

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 Demands and needs

Application: who? what?

5.2.1 **R** This section applies to an *insurance distributor* when carrying on *insurance distribution activities*.

Demands and needs

5.2.2 **R**

- (1) Prior to the conclusion of a *contract of insurance* a *firm* must specify, on the basis of information obtained from the *customer*, the demands and the needs of that *customer*.
- (2) The details must be modulated according to the complexity of the *contract of insurance* proposed and the type of *customer*.
- (3) A statement of the demands and needs must be communicated to the *customer* prior to the conclusion of a *contract of insurance*.

[Note: articles 20(1) and 20(2) of the *IDD*]

5.2.2A **G** A *firm* may obtain information from the *customer* in a number of ways including, for example, by asking the *customer* questions in person or by way of a questionnaire prior to any *contract of insurance* being proposed.

5.2.2B **R** When proposing a *contract of insurance* a *firm* must ensure it is consistent with the *customer's* insurance demands and needs.

[Note: recital 44 to, and article 20(1) of, the *IDD*]

5.2.2C **G** ■ ICOBS 5.2.2BR applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, in connection with another *contract of insurance*, or in connection with other goods or services.

5.2.2D **R** The sale of a *contract of insurance* must always be accompanied by a demands and needs test on the basis of information obtained from the *customer*.

[Note: recital 44 to, and article 20(1) of, the *IDD*]

5.2.3 **R** [deleted]

Format of the statement of demands and needs: non-advised sales

5.2.4

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Once the *firm* has obtained information from the *customer* and ensured the *contract of insurance* is consistent with the demands and needs, 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, for whose demands and needs the contract is consistent. 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"; and
- (3) giving a *customer* a record of all his demands and needs that have been discussed

Means of communication to customers

5.2.5

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The information to be provided to customers in ■ ICOBS 5.2 must be given in accordance with ■ ICOBS 4.1A (Means of communication to customers).

[Note: article 23(1) of the *IDD*]

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 judgement.

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 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;
- (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:

- (1) 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; or
- (2) a *personal recommendation* on the basis of a fair and personal analysis, it must give that *personal recommendation* on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a *personal recommendation*;

and in each case, it must be in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer’s needs.[**Note:** article 20(1) third paragraph of the *IDD*]

Personalised explanation

5.3.4 **R** Where a *firm* provides a *personal recommendation* (other than in relation to a *connected travel insurance contract*) the *firm* must, in addition to the statement of demands and needs, provide the *customer* with a personalised explanation of why a particular *contract of insurance* would best meet the *customer’s* demands and needs.

[**Note:** article 20(1) third paragraph of the *IDD*]

Means of communication

5.3.5 **R** A *firm* must provide the information in this section in accordance with **ICOBS 4.1A** (Means of communication to customers).

[**Note:** article 23(1) of the *IDD*]

