Chapter 5

Identifying client needs and advising
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.

Eligibility to claim benefits: policies 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 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 (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 provided in accordance with this rule, ICOBS 6.1.7-AG(2), ICOBS 6A.4.5R(1) and ICOBS 6A.4.7G; 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 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 This section applies to an insurance distributor when carrying on insurance distribution activities.

Demands and needs

5.2.2 (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 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 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 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 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 [deleted]
Format of the statement of demands and needs: non-advised sales

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

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 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 (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 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]