ■ ICOBS 8.4.9R (7).

Updating and verification requirements

- 8.4.11** R
- (1) A *firm* must notify the *FCA*:
 - (a) of any information provided to the *FCA* under ■ ICOBS 8.4.6 R or ■ ICOBS 8.4.6A R which ceases to be true or accurate; and
 - (b) of the new position, in accordance with the notification requirements in ■ ICOBS 8.4.6 R;

within one *month* of the change.
 - (2) A *firm* producing an employers' liability register must:
 - (a) update the register with any new or more accurate information falling within ■ ICOBS 8 Annex 1:
 - (i) by virtue of the entry into or renewal of, or of a claim made in relation to, a *policy*, as required by ■ ICOBS 8 Annex 1 Part 1; and

- (ii) in all other cases, by virtue of the *firm* having received that new or more accurate information;
- (b) make the updated information in (a) available, in accordance with ■ ICOBS 8.4.7 R, no later than:
 - (i) in relation to new or more accurate information arising out of the entry into or renewal of, or a claim made in relation to, a *policy*, three *months* from the date of entry, renewal or the date upon which the claim was made; and
 - (ii) in all other cases, three *months* from the date upon which the *firm* received the new or more accurate information;
- (c) update the register, no less frequently than once every three *months*, and include the date that the register was updated and a statement that the register may be relied on as up-to-date as at a date three *months* prior to the date upon which the register was updated, or such later date as applicable to the *firm*;
- (d) obtain and submit to the *FCA* a *director's* certificate:
 - (i) no later than twelve *months* after the date of the most recent *director's* certificate, obtained and submitted to the *FCA* in accordance with ■ ICOBS 8.4.4R (1)(b) or this *rule*;
 - (ii) complying with the requirements, and containing one of the statements, set out in ■ ICOBS 8.4.4R (1)(b); and
 - (iii) in relation to a version of the employers' liability register dated no more than four *months* prior to the date of the *director's* certificate;
- (e) obtain and submit to the *FCA* a report prepared by an auditor:
 - (i) no later than twelve *months* after the date of the most recent report, obtained and submitted to the *FCA* in accordance with ■ ICOBS 8.4.4R (1)(c) or this *rule*;
 - (ii) complying with the requirements set out in ■ ICOBS 8.4.4R (1)(c); and
 - (iii) in relation to a version of the employers' liability register dated no more than four *months* prior to the date of the report; and
- (f) make available, in accordance with ■ ICOBS 8.4.7 R, the *director's* statement in (d) and the report in (e) no later than four *months* after the effective date of the version of the register to which they relate, in place of the previous certificate and report.

8.4.12

G

For the purposes of ■ ICOBS 8.4.11R (2)(c) a *firm* is required to include the date at which it updates the register. However, depending on the *firm's* processes for making information available for the purposes of ■ ICOBS 8.4.11R (2)(b), the register may only be relied upon as being up-to-date as at a date three *months* prior to the date on which the *firm* has updated the register, or such lesser period as applicable to the *firm* as is consistent with the *firm's* processes. ■ ICOBS 8.4.11R (2)(c) requires the *firm* to include a statement as to the date at which the register may be relied upon as containing up-to-date information which can be no earlier than three *months* prior to the new date on the register, but may be later depending on the *firm's* circumstances.

- 8.4.12A **R**
- (1) For the purposes of ■ ICOB8 8.4.11R (2)(a), ■ 8.4.11R (2)(b) and ■ ICOB8 8 Annex 1 a claim is deemed to be made in relation to a *policy* at the date on which the *firm* establishes, or otherwise accepts, that it has provided relevant cover under the *policy*, and is therefore potentially liable subject to the terms of the *policy*.
 - (2) A *firm* must use reasonable endeavours to establish whether it has provided relevant cover:
 - (a) within three *months* of being notified of a potential claim; or
 - (b) if that is not possible, as soon as is reasonably practicable thereafter.

Transfers of insurance business

- 8.4.13 **R**
- The transferor in an *insurance business transfer scheme* must provide the transferee with the information and documents the transferor holds in compliance with ■ ICOB8 8.4 in respect of the insurance business transferred.

Requirement to conduct effective searches for historical policies

- 8.4.14 **R**
- A *firm* with actual or potential liability for *United Kingdom* commercial lines *employers' liability insurance* claims must take reasonable steps to conduct effective searches of their records when they receive a request to carry out a search for a historical *policy* from persons falling into one of the categories in ■ ICOB8 8.4.4R (2)(c) or a tracing office which meets the conditions in ■ ICOB8 8.4.9 R.

- 8.4.15 **R**
- A *firm* must put in place a written policy for complying with ■ ICOB8 8.4.14 R and operate in accordance with it. The policy must cover at least the following matters:
- (1) details of where the *firm's* historical *policies* are held or are likely to be held (including details of records which are archived or stored off site);
 - (2) details of the different types of records to be searched by the *firm*, such as electronic files, paper files, and microfiche; and
 - (3) details of how the searches will be carried out, including a description of how and in what circumstances the *firm* may decide not to conduct a search.

- 8.4.16 **R**
- (1) When a *firm* receives a request under ■ ICOB8 8.4.14 R, from a qualifying tracing office, it must provide a response, in writing, to the requestor within one *month* of receiving the request.
 - (2) This rule does not apply when the *firm* has conducted a search but no historical *policies* have been found.
 - (3) When a *firm* receives a request under ■ ICOB8 8.4.14 R, other than from a qualifying tracing office, it must provide a response, in writing, to the requestor within two *months* of receiving the request in accordance with ■ ICOB8 8.4.17 R.

8.4.17

R

- (1) Where a *firm* has established that a historical *policy* does exist, the response should confirm what cover was provided and set out any available information that is relevant to the request received.
- (2) Where there is evidence to suggest that a historical *policy* does exist, but the *firm* is unable to confirm what cover was provided, the response should set out any information relevant to the request and describe the next steps (if any) the *firm* will take to continue the search.
- (3) Subject to ■ ICOBS 8.4.16R (2), where the *firm* has conducted a search, but no historical *policies* have been found, the response should set this out clearly and explain that reasonable steps were taken to conduct an effective search.

Employers' liability register

See ■ ICOBS 8.4.4R (1)(a).

Part 1 In relation to information to be included in the employers' liability register

- | | | |
|------|---|--|
| 1.1 | R | <p>A <i>firm</i> must:</p> <ol style="list-style-type: none"> (1) for each <i>policy</i> it enters into or renews on or after 1 April 2011, include, in relation to that <i>policy</i>, all the information required by the form in 1.2R, in accordance with the notes; (2) for each <i>policy</i> not falling in (1) and in relation to which a claim is made on or after 1 April 2011, include, in relation to that <i>policy</i>, all the information required by the form in 1.2R that the <i>firm</i> holds, in accordance with the notes; and (3) in relation to (1) and (2) include the notes set out in 1.2R. |
| 1.1A | R | <p>A <i>firm</i> is not required to include information required by 1.1R(1) and (2) to the extent that it relates to the <i>firm's</i> potential liability as a co-insurer, other than as the lead <i>insurer</i>, under a co-insurance arrangement satisfying the following conditions:</p> <ol style="list-style-type: none"> (1) the risk is covered by a single contract at an overall premium and for the same period by two or more <i>insurers</i> each for its own part; (2) one of the <i>insurers</i> is the lead <i>insurer</i> who is treated as if it were the <i>insurer</i> covering the whole risk; (3) the lead <i>insurer</i> fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating; (4) the <i>firm</i> has entered into and maintains with the lead <i>insurer</i> up-to-date written agreements identifying the <i>policies</i> in relation to which the <i>firm</i> is a co-insurer of the lead <i>insurer</i> and the proportions of the risk for which the co-insurer is responsible; and (5) the <i>firm</i> is satisfied that the lead <i>insurer</i> complies with the requirements in 1.1R(1) and (2) in relation to the co-insured <i>policies</i>. |
| 1.1B | R | <p>A <i>firm</i> is not required to include information required by 1.1R(1) and (2) to the extent that it relates solely to the <i>firm's</i> potential liability under an excess <i>policy</i> where another <i>insurer</i> has principal liability for the risk, and the following conditions are satisfied:</p> <ol style="list-style-type: none"> (1) the principal <i>insurer's</i> maximum liability under the primary <i>policy</i> covering the risk is for no less than £5,000,000 in relation to a single event; (2) the <i>firm</i> has no liability to potential claimants until those claimants have exhausted their remedies against the principal <i>insurer</i>; and (3) the <i>firm</i> has adequate arrangements for identifying and recording the <i>policies</i> in relation to which the <i>firm</i> provides excess cover under an excess <i>policy</i>. |
| 1.1C | R | <p>A <i>firm</i> is not required to include the employer reference number (ERN) required by 1.1R(1) and (2) if the following conditions are met:</p> <ol style="list-style-type: none"> (1) the <i>firm</i> has not been able to obtain that information solely due to failures by parties outside the <i>firm's</i> control; and |

		(2)	the <i>firm</i> has used and continues to use its best endeavours to obtain the information, other than refusing to provide cover to an employer solely because it has not provided the information requested.
1.1D	G	(1)	To help to demonstrate that it has used its best endeavours, a <i>firm</i> should consider: <ul style="list-style-type: none"> (a) appointing an <i>approved person</i> with appropriate seniority within the <i>firm</i> to be responsible for agreeing and signing off the <i>firm's</i> approach to obtaining employee reference numbers; (b) establishing an appropriate framework for collecting employee reference numbers and monitoring of compliance with ICOBS 8.4.4 R. The framework should be documented and should include the following matters (this is not an exhaustive list): <ul style="list-style-type: none"> (i) collection procedures which are subject to regular reviews; (ii) appropriate compliance monitoring, and production and review of management information; (iii) regular meetings between those responsible for operational collection; (iv) escalation of compliance issues on a timely basis; and (v) appropriate use of internal and external communication to promote the importance of ERN compliance; (c) implementing and maintaining appropriate: <ul style="list-style-type: none"> (i) internal audit measures to ensure ERN collection procedures are being followed internally and by the <i>firm's</i> intermediary partners; and (ii) controls to ensure any issues identified through the audit process are followed up and corrected within appropriate timescales; (d) updating terms of business agreements to cover ERN collection.
		(2)	It is the responsibility of each <i>firm</i> to decide what processes to use to obtain the ERN based on what is appropriate and proportionate for that <i>firm</i> , taking into account the volume of policies, type of business written and the distribution channels used to write that business.
1.2	R	FORM	
Part 2 In relation to information not required to be included			
2.1	R		A <i>firm</i> carrying out contracts of insurance, in relation to which information is not required to be included in the register under <i>FCA rules</i> , must, beneath the form in 1.2R, state the following, where applicable, tailored as necessary to the <i>firm's</i> circumstances: <p>“We have potential liability for policies under which UK commercial lines employers’ liability cover has been provided to employers and which commenced or were renewed before 1 April 2011 and in respect of which no claims were made on or after 1 April 2011. However, we are not required to make details of those policies available in this register under <i>FCA rules</i>. Enquiries may be made about these policies by individual claimants, their authorised representatives, or insurers or their insurance intermediaries, with potential claims, by contacting [insert contact details]”</p>
2.1A	R		A <i>firm</i> with potential liability as a co-insurer and which satisfies the requirements of 1.1AR must tailor the statement in 2.1R to include reference to the following: <ul style="list-style-type: none"> (1) that the <i>firm</i> has potential liability for <i>policies</i> under which UK commercial lines employers’ liability cover has been provided to employers for which the <i>firm</i> was co-insurer, but not lead insurer, but that the <i>firm</i> is not

		required to make details of those <i>policies</i> available in the register under <i>FCA</i> rules; and
2.1B	R	<p>(2) responsibility for making information available in relation to <i>policies</i> to which (1) applies is with the lead insurer.</p> <p>A <i>firm</i> with potential liability under an excess <i>policy</i> and which satisfies the requirements of 1.1BR must tailor the statement in 2.1R to include reference to the following:</p> <p>(1) that the <i>firm</i> has potential liability for <i>policies</i> under which <i>UK</i> commercial lines employers' liability cover has been provided to employers for which it provides cover only in excess of that provided by another <i>insurer</i> (and where the principal cover is for £5m or more) but that the <i>firm</i> is not required to make details of those <i>policies</i> available in the register under <i>FCA</i> rules; and</p> <p>(2) responsibility for making information available in relation to the <i>policy</i> providing the principal cover is with the principal <i>insurer</i>.</p>
2.2	G	The purpose of 2.1R, 2.1AR and 2.1BR is to inform users of the register that the <i>firm</i> may be potentially liable in relation to <i>policies</i> other than those on the register. However, a <i>firm</i> may include <i>policies</i> additional to those entered into, renewed, or in relation to which a claim was made, after April 2011, in the register. If it does, the statement in 2.1R, 2.1AR or 2.1BR may be amended as necessary to refer to the <i>policies</i> that are not included.

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ICOBS TP 1 Transitional Provisions

Consolidated Motor Insurance Directive		
1	R	In relation to a claim by an <i>injured party</i> received by a <i>motor vehicle liability insurer</i> or its claims representative on or before 10 June 2007, the motor vehicle liability claims handling <i>rules</i> (see ICOBS 8.2.6 R to ICOBS 8.2.11 G) only apply if the claim results from an accident occurring in an <i>EEA State</i> other than the <i>injured party's EEA State</i> of residence which was caused by the use of a <i>vehicle</i> insured through an establishment in, and <i>normally based</i> in, an <i>EEA State</i> other than the <i>injured party's EEA State</i> of residence.
[FCA]		
Initial disclosure document		
2		Expired
3		Expired
4		Expired
5		Expired
Series of events		
6	R	If, for a <i>connected travel insurance intermediary</i> , the application of any provision in this sourcebook is dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 1 January 2009.
[FCA]		
Employers' liability insurance: disclosure by insurers		
7		Expired
8		Expired
8A		Expired
8B	R	Expired
[FCA]		
8C	G	Expired
[FCA]		
9		Expired
9A	R	Expired
[FCA]		
9B	G	Expired
[FCA]		
10		Expired
10A		Expired
11		Expired
12		Expired
13	R	For the purposes of ICOBS 8.4.11R (2)(a), ICOBS 8.4.11R (2)(b), ICOBS 8.4.12A R, ICOBS 8 Annex 1, TP 8, TP 8B and TP 9, in relation to references to claims made in relation to <i>policies</i> :
[FCA]		

-
- (1) for claims received by a *firm* prior to 1 April 2011 which have not been settled as at 1 April 2011, those claims must be treated, for the purposes of the above *rules*, as having been made on or after 1 April 2011, and for the purposes of the above *rules*, the *firm* must include information in the form in ICOBS 8 Annex 1.1.2 R, in accordance with and including the notes, held by the *firm* (with the exception of information within TP 8R(1)(d) until 1 April 2012) within three *months* of the date upon which the claim was settled, on or after 1 April 2011; and
 - (2) if, as at 1 April 2011, a *firm's* systems record claims by reference to the date the claim was created in the *firm's* systems or the date upon which it was settled, then, notwithstanding ICOBS 8.4.12A R, that *firm* may treat references to the date that a claim was made as a reference to the date that the claim was created in the *firm's* systems, or if applicable to the *firm*, the date that the claim was settled.

TP 13R(2) applies until 1 April 2013.

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ICOBS TP 2 Other Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	ICOBS 4.5.1 G	R	Expired		
2	ICOBS 4.5	R	Expired		
3	ICOBS 6A.2.1R(1) to (3)	R	<p>A <i>firm</i> need not comply with ICOBS 6A.2.1R(1) to (3) in relation to an automatic renewal of an agreement for an optional additional product which was entered into on or before 31 March 2016 provided:</p> <p>(1) the automatic renewal of the agreement is on substantially the same terms. The phrase “on substantially the same terms” is to be interpreted in the same way as in ICOBS 6A.2.1R (10)(b) and (c).</p> <p>(2) on the occasion of the first automatic renewal on or after 1 April 2016, the <i>firm</i> takes reasonable steps to ensure that the <i>customer</i> is informed:</p> <p>(a) that the renewal of the agreement is optional;</p> <p>(b) that the <i>customer</i> may elect not to renew the agreement; and</p> <p>(c) of the effect of the non-renewal of the agreement, if any, on the <i>non-investment insurance contract</i>; and</p> <p>(3) the procedure to be used by <i>customers</i> for electing not to renew the agreement pays due regard to the interests of <i>customers</i> and treats them fairly.</p>	From 1 April 2016	On 1 April 2016
4	ICOBS 2.5.2AR	R	An <i>insurer</i> need not comply with ICOBS 2.5.2AR for contracts entered into or variations agreed before 1 August 2017.	From 1 August 2017	On 1 August 2017

Insurance: Conduct of Business

Schedule 1 Record keeping requirements

Sch 1 G

Notes

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
ICOBS 1 Annex 1 G, Part 2 3.1R(3)	Record of election to comply with <i>COBS rules</i> for pure protection policies (including amendment or reversal)	Date of election and precise description of parts of the <i>firm's</i> business that will comply with <i>COBS</i> provisions	Not specified	Indefinitely
ICOBS 5.1.3B R	Eligibility	Details of whether the <i>customer</i> is eligible to claim each of the benefits under each <i>policy</i> included in the <i>packaged bank account</i>	Date of eligibility assessment	3 years
ICOBS 5.3.2B R	Suitability and recommendation given	Details of whether each <i>policy</i> included in the <i>packaged bank account</i> is suitable for the <i>customer's</i> demand and needs, the recommendation given and the reasons for the recommendation	Date of recommendation	3 years

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Schedule 2 Notification requirements

Sch 2.1 G

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
ICOBS 8.4.4 R (1)(b), ICOBS 8.4.4 R (3), ICOBS 8.4.11 R (2)(d)	A statement satisfying the requirements of ICOBS 8.4.4 R (1)(b)	A statement satisfying the requirements of ICOBS 8.4.4 R (1)(b)	Obtaining a statement satisfying the requirements of ICOBS 8.4.4 R (1)(b)	Four <i>months</i> from the date of the version of the register being commented on in accordance with ICOBS 8.4.4 R (3) or ICOBS 8.4.11 R (2)(d)
ICOBS 8.4.4 R (1)(c), ICOBS 8.4.4C R, ICOBS 8.4.4 R (3), ICOBS 8.4.11 R (2)(e)	A report satisfying the requirements of ICOBS 8.4.4C R	A report satisfying the requirements of ICOBS 8.4.4C R	Obtaining a report satisfying the requirements of ICOBS 8.4.4C R	Four <i>months</i> from the date of the version of the register being reported on in accordance with ICOBS 8.4.4 R (3) or ICOBS 8.4.11 R (2)(e)
ICOBS 8.4.6 R	Whether or not business falling within ICOBS 8.4.4 R (1) is being carried out	Statement by <i>director</i> that, to the best of the <i>director's</i> knowledge, content is true and accurate, and if relevant details of the internet address at which the employers' liability register is made available, the <i>firm's</i> contact details and the period over which the <i>firm</i> or <i>syndicate</i> member provided cover under relevant <i>policies</i> .	<i>Firms</i> or <i>syndicate</i> members <i>carry out contracts of insurance</i> which are <i>general insurance contracts</i>	One <i>month</i>

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
ICOBS 8.4.6A R	That the <i>firm</i> has potential liability under an excess <i>policy</i> and satisfies the requirements and relies on the provisions in ICOBS 8 Annex 1.1.1BR	A statement that the <i>firm</i> has potential liability under an excess <i>policy</i> ; satisfies the requirements and relies on the provisions in ICOBS 8 Annex 1.1.1BR	<i>Firm</i> relies on ICOBS 8 Annex 1.1.1BR	Prior to reliance on ICOBS 8 Annex 1.1.1BR
ICOBS 8.4.11 R	Changes to the accuracy of the contents of the notification in ICOBS 8.4.6 R (1) or ICOBS 8.4.6A R	Details of the change and of the new position	Changes to the accuracy of a notification made under ICOBS 8.4.6 R or ICOBS 8.4.6A R	Within one <i>month</i> of the change

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Schedule 3 Fees and other required payments requirements

Sch 3.1 G

There are no requirements for fees or other payments in *ICOBS*.

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Schedule 4 Powers exercised

Sch 4.1 G
[deleted]

Sch 4.2 G
[deleted]

Insurance: Conduct of Business

Schedule 5 Rights of action for damages

Sch 5.1 G

The table below sets out the *rules* in *ICOBS* contravention of which by an *authorised person* may be actionable under Section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a *private person* under Section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 G

Rule	Right of action under Section 138D		
	For private person?	Removed?	For other person?
All rules in <i>ICOBS</i> with the status letter "E"	No	No	No
Any rule in <i>ICOBS</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or restricting any duty or liability	Yes	No	Yes Any other person
ICOBS 8.2.9 R	Yes	No	Yes Any other person
All other rules in <i>ICOBS</i>	Yes	No	No

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Schedule 6 Rules that can be waived

Sch 6.1 G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

