

Chapter 2

General matters



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.