

**Insurance: Conduct of Business**

## 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* it must ensure that is clear, fair and not misleading.  
 [Note: article 17(2) of the *IDD*]

### Marketing communications

- 2.2.2A **R** A *firm* must ensure that, in relation to *insurance distribution*, marketing communications are always clearly identifiable as such.  
 [Note: article 17(2) of the *IDD*]

### 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.
- 2.2.3A **G**
- (1) The effect of section 55NA of the *Act* is that a *firm* is unable to approve a *financial promotion* unless:
    - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
    - (b) an *approver permission exemption* applies.
  - (2) ■ SUP 6A contains *guidance* on applying for *approver permission*.

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

2.2.4

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- (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.

**Sustainability-related claims: guidance on the clear, fair and not misleading rule**

2.2.4A

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A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves* a *financial promotion* that references the *sustainability characteristics* of a product or service.

**The reasonable steps defence**

2.2.5

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If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it is fair, clear and not misleading then:

- (1) the *firm* will not contravene ■ ICOBS 2.2.2R where:
  - (a) the recipient is a *customer* that does not make the arrangements preparatory to the conclusion of the *contract of insurance*; or
  - (b) the communication is made in relation to activities other than *insurance distribution*; and
- (2) a contravention of the clear, fair and not misleading rule (■ ICOBS 2.2.2R) does not give rise to a right of action under section 138D of the Act.

## 2.3 Inducements

### 2.3.1

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- (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:
  - (a) *Principles 1* and *6* to act with integrity and treat customers fairly; and
  - (b) the *customer's best interests rule*.
- (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

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### 2.4.1

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- (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 Acting honestly, fairly and professionally, exclusion of liability, conditions and warranties**

**2.5.-1** **R** A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *customer*.  
 [Note: article 17(1) of the *IDD*]

**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*, including the *customer's best interests 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.

**Other requirements**

2.5.4 **G** *Firms* are reminded of their obligations in ■ SYSC 19F.2 to ensure remuneration arrangements do not conflict with their duty to act in the *customer's best interests*.

2.5.5 **G** *Firms* are reminded that for *non-investment insurance contracts*, their obligations under the *customer's best interests rule* (and in ■ SYSC 19F.2 and ■ PROD 4) will include consideration of the interests of any *policy stakeholder* of which the *firm* should be aware (which, in relation to a *multi-occupancy building insurance contract*, will include any *leaseholder*).

**Customer's best interests rule and third-party incentives**

2.5.6 **G** (1) A *firm* that offers incentives to third parties in connection with a *non-investment insurance contract* should consider whether doing so conflicts with its obligations under the *customer's best interests rule*, including whether this is consistent with the interests of *policyholders* and any *policy stakeholder* in relation to a *multi-occupancy building insurance contract*.

(2) A 'third party incentive' is a benefit offered to any third party, with a view to that *firm*, or that *person*, adopting a particular course of action (for a *customer*, this includes taking out a particular *contract of insurance*), or which could be perceived as having that effect. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.

## 2.6 Distribution of connected contracts through exempt persons

### 2.6.1

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(1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met.

(1) The requirements referred to in (1) are:

- (a) ■ SYSC 19F.2 (Remuneration and insurance distribution activities);
- (b) ■ ICOB5 2.2.2R and ■ ICOB5 2.2.2AR (Clear, fair and not misleading rule and marketing communications);
- (c) ■ ICOB5 2.5.-1R (Customer’s best interests);
- (d) ■ ICOB5 4.1.2R(1)(a) and (c) (Status disclosure: general information provided by insurance intermediaries or insurers);
- (e) ■ ICOB5 5.2 (Demands and needs);
- (f) ■ ICOB5 6.1.5R(4) (Ensuring customers can make an informed decision: the appropriate information rule);
- (g) ■ ICOB5 6.1.10AR (How must IPID information be provided?) (see also ■ ICOB5 6.1.10BG); and
- (h) ■ ICOB5 6A.3 (Cross-selling).

[Note: article 1(4) of the *IDD*]

### 2.6.2

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To comply with the relevant chapter of *SYSC* or *Principle 3*, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with ■ ICOB5 2.6.1R.



## 2.7 Customers in financial difficulty

### Purpose

2.7.1 **G** The purpose of the *guidance* in this section is to give the *FCA's* view on the outcomes *firms* should aim to achieve and actions they should take to deliver good outcomes for *customers* experiencing financial difficulties.

2.7.2 **G** The *guidance* complements:

- (1) *Principle 12*, which requires *firms* to act to deliver good outcomes for *retail customers*;
- (2) the obligations in ■ PRIN 2A (the Consumer Duty), including in particular the *rules* in ■ PRIN 2A.2 (cross-cutting obligations), ■ PRIN 2A.5 relating to communication, interacting on a one-to-one basis and adapting communication, ■ PRIN 2A.6 (Consumer Duty: retail customer outcome on consumer support) and expected standards in ■ PRIN 2A.7; and
- (3) the *customer's best interests rule*.

However, it is not, and does not seek to be, a complete exposition of all of a *firm's* responsibilities to *customers* experiencing financial difficulties, nor does it alter, replace or substitute applicable *rules, guidance* or law, including those in relation to credit agreements.

2.7.3 **G** The *guidance* does not set expectations in relation to *contracts of large risks* distributed to *commercial customers*. However, *firms* distributing *contracts of large risks* to *commercial customers* continue to be subject to *FCA rules* (including the *principles*) referred to in ■ ICOBS 2.7.2G in relation to that business, and will need to continue to consider what those *rules* may require of those *firms* in their particular circumstances.

### Outcomes firms should aim to achieve

2.7.4 **G** Where a *firm* identifies a *customer* in financial difficulty, the *firm* should:

- (1) provide or ensure that the *customer* is provided with good outcomes-focused support that is appropriate given the needs and characteristics of the *customer* to:
  - (a) reduce the impact of the financial difficulty on the *customer*;
  - (b) enable the *customer* to maintain an appropriate level of insurance that the *customer* can afford; and

(c) reduce, as far as reasonably possible, the risk of the *customer* losing appropriate insurance cover that is important to the *customer*; and

(2) ensure the *customer* has an appropriate level of information about the option or options available to them in good time and in an understandable format to enable the *customer* to make an informed decision.

**2.7.5** **G** The options available to, and the level of support reasonably expected to be provided by, *firms* to achieve the outcomes in **■ ICOBS 2.7.4G** will vary, depending on the nature of the *firm's* relationship with the *customer*, the *firm's* role in the distribution chain, the type of and characteristics of the *customer* and the type of product.

**2.7.6** **G** *Firms* are reminded that the level of support needed for *customers* who have characteristics of vulnerability may be different from that for others; *firms* should take particular care to ensure they act to deliver good outcomes for those *customers*.

**2.7.7** **G** In relation to *Principle 12* and **■ PRIN 2A** (the Consumer Duty), *firms* are reminded of their responsibilities as a *firm* in a product's distribution chain, including in **■ PRIN 2A.1.14G**, **■ PRIN 2A.1.15G** and **■ PRIN 3.2.7R**.

**2.7.8** **G** When considering outcomes, *firms* should also consider:

- (1) the purpose of the *policy* and the interests of all *policyholders*; and
- (2) whether there are any relevant duties or obligations the *customers* may owe to others in connection with the *policy* that should be taken into account. For example, where a property owner may be subject to a duty to leaseholders and others around adequate insurance cover being in place for the property.

**Signposting to customers**

**2.7.9** **G** *Firms* should take reasonable steps to make *customers* aware of, and help them to understand, the support available to them in the event that they experience financial difficulty, and also to enable those *customers* to easily contact the *firm*. This includes, but is not limited to:

- (1) including sufficiently prominent information:
  - (a) in the *firm's* general communications, including the *firm's* website, software applications, letters, telephone recorded messages and other channels of communication;
  - (b) in communications to *customers* which could be relevant to potential financial difficulties experienced by the *customers* – for example, in communications to *customers* about missed payments;
- (2) making it easier for *customers* to contact them when they need help by considering the different communication needs of *customers* (for

example, those needing to communicate through channels other than electronic means, such as websites, webchats and email).

**2.7.10** **G** Where the *firm* has reason to believe that the *customer* is, or is likely to be, experiencing financial difficulty, the *firm* should take reasonable steps to make the *customer* aware of, and help them to understand, the support available (whether or not a *customer* has contacted the *firm* in relation to their financial difficulty).

**Identifying customers experiencing financial difficulty**.....

**2.7.11** **G** There are a number of circumstances in which *firms* may have reason to believe that a *customer* is, or is likely to be, experiencing financial difficulty. In particular, *firms* should include consideration of circumstances where:

- (1) *customers* contact the *firm*:
  - (a) wanting to reduce their insurance cover (whether having paid in full or on a monthly basis); and/or
  - (b) asking about their insurance cover in a manner that indicates they may have financial difficulties, or about *premium* payments, including where they have difficulty paying the *premium*;
- (2) *customers* have missed payments, even where they have not contacted the *firm* about possible financial difficulties. A *firm* should not cancel a *customer's policy* solely because of missed payments without first considering options to support the *customer*;
- (3) there are other indications (whether the *customer* has contacted the *firm* directly or not) that the *customer* is, or is likely to be, experiencing financial difficulty (for example, where the *customer* has requested cancellation of insurance cover that is important to the *customer*).

**Options firms should consider**.....

**2.7.12** **G** Options which *firms* should consider to ensure they meet the relevant obligations under the *rules*, including to act to deliver good outcomes (which may be used in combination with each other), include but are not limited to:

- (1) whether there are other products that provide an appropriate level of insurance cover for the *customer* at a price the *customer* can afford and revise the existing cover accordingly;
- (2) adjusting cover to take account of the change in the *customer's* financial circumstances. This could be done on a short-term basis (affecting a period within the *policy* cover period) or for the longer term (affecting the entirety of the remainder of the *policy* cover period);
- (3) working with *customers* to help them avoid the need to cancel cover that is important to them;
- (4) re-assessing the risk profile of the *customer*. It might be that some *customers' risk* profiles have changed since purchasing the *policy* and *customers* could potentially be offered lower *premiums*; and

- (5) considering whether it is appropriate to require the *customer* to pay all contractual fees or charges in circumstances where the *firm* not relying on these contractual provisions would be needed to provide fair treatment in the *customer's* best interests.
- (6) considering whether in the particular circumstances (see ■ ICOB 2.7.5G) it would be appropriate to refer the *customer* to another *firm* in the distribution chain who is in a better position to support the *customer*.

- 2.7.13 G For shorter-term adjustments, *firms* should take reasonable steps to ensure that they re-assess the *customer's* situation when that short-term period comes to an end to ensure the *customer* continues to have an appropriate level of insurance. For example, by introducing an expiry date for any changes to a *policy* and reviewing the situation on expiry, or by inviting *customers* to contact the *firm* when their financial circumstances have improved sufficiently.
- 2.7.14 G Depending on the circumstances, options could range from consideration of a single *policy* to a more holistic approach considering all the *policies* a *customer* has with the *firm*. *Firms* should consider if it is appropriate to take steps for all *policies* that the *customer* holds with the *firm*.
- 2.7.15 G When setting out the options available to a *customer*, *firms* should include an appropriate level of information about each option, including:
  - (1) where the option includes possible changes to insurance cover or to a different *policy*, what the possible changes are, the effect of the changes on the *customer*, the period of time the changes might apply for, the main exclusions where claims would no longer be able to be made, and the change in the costs to the *customer* or to their payment plan;
  - (2) the effect on *premiums* paid and still due, and on any interest owed; and
  - (3) any cancellation or adjustment fees and charges associated with the options.
- 2.7.16 G *Firms* are reminded that other *rules* in *ICOB* – for example, those relating to specifying the demands and needs of the *customer* (■ ICOB 5.2.1R), the appropriate information *rule* which applies at all of the different stages of a contract (■ ICOB 6.1.5R), and renewal (■ ICOB 6.5) – may also be relevant to the *firm* in relation to the options available to the *customer*.