

**Insurance: Conduct of Business**

## Chapter 8

# Claims handling

**8.1 Insurers: general**

8.1.1

**R**

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

**R**

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** **G** (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** **R** 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** **R** 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

**R**

- (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

**G**

[deleted]

8.2.2A

**R**

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

**R**

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

8.2.3

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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*]

8.2.4

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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

8.2.5

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(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

8.2.6

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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.

[Note: article 22 of the *Consolidated Motor Insurance Directive* and article 3 of the *Consolidated Motor Insurance Directive*]

- 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*. Regulation 6 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 makes this *rule* actionable under section 138D of the Act (Actions for damages) by any person who suffers loss as a result of its contravention]

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*, or the *vehicle's*, *insurers*.



### 8.3 Insurance intermediaries (and insurers handling claims on another insurer's policy)

#### Application: who?

8.3.1 **G** 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 **G** 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 **G**
- (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

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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 ■ ICOBS 8.4.4R (1)(b);
  - (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 ■ ICOBS 8.4.4R (1)(b)(ii); 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 and supporting documents

8.4.4

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- (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) obtain and submit to the *FCA* a written statement, by a *director* of the *firm* responsible for the production of the employers' liability register, that to the best of the *director's* knowledge the *firm* in its production of the register is either:
    - (i) materially compliant with the requirements of ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1, including (where necessary) how the *firm* has used and continues to use its best endeavours in accordance with ■ ICOBS 8 Annex 1 1.1CR; or
    - (ii) not materially compliant with the provisions referred to in (i), in which case the statement must also set out, to the best of the *director's* knowledge, the information required by ■ ICOBS 8.4.4A R; and
  - (c) obtain and submit to the *FCA* a report satisfying the requirements of ■ ICOBS 8.4.4C R, prepared by an auditor satisfying the requirements of ■ SUP 3.4 and ■ SUP 3.8.5 R to ■ 3.8.6 R, and addressed to the *directors* of the *firm*.
- (1A) For the purposes of ■ ICOBS 8.4.4R (1)(b):
- (a) 'materially compliant' means that in relation to at least ninety-nine percent of *policies* for which information is required to be included, the information in the register does not contain any inaccuracy or lack faithful reproduction (as relevant) that would affect the outcome of a search when compared to a search carried out with fully accurate and/or faithfully reproduced information; and
  - (b) the *firm* must ensure that the *director's* certificate includes the description of 'materially compliant' referred to in (a).
- (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) For the purposes of (1)(b) and (c) the *director's* certificate and report prepared by an auditor must:
- (a) relate to a version of the register as at a date no later than 12 *months* after it is first produced in accordance with (1)(a); and
  - (b) be obtained and submitted to the *FCA* within four *months* of the date in (a).
- (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

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The information referred to in ■ ICOBS 8.4.4R (1)(b)(ii) is:

- (1) a description of the ways in which the *firm*, in its production of the register, is not materially compliant;
- (2) the number of *policies*, in relation to which, either:
  - (a) the *firm* is not able to include any information in the register; and/or
  - (b) information is included in the register but information may be incorrect or incomplete;

in each case as a proportion of the total number of *policies* required to be included in the register;

- (3) where the *firm* is only practicably able to provide an estimate of the numbers in (2), the basis of each estimate; and
- (4) a description of the systems and controls used in the production of the register and of the steps, together with relevant timescales, that the *firm* is taking to ensure that the *firm* will be materially compliant as soon as practicable.

8.4.4B

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In relation to the written statement referred to in ■ ICOBS 8.4.4R (1)(b):

- (1) ■ ICOBS 8.4.4R (1)(b) does not preclude the relevant *director* from, in addition, including in the *director's* statement any of the following as relevant:
  - (a) if a *firm's* employers' liability register is more than materially compliant, a statement to this effect, and/or a statement of the extent to which the *director* considers, to the best of his knowledge, the *firm* to be compliant in its production of the register;
  - (b) reasons for the level of any non-compliance; and/or
  - (c) information relating to *policies* which are not required to be included in the register;
- (2) the statement regarding the *firm's* level of compliance with requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1, and, in relevant cases, the steps the *firm* is undertaking to ensure material compliance as soon as practicable, does not alter the underlying requirement that the *firm* has to comply fully with the relevant requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1 (that is, not just to a material extent). So, it is possible that a *firm* will be able to comply with ■ ICOBS 8.4.4R (1)(b) but continue to not fully comply with the underlying requirements, for example, in respect of the *policies* falling outside the ninety-nine percent threshold. In relation to these *policies*, as well as those identified in any qualified *director's* certificate, the *firm* will need to remedy errors or omissions as soon as practicable, and have systems and controls in place to give effect to this on an ongoing basis.

8.4.4C

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The report referred to in ■ ICOBS 8.4.4R (1)(c) must:

- (1) be prepared on the basis of providing an opinion under a *limited assurance engagement* confirming whether the auditor has found no reason to believe that the *firm*, solely in relation to the *firm's* extraction of information from its underlying records, has not materially complied with the requirements in ■ ICOBS 8.4.4R (2) and ■ ICOBS 8 Annex 1 in the production of its employer's liability register, having regard in particular to the possible errors and omissions referred to in (3) below;
- (2) use the description of material compliance as referred to in ■ ICOBS 8.4.4R (1A)(a) adapted as necessary to apply solely to the *firm's* extraction of information from its underlying records;

- (3) address, in particular, the following risks:
  - (a) information relating to certain *policies* issued or renewed on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
  - (b) information relating to certain *policies* in respect of which claims were made on or after 1 April 2011 is entirely omitted from the register even though some relevant policy details are included in the *firm's* underlying records;
  - (c) relevant information required to be included in the register, and which is included in the *firm's* underlying records, is omitted from, or is inaccurately entered on to, the register; and
  - (d) information relating to *policies* which do not provide *employers' liability insurance* are included in the register.

8.4.5

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- (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

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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

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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 and the latest report prepared by an auditor for the purposes of ■ ICOBS 8.4.4R (1)(c), 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.

## 8.4.8

**E** 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

## 8.4.9

**R** 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;
- (2) 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.

**8.4.9A** R 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*.

- 8.4.10** G
- (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](http://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** R
- (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*;
- (d) obtain and submit to the *FCA* a *director's* certificate:
  - (i) no later than twelve *months* after the date of the most recent *director's* certificate, obtained and submitted to the *FCA* in accordance with ■ ICOBS 8.4.4R (1)(b) or this *rule*;
  - (ii) complying with the requirements, and containing one of the statements, set out in ■ ICOBS 8.4.4R (1)(b); and
  - (iii) in relation to a version of the employers' liability register dated no more than four *months* prior to the date of the *director's* certificate;
- (e) obtain and submit to the *FCA* a report prepared by an auditor:
  - (i) no later than twelve *months* after the date of the most recent report, obtained and submitted to the *FCA* in accordance with ■ ICOBS 8.4.4R (1)(c) or this *rule*;
  - (ii) complying with the requirements set out in ■ ICOBS 8.4.4R (1)(c); and
  - (iii) in relation to a version of the employers' liability register dated no more than four *months* prior to the date of the report; and
- (f) make available, in accordance with ■ ICOBS 8.4.7 R, the *director's* statement in (d) and the report in (e) no later than four *months* after the effective date of the version of the register to which they relate, in place of the previous certificate and report.

## 8.4.12

G

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 ■ ICOB8 8.4.11R (2)(a), ■ 8.4.11R (2)(b) and ■ ICOB8 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 ■ ICOB8 8.4 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 ■ ICOB8 8.4.4R (2)(c) or a tracing office which meets the conditions in ■ ICOB8 8.4.9 R.

8.4.15 **R** A *firm* must put in place a written policy for complying with ■ ICOB8 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 ■ ICOB8 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 ■ ICOB8 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 ■ ICOB8 8.4.17 R.

## 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 8.4.16R (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 | <p>A <i>firm</i> must:</p> <ol style="list-style-type: none"> <li>(1) for each <i>policy</i> it enters into or renews on or after 1 April 2011, include, in relation to that <i>policy</i>, all the information required by the form in 1.2R, in accordance with the notes;</li> <li>(2) for each <i>policy</i> not falling in (1) and in relation to which a claim is made on or after 1 April 2011, include, in relation to that <i>policy</i>, all the information required by the form in 1.2R that the <i>firm</i> holds, in accordance with the notes; and</li> <li>(3) in relation to (1) and (2) include the notes set out in 1.2R.</li> </ol>   |
| 1.1A | R | <p>A <i>firm</i> is not required to include information required by 1.1R(1) and (2) to the extent that it relates to the <i>firm's</i> potential liability as a co-insurer, other than as the lead <i>insurer</i>, under a co-insurance arrangement satisfying the following conditions:</p> <ol style="list-style-type: none"> <li>(1) the risk is covered by a single contract at an overall premium and for the same period by two or more <i>insurers</i> each for its own part;</li> <li>(2) one of the <i>insurers</i> is the lead <i>insurer</i> who is treated as if it were the <i>insurer</i> covering the whole risk;</li> <li>(3) the lead <i>insurer</i> fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating;</li> <li>(4) the <i>firm</i> has entered into and maintains with the lead <i>insurer</i> up-to-date written agreements identifying the <i>policies</i> in relation to which the <i>firm</i> is a co-insurer of the lead <i>insurer</i> and the proportions of the risk for which the co-insurer is responsible; and</li> <li>(5) the <i>firm</i> is satisfied that the lead <i>insurer</i> complies with the requirements in 1.1R(1) and (2) in relation to the co-insured <i>policies</i>.</li> </ol> |
| 1.1B | R | <p>A <i>firm</i> is not required to include information required by 1.1R(1) and (2) to the extent that it relates solely to the <i>firm's</i> potential liability under an excess <i>policy</i> where another <i>insurer</i> has principal liability for the risk, and the following conditions are satisfied:</p> <ol style="list-style-type: none"> <li>(1) the principal <i>insurer's</i> maximum liability under the primary <i>policy</i> covering the risk is for no less than £5,000,000 in relation to a single event;</li> <li>(2) the <i>firm</i> has no liability to potential claimants until those claimants have exhausted their remedies against the principal <i>insurer</i>; and</li> <li>(3) the <i>firm</i> has adequate arrangements for identifying and recording the <i>policies</i> in relation to which the <i>firm</i> provides excess cover under an excess <i>policy</i>.</li> </ol>  |
| 1.1C | R | <p>A <i>firm</i> is not required to include the employer reference number (ERN) required by 1.1R(1) and (2) if the following conditions are met:</p> <ol style="list-style-type: none"> <li>(1) the <i>firm</i> has not been able to obtain that information solely due to failures by parties outside the <i>firm's</i> control; and</li> </ol>   |

		(2)	the <i>firm</i> 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 <i>firm</i> should consider: <ul style="list-style-type: none"> <li>(a) appointing an <i>approved person</i> with appropriate seniority within the <i>firm</i> to be responsible for agreeing and signing off the <i>firm's</i> approach to obtaining employee reference numbers;</li> <li>(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):                         <ul style="list-style-type: none"> <li>(i) collection procedures which are subject to regular reviews;</li> <li>(ii) appropriate compliance monitoring, and production and review of management information;</li> <li>(iii) regular meetings between those responsible for operational collection;</li> <li>(iv) escalation of compliance issues on a timely basis; and</li> <li>(v) appropriate use of internal and external communication to promote the importance of ERN compliance;</li> </ul> </li> <li>(c) implementing and maintaining appropriate:                         <ul style="list-style-type: none"> <li>(i) internal audit measures to ensure ERN collection procedures are being followed internally and by the <i>firm's</i> intermediary partners; and</li> <li>(ii) controls to ensure any issues identified through the audit process are followed up and corrected within appropriate timescales;</li> </ul> </li> <li>(d) updating terms of business agreements to cover ERN collection.</li> </ul>
		(2)	It is the responsibility of each <i>firm</i> to decide what processes to use to obtain the ERN based on what is appropriate and proportionate for that <i>firm</i> , 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 <i>firm</i> carrying out contracts of insurance, in relation to which information is not required to be included in the register under <i>FCA rules</i> , must, beneath the form in 1.2R, state the following, where applicable, tailored as necessary to the <i>firm's</i> circumstances: <p>“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 <i>FCA rules</i>. 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]”</p>
2.1A	R		A <i>firm</i> 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: <ul style="list-style-type: none"> <li>(1) that the <i>firm</i> has potential liability for <i>policies</i> under which UK commercial lines employers’ liability cover has been provided to employers for which the <i>firm</i> was co-insurer, but not lead insurer, but that the <i>firm</i> is not</li> </ul>

		required to make details of those <i>policies</i> available in the register under <i>FCA</i> rules; and
2.1B	R	<p>(2) responsibility for making information available in relation to <i>policies</i> to which (1) applies is with the lead insurer.</p> <p>A <i>firm</i> with potential liability under an excess <i>policy</i> and which satisfies the requirements of 1.1BR must tailor the statement in 2.1R to include reference to the following:</p> <p>(1) that the <i>firm</i> has potential liability for <i>policies</i> under which <i>UK</i> commercial lines employers' liability cover has been provided to employers for which it provides cover only in excess of that provided by another <i>insurer</i> (and where the principal cover is for £5m or more) but that the <i>firm</i> is not required to make details of those <i>policies</i> available in the register under <i>FCA</i> rules; and</p> <p>(2) responsibility for making information available in relation to the <i>policy</i> providing the principal cover is with the principal <i>insurer</i>.</p>
2.2	G	The purpose of 2.1R, 2.1AR and 2.1BR is to inform users of the register that the <i>firm</i> may be potentially liable in relation to <i>policies</i> other than those on the register. However, a <i>firm</i> may include <i>policies</i> 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 <i>policies</i> that are not included.

