

**CONSUMER INSURANCE (DISCLOSURE AND REPRESENTATIONS) ACT 2012
INSTRUMENT 2013**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 October 2013.

Amendments to the Handbook

- D. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with Annex B to this instrument.

Notes

- E. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Citation

- F. This instrument may be cited as the Consumer Insurance (Disclosure and Representations) Act 2012 Instrument 2013.

By order of the Board of the Financial Conduct Authority
26 September 2013

Annex

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.1 Client categorisation

...

Customer covered in both a private and business capacity

- 2.1.3 G (1) ~~If Except where paragraph (2) applies, if~~ a *customer* is acting in the capacity of both a *consumer* and a *commercial customer* in relation to a particular *contract of insurance*, the *customer* is a *commercial customer*.
- (2) For the purposes of ICOBS 5.1.4G and ICOBS 8.1.2R, if, in relation to a particular *contract of insurance*, the *customer* entered into it mainly for purposes unrelated to his trade or profession, the *customer* is a *consumer*.

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5.1 General

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~~Disclosure of material facts~~

- 5.1.4 G A *firm* should bear in mind the restriction on rejecting claims ~~for non-disclosure~~ (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; ~~or~~
 - (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.

...

8.1 Insurers: general

...

- 8.1.2 R A rejection of a *consumer policyholder's* claim is unreasonable, except where there is evidence of fraud, if it is ~~for~~:
- (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
 - ~~(2)~~ non-negligent misrepresentation of a fact material to the risk;
 - (b) 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*; 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*):
- ...

- 8.1.3 R For the purposes of *ICOBS* 8.1.2R(2) 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.]