Chapter 8

Claims handling
8.1 Insurers: general

8.1.1 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 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  (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  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  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  
(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  
[deleted]

8.2.2A  
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  
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

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]

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

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

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.
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 and article 3 of the Consolidated Motor Insurance Directive]

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, the vehicle's, insurers.
8.3 Insurance intermediaries (and insurers handling claims on another insurer’s policy)

Application: who?

8.3.1 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 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 (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  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 SUP 16.23A;

(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 SUP 16.23A.5R; 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

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) [deleted]
   
   (c) [deleted]
   
1A. [deleted]

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) [deleted]

(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 [deleted]

8.4.4B  G [deleted]

8.4.4C  R [deleted]

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 prepared in accordance with ■ SUP 16.23A.5R(1) and the latest report prepared by an auditor for the purposes of ■ SUP 16.23A.6R(1), 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.

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

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;
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.

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.

(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  

(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;

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 ICOBS 8.4.11R (2)(a), ICOBS 8.4.11R (2)(b) and ICOBS 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 ICOBS 8 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 ICOBS 8.4.4R (2)(c) or a tracing office which meets the conditions in ICOBS 8.4.9 R.

8.4.15 R

A firm must put in place a written policy for complying with ICOBS 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 ICOBS 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 ICOBS 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 ICOBS 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 8.4.16 R (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 A firm must:

(1) for each policy it enters into or renews on or after 1 April 2011, include, in relation to that policy, all the information required by the form in 1.2R, in accordance with the notes;

(2) for each policy not falling in (1) and in relation to which a claim is made on or after 1 April 2011, include, in relation to that policy, all the information required by the form in 1.2R that the firm 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 A firm is not required to include information required by 1.1R(1) and (2) to the extent that it relates to the firm’s potential liability as a co-insurer, other than as the lead insurer, under a co-insurance arrangement satisfying the following conditions:

(1) the risk is covered by a single contract at an overall premium and for the same period by two or more insurers each for its own part;

(2) one of the insurers is the lead insurer who is treated as if it were the insurer covering the whole risk;

(3) the lead insurer fully assumes the leader’s role in co-insurance practice and in particular determines the terms and conditions of insurance and rating;

(4) the firm has entered into and maintains with the lead insurer up-to-date written agreements identifying the policies in relation to which the firm is a co-insurer of the lead insurer and the proportions of the risk for which the co-insurer is responsible; and

(5) the firm is satisfied that the lead insurer complies with the requirements in 1.1R(1) and (2) in relation to the co-insured policies.

1.1B R A firm is not required to include information required by 1.1R(1) and (2) to the extent that it relates solely to the firm’s potential liability under an excess policy where another insurer has principal liability for the risk, and the following conditions are satisfied:

(1) the principal insurer’s maximum liability under the primary policy covering the risk is for no less than £5,000,000 in relation to a single event;

(2) the firm has no liability to potential claimants until those claimants have exhausted their remedies against the principal insurer; and

(3) the firm has adequate arrangements for identifying and recording the policies in relation to which the firm provides excess cover under an excess policy.

1.1C R A firm is not required to include the employer reference number (ERN) required by 1.1R(1) and (2) if the following conditions are met:

(1) the firm has not been able to obtain that information solely due to failures by parties outside the firm’s control; and
the firm 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 firm should consider:

(a) appointing an approved person with appropriate seniority within the firm to be responsible for agreeing and signing off the firm’s 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):

(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:

(i) internal audit measures to ensure ERN collection procedures are being followed internally and by the firm’s 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 firm to decide what processes to use to obtain the ERN based on what is appropriate and proportionate for that firm, 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 firm carrying out contracts of insurance, in relation to which information is not required to be included in the register under FCA rules, must, beneath the form in 1.2R, state the following, where applicable, tailored as necessary to the firm’s circumstances:

“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 FCA rules. 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]”

2.1A R A firm 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:

(1) that the firm has potential liability for policies under which UK commercial lines employers’ liability cover has been provided to employers for which the firm was co-insurer, but not lead insurer, but that the firm is not
2.1B R

A firm with potential liability under an excess policy and which satisfies the requirements of 1.1BR must tailor the statement in 2.1R to include reference to the following:

1. that the firm has potential liability for policies under which UK commercial lines employers’ liability cover has been provided to employers for which it provides cover only in excess of that provided by another insurer (and where the principal cover is for £5m or more) but that the firm is not required to make details of those policies available in the register under FCA rules; and

2. responsibility for making information available in relation to the policy providing the principal cover is with the principal insurer.

2.2 G

The purpose of 2.1R, 2.1AR and 2.1BR is to inform users of the register that the firm may be potentially liable in relation to policies other than those on the register. However, a firm may include policies 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 policies that are not included.