

## INSURANCE ACT 2015 (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2017

### 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 (Power of the FCA to give 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 August 2017.

### Amendments to the Handbook

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

### Citation

- F. This instrument may be cited as the Insurance Act 2015 (Consequential Amendments) Instrument 2017.

By order of the Board  
27 April 2017

## Annex A

## Amendments to the Conduct of Business sourcebook (COBS)

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

**17.1 Providing information to claimants ~~and~~, dealing with claims and warranties in policies**

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Rejecting a claim

17.1.3 R An *insurer* and a *managing agent* must not:

- (1) unreasonably reject a claim; ~~or~~
- (2) ~~except where there is evidence of fraud, reject a claim for:~~
  - (a) ~~non-disclosure of a fact material to the risk which the *policyholder* could not reasonably have been expected to disclose; or~~
  - (b) ~~misrepresentation of a fact material to the risk, unless the misrepresentation is negligent; or~~
  - (c) ~~Breach of warranty, unless the circumstances of the claim are connected to the breach, the warranty is material to the risk and was drawn to the *policyholder's* attention before the conclusion of the contract.~~

Cases where rejection of consumer's claim is unreasonable: contracts or variations before 1 August 2017

17.1.4 R For contracts entered into or variations agreed before 1 August 2017, except where there is evidence of fraud, an *insurer* and a *managing agent* must not reject a claim for:

- (1) (in relation to contracts entered into or variations agreed on or before 5 April 2013) non-disclosure of a fact material to the risk which the *policyholder* could not reasonably have been expected to disclose; or
- (2) misrepresentation of a fact material to the risk, unless the misrepresentation is negligent; or
- (3) breach of warranty, unless the circumstances of the claim are connected to the breach, the warranty is material to the risk and was drawn to the *policyholder's* attention before the conclusion of the contract.

Cases where rejection of consumer's claim is unreasonable: contracts or variations on or after 1 August 2017

- 17.1.5      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" in *ICOB*S 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.
- 17.1.6      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 the Insurance Act 2015) is unreasonable unless the circumstances of the claim are connected to the breach.
- 17.1.7      R      An *insurer* must ensure that any condition or warranty included in a *long-term care insurance contract* with a *consumer*:
- (1)      has operative effect only in relation to the types of crystallised risk covered by the *policy* that are connected to that condition or warranty; and
- (2)      is material to the risks to which it relates and is drawn to the *customer's* attention before the conclusion of the contract.

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**TP 2      Other Transitional Provisions**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
<u>2.26</u>	<u>COBS 17.1.7R</u>	<u>R</u>	<u>An insurer need not comply with COBS 17.1.7R for contracts entered into or variations agreed before 1 August 2017.</u>	<u>From 1 August 2017</u>	<u>On 1 August 2017</u>

## Annex B

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

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

#### 2.5 Exclusion of liability, conditions, warranties, and reliance on others

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##### Conditions and warranties in policies

2.5.2A R An insurer must ensure that any condition or warranty included in a policy with a consumer:

(1) has operative effect only in relation to the types of crystallised risk covered by the policy that are connected to that condition or warranty; and

(2) (for a warranty in a pure protection contract) is material to the risks to which it relates and is drawn to the customer's attention before the conclusion of the contract.

2.5.2B R ICOBS 2.5.2AR(2) does not apply to a 'life of another' contract where the warranty relates to a statement of fact concerning the life to be assured.

2.5.2C G An insurer may choose to draft its conditions and warranties so that they clearly state the particular types of crystallised risks covered by the policy to which they are connected, for the purposes of ICOBS 2.5.2AR(1). Alternatively the insurer may in practice have systems and controls which operate the conditions and warranties in a way that has the same effect.

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#### 8.1 Insurers: general

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##### Cases where rejection of consumer's claim is unreasonable: contracts before 1 August 2017

8.1.2 R A 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**     ~~For the purposes of *ICOBS* 8.1.2R(2)~~ In this section, a “qualifying misrepresentation” is one made by a consumer before a consumer insurance contract was entered into or varied if:

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**TP 2            Other Transitional Provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>4</u>	<u><i>ICOBS</i> 2.5.2AR</u>	<u>R</u>	<u>An insurer need not comply with <i>ICOBS</i> 2.5.2AR for contracts entered into or variations agreed before 1 August 2017.</u>	<u>From 1 August 2017</u>	<u>On 1 August 2017</u>