

A large, stylized number '5' logo in a light purple color, split vertically. The left half is a solid purple shape, and the right half is a white shape with a purple outline. The number is positioned behind the main title text.

Insurance: New Conduct of Business sourcebook

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Chapter 1

Application

1.1 The general application rule

The general application rule

1.1.1 **R** This sourcebook applies to a *firm* with respect to the following activities carried on in relation to a *non-investment insurance contract* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

- (1) an *insurance mediation activity*;
- (2) *effecting and carrying out contracts of insurance*;
- (3) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (4) *communicating or approving a financial promotion*;

and activities connected with them.

Modifications to the general application rule

1.1.2 **R** The general application *rule* is modified in ■ ICOBS 1 Annex 1 G according to the type of *firm* (Part 1), its activities (Part 2), and its location (Part 3).

1.1.3 **R** The general application *rule* is also modified in the chapters of this sourcebook for particular purposes, including those relating to the type of *firm*, its activities or location, and for purposes relating to connected activities.

Guidance

1.1.4 **G** *Guidance* on the application provisions is in ■ ICOBS 1 Annex 1 G (Part 4).

Application (see ICOBS 1.1.2 R)

Part 1: Who?

Modifications to the general application rule according to type of firm

1 Third party processors

- 1.1 R (1) This rule applies where a *firm* (or its *appointed representative*) ("A") has outsourced *insurance mediation activities* to a *third party processor*.
- (2) Any rule in this sourcebook which requires the *third party processor*, when acting as such, to disclose its identity to a *customer* must be read as applying to the *third party processor* only to the extent that it applies to A and as requiring disclosure of A's identity.

2 Managing agents

- 2.1 R (1) References to an *insurer* apply equally to a *managing agent* unless the context requires otherwise.
- (2) A *managing agent* must give effect to the policy that a *consumer* must, where required by this sourcebook, be offered cancellation rights.
- (3) References to *managing agents* in this sourcebook relate to their functions in managing the obligations of a *member* in his capacity as such.

3 Authorised professional firms

- 3.1 R This sourcebook does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for:
- (1) the provisions on communications to *clients* and *financial promotions* (see ICOBS 2.2);
- (2) the e-commerce provisions (ICOBS 3.2);
- (3) status disclosure requirements in relation to complaints procedures (see ICOBS 4.1); and
- (4) provisions implementing articles 12 and 13 of the *Insurance Mediation Directive* (see ICOBS 4.1, ICOBS 5.2 and ICOBS 5.3.3 R), except to the extent that the *firm* is subject to equivalent rules of its *designated professional body* approved by the *FSA*.

- 3.2 G Compliance with provisions of the *Distance Marketing Directive* is dealt with in the Professional Firms sourcebook (see PROF 5.4).

4 Appointed representatives

Part 1: Who?

Modifications to the general application rule according to type of firm

- 4.1 R (1) An *insurer* must ensure that its *appointed representative* complies with this sourcebook as it applies to an *insurance intermediary*.
- (2) However, if the *appointed representative* is acting as the *insurer's third party processor* then:
 - (a) this rule is subject to the *third party processors rule* (see paragraph 1.1R); and
 - (b) the *insurer* is not required to ensure that the *appointed representative* complies with the *rules* in this sourcebook on commission disclosure (see [ICOBS 4.4](#)) or, unless they apply to an *insurer*, the *rules* on statements of demands and needs (see [ICOBS 5.2](#)).
- 4.2 G The cancellation requirements in chapter 7 do not apply to a *distance contract* entered into by an *appointed representative* to provide mediation services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the *Distance Marketing Regulations* apply instead.
- 5 Service companies
- 5.1 R This sourcebook does not apply to a *service company*, except for the provisions on communications to *clients* and *financial promotions* (see [ICOBS 2.2](#)).
- 6 Lloyd's
- 6.1 R The *Society* must ensure that no *member* carries on *motor vehicle liability insurance business* at Lloyd's unless a claims representative has been appointed to act for that *member* in each *EEA State* other than the *United Kingdom*, with responsibility for handling and settling a claim by an *injured party*. Otherwise, this sourcebook does not apply to the *Society*.

Part 2: What?

Modifications to the general application rule according to activities

- 1 Reinsurance
- 1.1 R This sourcebook does not apply to activities carried on in relation to a *reinsurance contract*.
[Note: article 12(4) of the *Insurance Mediation Directive*]
- 2 Contracts of large risks
- 2.1 R Subject to Part 3 of this Annex, this sourcebook does not apply to an *insurance intermediary* mediating a *contract of large risks*:
 - (1) where the risk is located outside the *European Economic Area*; or
 - (2) for a *commercial customer* where the risk is located within the *European Economic Area*.

[Note: article 12(4) of the *Insurance Mediation Directive*]

Part 2: What?

Modifications to the general application rule according to activities

- 2.2 G *Principle 7* continues to apply so a *firm* should provide evidence of cover promptly after inception of a *policy* to its *customer*. In respect of a *group policy*, a *firm* should provide information to its *customer* to pass on to other *policyholders* and should tell the *customer* that he should give the information to each *policyholder*.
- 3 Pure protection contracts: election to apply COBS rules
- 3.1 R (1) This sourcebook does not apply in relation to a *pure protection contract* to the extent that a *firm* has elected to comply with the Conduct of Business sourcebook (*COBS*) in respect of such business.
- (2) Within the scope of such an election, a *firm* must comply with the rest of the *Handbook*, treating the *pure protection contract* as a *life policy* and a *designated investment*, and not as a *non-investment insurance contract*.
- (3) A *firm* must make, and retain indefinitely, a record in a *durable medium* of such an election (and any reversal or amendment). The record must include the effective date and a precise description of the part of the *firm's* business to which the election applies.
- 4 Chains of insurance intermediaries
- 4.1 R Where there is a chain of *insurance intermediaries* between the *insurer* and the *customer*, this sourcebook applies only to the *insurance intermediary* in contact with the *customer*.

Part 3: Where?

Modifications to the general rule of application according to location

- 1 EEA territorial scope rule: compatibility with European law
- 1.1 R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law (see Part 4 for *guidance* on this).
- (2) This *rule* overrides any other *rule* in this sourcebook.
- 1.2 R In addition to the *EEA territorial scope rule*, the effect of the *E-Commerce Directive* on territorial scope is applied in the fields covered by the 'derogations' in the Annex to that Directive other than the 'insurance derogation' in the fourth indent (see paragraph 8 of Part 4 for *guidance* on this).
- [Note: article 3(3) of, and Annex to, the *E-Commerce Directive*]
- 2 Exemption for insurers: business with non-EEA customers via non-UK intermediaries
- 2.1 R This sourcebook does not apply to an *insurer* if:
 - (1) the intermediary (whether or not an *insurance intermediary*) in contact with the *customer* is not established in the *United Kingdom*; and
 - (2) the *customer* is not *habitually resident* in, and, if applicable, the *State of the risk* is outside, an *EEA State*.

Part 3: Where?

Modifications to the general rule of application according to location

3 Exemption for insurers: business with non-UK EEA customers

3.1 R A *rule* in this sourcebook which goes beyond the minimum required by Community legislation does not apply to an *insurer* if the *customer* is *habitually resident* in (and, if applicable, the *State of the risk* is) an *EEA State* other than the *United Kingdom*, to the extent that the *EEA State* in question imposes measures of like effect.

Part 4: Guidance

1 The main extensions and restrictions to the general application rule

1.1 G The general application *rule* is modified in Parts 1 to 3 of this Annex and in certain chapters of this sourcebook.

1.2 G The provisions of the *Single Market Directives* and other directives also extensively modify the general application *rule*, particularly in relation to territorial scope. However, for the majority of circumstances, the general application *rule* is likely to apply.

2 The Single Market Directives and other directives

2.1 G This *guidance* provides a general overview only and is not comprehensive.

2.2 G When considering the impact of a directive on the territorial application of a *rule*, a *firm* will first need to consider whether the relevant situation involves a non-UK element. The *EEA* territorial scope *rule* is unlikely to apply if a *UK firm* is doing business from a *UK establishment* for a *client* located in the *United Kingdom* in relation to a *UK product*. However, if there is a non-UK element, the *firm* should consider whether:

- (1) it is subject to the directive;
- (2) the business it is performing is subject to the directive; and
- (3) the particular *rule* is within the scope of the directive.

If the answer to all three questions is 'yes', the *EEA* territorial scope *rule* may change the effect of the general application *rule*.

2.3 G When considering a particular situation, a *firm* should also consider whether two or more directives apply.

3 Insurance Mediation Directive: effect on territorial scope

3.1 G The *Insurance Mediation Directive's* scope covers most *firms* carrying on most types of *insurance mediation*. The *rules* in this sourcebook within the Directive's scope are those that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis (see [ICOBS 4](#) (Information about the firm, its services and remuneration), [ICOBS 5.2](#) (Statement of demands and needs), [ICOBS 5.3.3 R](#) (Advice on the basis of a fair analysis) and [ICOBS 6](#) (Product information)).

Part 4: Guidance

- 3.2 G The *rules* implementing the minimum information and other requirements in articles 12 and 13 of the Directive are set out in **ICOBS 4.1** (General requirements for insurance intermediaries), **ICOBS 5.2** (Statement of demands and needs) and **ICOBS 5.3.3 R** (Advice on the basis of a fair analysis).
- 3.3 G In the *FSA's* view, the responsibility for these minimum requirements rests with the *Home State*, but a *Host State* is entitled to impose additional requirements within the Directive's scope in the 'general good'. (See recital 19 to and article 12(5) of the *Insurance Mediation Directive*.) Accordingly, the general *rules* on territorial scope are modified so that:
- (1) for a *UK firm* providing *passported activities* through a *branch* in another *EEA State* under the Directive, the *rules* implementing the Directive's minimum requirements apply, but the territorial scope of the additional *rules* within the Directive's scope is not modified;
 - (2) for an *EEA firm* providing *passported activities* under the Directive in the *United Kingdom*, the *rules* implementing the Directive's minimum requirements do not apply, but the additional *rules* within the Directive's scope have their unmodified territorial scope unless the *Home State* imposes measures of like effect; and
 - (3) an *EEA firm* acting as the principal of an *appointed representative* is required to ensure that its *appointed representative* complies with this sourcebook as it applies to a *UK firm* that is an *authorised person*.
- 4 Non-Life Directives: effect on territorial scope
- 4.1 G The *Non-Life Directives'* scope covers *insurers* authorised under those Directives conducting *general insurance business*.
- 4.2 G The *rules* in this sourcebook within the Directives' scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the insurance contract (see **ICOBS 2.2** (Communications to clients and financial promotions), **ICOBS 4** (Information about the firm, its services and remuneration), **ICOBS 6** (Product information) and **ICOBS 8** (Claims handling) except **ICOBS 8.2** (Motor vehicle liability insurers)).
- 4.3 G The Directives specify minimum information requirements and permit *EEA States* to adopt additional mandatory rules. (See article 7 of the *Second Non-Life Directive*)
- 4.4 G If the *State of the risk* is an *EEA State*, the Directives provide that the applicable information rules shall be determined by that state. Accordingly, if the *State of the risk* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the risk* is another *EEA State*. The territorial scope of other *rules*, in particular the *financial promotion rules*, is not affected since the Directives explicitly permit *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 28 and 41 of the *Third Non-Life Directive*)
- 5 Consolidated Life Directive: effect on territorial scope
- 5.1 G The *Consolidated Life Directive's* scope covers *long-term insurers* authorised under that Directive conducting *long-term insurance business*.

Part 4: Guidance

- 5.2 G The *rules* in this sourcebook within the Directive's scope are the cancellation *rules* (see ICOBS 7) and those *rules* requiring the provision of pre-contract information or information during the term of the contract concerning the *insurer* or the *contract of insurance* (see ICOBS 2.2 (Communications to clients and financial promotions), ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 6 (Product information) and ICOBS 8 (Claims handling) except ICOBS 8.2 (Motor vehicle liability insurers)).
- 5.3 G The Directive specifies minimum information and cancellation requirements and permits *EEA States* to adopt additional information requirements that are necessary for a proper understanding by the *policyholder* of the essential elements of the commitment.
- 5.4 G If the *State of the commitment* is an *EEA State*, the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the *State of the commitment* is the *United Kingdom*, the relevant *rules* in this sourcebook apply. Those *rules* do not apply if the *State of the commitment* is another *EEA State*. The territorial scope of other *rules*, in particular *rules* on *financial promotions*, is not affected since the Directive explicitly permits *EEA States* to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the *Consolidated Life Directive*)
- 6 Motor Insurance Directives: effect on territorial scope
- 6.1 G The scope of the *Fourth Motor Insurance Directive* and *Fifth Motor Insurance Directive* covers *insurers* conducting *motor vehicle liability insurance business*. The *rules* in this sourcebook within the Directives' scope are those regarding the appointment of claims representatives and handling of claims by *injured parties* (see ICOBS 8.2).
- 6.2 G The Directives require a *motor vehicle liability insurer* to appoint a claims representative in each *EEA State* other than its *Home State*. They specify minimum requirements regarding function and powers of claims representatives in handling claims and regarding the settlement of claims by *injured parties*.
- 6.3 G The Directives' provisions apply to *motor vehicle liability insurers* for which the *United Kingdom* is the *Home State*. (See article 4 of the *Fourth Motor Insurance Directive*)
- 7 Distance Marketing Directive: effect on territorial scope
- 7.1 G In broad terms, a *firm* is within the *Distance Marketing Directive's* scope when conducting an activity relating to a *distance contract* with a *consumer*. The *rules* in this sourcebook within the Directive's scope are those requiring the provision of pre-contract information (see ICOBS 2.2 ((Communications to clients and financial promotions), ICOBS 4 (Information about the firm, its services and remuneration) and ICOBS 6 (Product information)), the cancellation *rules* (see ICOBS 7) and the other specific *rules* implementing the Directive (see ICOBS 3.1).
- 7.2 G In the *FSA's* view, the Directive places responsibility for requirements within the Directive's scope on the *Home State* except in relation to business conducted through a *branch*, in which case the responsibility rests with the *EEA State* in which the

Part 4: Guidance

- branch* is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the *Distance Marketing Directive*)
- 7.3 G This means that relevant *rules* in this sourcebook will, in general, apply to a *firm* conducting business within the Directive's scope from an establishment in the *United Kingdom* (whether the *firm* is a national of the *United Kingdom* or of any other *EEA State* or *non-EEA state*).
- 7.4 G Conversely, the territorial scope of the relevant *rules* in this sourcebook is modified as necessary so that they do not apply to a *firm* conducting business within the Directive's scope from an establishment in another *EEA State* if the *firm* is a national of the *United Kingdom* or of any other *EEA State*.
- 7.5 G In the *FSA's* view:
- (1) the 'country of origin' basis of the Directive is in line with that of the *E-Commerce Directive*; (see recital 6 to the *Distance Marketing Directive*)
 - (2) for business within the scope of both the *Distance Marketing Directive* and the *Consolidated Life Directive*, the territorial application of the *Distance Marketing Directive* takes precedence; in other words, the *rules* requiring pre-contract information and cancellation rules derived from the *Consolidated Life Directive* apply on a 'country of origin' basis rather than being based on the *State of the commitment*; (see articles 4(1) and 16 of the *Distance Marketing Directive* noting that the *Distance Marketing Directive* was adopted after the *Consolidated Life Directive*)
 - (3) for business within the scope of both the *Distance Marketing Directive* and the *Insurance Mediation Directive*, the minimum information and other requirements in the *Insurance Mediation Directive* continue to be those applied by the *Home State*, but the minimum requirements in the *Distance Marketing Directive* and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the *Insurance Mediation Directive* was adopted after the *Distance Marketing Directive* and is not expressed to be subject to it.)
- 8 Electronic Commerce Directive: effect on territorial scope
- 8.1 G The *E-Commerce Directive's* scope covers every *firm* carrying on an *electronic commerce activity*. Every *rule* in this sourcebook is within the Directive's scope.
- 8.2 G A key element of the Directive is the ability of a *person* from one *EEA State* to carry on an *electronic commerce activity* freely into another *EEA State*. Accordingly, the territorial application of the *rules* in this sourcebook is modified so that they apply at least to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom* with or for a *person* in the *United Kingdom* or another *EEA State*.
- 8.3 G Conversely, a *firm* that is a national of the *United Kingdom* or another *EEA State*, carrying on an *electronic commerce activity* from an *establishment* in another *EEA State* with or for a *person* in the *United Kingdom*, need not comply with the *rules* in this sourcebook. (See article 3(1) and (2) of the *E-Commerce Directive*)

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- 8.4 G The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the FSA has adopted for this sourcebook. The derogation applies to an *insurer* that is authorised under, and carrying on an *electronic commerce activity* within, the scope of the *Insurance Directives* and permits *EEA States* to continue to apply their advertising rules in the 'general good'.
- 8.5 G Where the derogation applies, the *rules on financial promotion* continue to apply for incoming *electronic commerce activities* (unless the *firm's* 'country of origin' applies rules of like effect), but do not apply for outgoing *electronic commerce activities*. (See article 3(3) and Annex, fourth indent of the *E-Commerce Directive*; Annex to European Commission Discussion Paper MARKT/2541/03)
- 8.6 G In the FSA's view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
- (1) is in line with the *Distance Marketing Directive*;
 - (2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
- 8.7 G The 'derogations' in the Directive may enable other *EEA States* to adopt a different approach to the *United Kingdom* in certain fields. (See recital 19 to the *Insurance Mediation Directive*, recital 6 to the *Distance Marketing Directive*, article 3 of, and the Annex to, the *E-Commerce Directive*)

Chapter 2

General matters



2.1 Client categorisation

Introduction

2.1.1

G

Different provisions in this sourcebook may apply depending on the type of *person* with whom a *firm* is dealing:

- (1) A *policyholder* includes anyone who, upon the occurrence of the contingency insured against, is entitled to make a claim directly to the *insurance undertaking*.
- (2) Only a *policyholder* or a prospective *policyholder* who makes the arrangements preparatory to him concluding a *contract of insurance* (directly or through an agent) is a *customer*. In this sourcebook, *customers* are either *consumers* or *commercial customers*.
- (3) A *consumer* is any natural person who is acting for purposes which are outside his trade or profession.
- (4) A *commercial customer* is a *customer* who is not a *consumer*.

Customer to be treated as consumer when status uncertain

2.1.2

R

If it is not clear in a particular case whether a *customer* is a *consumer* or a *commercial customer*, a *firm* must treat the *customer* as a *consumer*.

Customer covered in both a private and business capacity

2.1.3

G

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*.

Customer classification examples

2.1.4

G

In practice, private individuals may act in a number of capacities. The following table sets out a number of examples of how an individual acting in certain capacities should, in the *FSA's* view, be categorised.

Customer classification examples	
Capacity	Classification
Personal representatives, including executors, unless they are acting in a professional capacity, for example, a solicitor acting as executor.	<i>Consumer</i>

Customer classification examples	
Capacity	Classification
Private individuals acting in personal or other family circumstances, for example, as trustee of a family trust.	<i>Consumer</i>
Trustee of a trust such as a housing or NHS trust.	<i>Commercial customer</i>
Member of the governing body of a club or other unincorporated association such as a trade body and a student union.	<i>Commercial customer</i>
Pension trustee.	<i>Commercial customer</i>
<i>Person</i> taking out a <i>policy</i> covering property bought under a buy-to-let mortgage.	<i>Commercial customer</i>
<i>Partner</i> in a <i>partnership</i> when taking out insurance for purposes related to his profession.	<i>Commercial customer</i>



2.2 Communications to clients and financial promotions

Application

2.2.1 **R** In addition to the general application *rule* for this sourcebook, this section applies to the *communication*, or *approval for communication*, to a *person* in the *United Kingdom* of a *financial promotion* of a *non-investment insurance contract* unless it can lawfully be *communicated* by an *unauthorised* communicator without *approval*.

Clear, fair and not misleading rule

2.2.2 **R** When a *firm* communicates information, including a *financial promotion*, to a *customer* or other *policyholder*, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.

Approving financial promotions

- 2.2.3 **R**
- (1) Before a *firm* *approves* a *financial promotion* it must take reasonable steps to ensure that the *financial promotion* is clear, fair and not misleading.
 - (2) If, subsequently, a *firm* becomes aware that a *financial promotion* is not clear, fair and not misleading, it must withdraw its *approval* and notify any *person* that it knows to be relying on its approval as soon as reasonably practicable.

Pricing claims: guidance on the clear, fair and not misleading rule

- 2.2.4 **G**
- (1) This *guidance* applies in relation to a *financial promotion* that makes pricing claims, including *financial promotions* that indicate or imply that a *firm* can reduce the *premium*, provide the cheapest *premium* or reduce a *customer's* costs.
 - (2) Such a *financial promotion* should:
 - (a) be consistent with the result reasonably expected to be achieved by the majority of *customers* who respond, unless the proportion of those *customers* who are likely to achieve the pricing claims is stated prominently;
 - (b) state prominently the basis for any claimed benefits and any significant limitations; and

- (c) comply with other relevant legislative requirements, including The Control of Misleading Advertisements Regulations 1988.

2.3 Inducements

2.3.1

G

- (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under *Principles 1* and *6* to act with integrity and treat *customers* fairly.
- (2) An inducement is a benefit offered to a *firm*, or any *person* acting on its behalf, with a view to that *firm*, or that *person*, adopting a particular course of action. This can include, but is not limited to, cash, cash equivalents, *commission*, goods, hospitality or training programmes.

2.4 Record-keeping

2

2.4.1

G

- (1) The Senior Management Arrangements, Systems and Controls sourcebook contains high-level record-keeping requirements (see ■ SYSC 3.2.20 R). These require *firms* to take reasonable care to make and retain adequate records of matters and dealings which are the subject of requirements and standards under the *regulatory system*, which includes this sourcebook.
- (2) This sourcebook does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.
- (3) *Firms* should bear in mind the need to deal with requests for information from the *FSA* as well as queries and complaints from *customers* which may require evidence of matters such as:
 - (a) the reasons for *personal recommendations*;
 - (b) what documentation has been provided to a *customer*; and
 - (c) how claims have been settled and why.



2.5 Exclusion of liability and reliance on others

Exclusion of liability

- 2.5.1 **R** A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or other *policyholder* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.
- 2.5.2 **G** The general law, including the *Unfair Terms Regulations*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

Reliance on others

- 2.5.3 **G**
 - (1) Where it is compatible with the nature of the obligation imposed by a particular *rule* and with the *Principles*, in particular *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.
 - (2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*. For example, where a *rule* imposes an absolute obligation (such as the requirement for an *insurer* to handle claims promptly and fairly) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

Chapter 3

Distance communications



3.1 Distance marketing

Application

- 3.1.1 **R** This section applies to a *firm* that carries on any distance marketing activity from an establishment in the *United Kingdom*, with or for a *consumer* in the *United Kingdom* or another *EEA* State.

Guidance on the Distance Marketing Directive

- 3.1.2 **G** *Guidance* on expressions derived from the *Distance Marketing Directive* and on the Directive's application in the context of *insurance mediation activity* can be found in **■** ICOB3 3 Annex 1 G.

The distance marketing disclosure rules

- 3.1.3 **R** A *firm* must provide a *consumer* with the distance marketing information (**■** ICOB3 3 Annex 2 R) in good time before conclusion of a *distance contract*.

[Note: article 3(1) of the *Distance Marketing Directive*]

- 3.1.4 **G** The *rules* setting out the responsibilities of *insurers* and *insurance intermediaries* for producing and providing information apply to requirements in this section to provide information (see **■** ICOB3 6.1.1 R).

- 3.1.5 **R** A *firm* must ensure that the distance marketing information, the commercial purpose of which must be made clear, is provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard, in particular, to the principles of good faith in commercial transactions, and the legal principles governing the protection of those who are unable to give their consent, such as minors.

[Note: article 3(2) of the *Distance Marketing Directive*]

- 3.1.6 **R** When a *firm* makes a voice telephony communication to a *consumer*, it must make its identity and the purpose of its call explicitly clear at the beginning of the conversation.

[Note: article 3(3)(a) of the *Distance Marketing Directive*]

3.1.7 **R** A *firm* must ensure that the information on contractual obligations to be communicated to a *consumer* during the pre-contractual phase is in conformity with the contractual obligations which would result from the law presumed to be applicable to the *distance contract* if that contract is concluded.

[Note: article 3(4) of the *Distance Marketing Directive*]

Terms and conditions, and form

3.1.8 **R** A *firm* must communicate to the *consumer* all the contractual terms and conditions and the information referred to in the distance marketing disclosure *rules* in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[Note: article 5(1) of the *Distance Marketing Directive*]

3.1.9 **G** A *firm* will provide or communicate information or contractual terms and conditions to a *consumer* if another *person* provides or communicates it to the *consumer* on its behalf.

Commencing performance of the distance contract

3.1.10 **R** The performance of the *distance contract* may only begin after the *consumer* has given his approval.

[Note: article 7(1) of the *Distance Marketing Directive*]

Exception: distance contract as a stage in the provision of another service

3.1.11 **R** This section does not apply to a *distance contract* to act as *insurance intermediary*, if the *distance contract* is concluded merely as a stage in the provision of another service by the *firm* or another *person*.

[Note: recital 19 to the *Distance Marketing Directive*]

Exception: successive operations

3.1.12 **R** In the case of a *distance contract* comprising an initial service agreement, followed by successive operations or a series of separate operations of the same nature performed over time, the *rules* in this section only apply to the initial agreement.

[Note: article 1(2) of the *Distance Marketing Directive*]

3.1.13 **R** If there is no initial service agreement but the successive operations or separate operations of the same nature performed over time are performed between the same contractual parties, the distance marketing disclosure *rules* will only apply:

- (1) when the first operation is performed; and
- (2) if no operation of the same nature is performed for more than a year, when the next operation is performed (the next operation being deemed to be the first in a new series of operations).

[Note: recital 16 and article 1(2) of the *Distance Marketing Directive*]

Exception: voice telephony communications

3.1.14

R

- (1) In the case of a voice telephony communication, and subject to the explicit consent of the *consumer*, only the abbreviated distance marketing information (■ ICOBS 3 Annex 3 R) needs to be provided during that communication.
- (2) However, unless another exemption applies (such as the exemption for means of distance communication not enabling disclosure) a *firm* must still provide the distance marketing information (■ ICOBS 3 Annex 2 R) in writing or another *durable medium* available and accessible to the *consumer* in good time before conclusion of any *distance contract*.

[Note: articles 3(3)(b) and 5(1) of the *Distance Marketing Directive*]

Exception: Means of distance communication not enabling disclosure

3.1.15

R

A *firm* may provide the distance marketing information (■ ICOBS 3 Annex 2 R) and the contractual terms and conditions in writing or another *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *consumer's* request using a means of distance communication that does not enable the provision of that information in that form in good time before conclusion of any *distance contract*.

[Note: article 5(2) of the *Distance Marketing Directive*]

Consumer's right to request paper copies and change the means of communication

3.1.16

R

At any time during the contractual relationship the *consumer* is entitled, at his request, to receive the contractual terms and conditions on paper. The *consumer* is also entitled to change the means of distance communication used unless this is incompatible with the contract concluded or the nature of the service provided.

[Note: article 5(3) of the *Distance Marketing Directive*]

Unsolicited services

3.1.17

R

- (1) A *firm* must not enforce, or seek to enforce, any obligations under a *distance contract* against a *consumer*, in the event of an unsolicited supply of services, the absence of reply not constituting consent.
- (2) This *rule* does not apply to the tacit *renewal* of a *distance contract*.

[Note: article 9 of the *Distance Marketing Directive*]

Mandatory nature of consumer's rights

3.1.18

R

If a *consumer* purports to waive any of the *consumer's* rights created or implied by the *rules* in this section, a *firm* must not accept that waiver, nor seek to rely on or enforce it against the *consumer*.

[Note: article 12 of the *Distance Marketing Directive*]

3.1.19

R

If a *firm* proposes to enter into a *distance contract* with a *consumer* that will be governed by the law of a country outside the *EEA*, the *firm* must ensure that the *consumer* will not lose the protection created by the *rules* in this section if the *distance contract* has a close link with the territory of one or more *EEA States*.

[Note: articles 12 and 16 of the *Distance Marketing Directive*]

3.2 E-Commerce

Application

- 3.2.1 **R** This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a *person* in the *United Kingdom* or another *EEA State*.

Information about the firm and its products or services

- 3.2.2 **R** A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *FSA register* and includes its *FSA register* number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where it was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and

(6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the *E-Commerce Directive*]

3.2.3 **R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

3.2.4 **R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

3.2.5 **R** An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders.....

3.2.6 **R** A *firm* must (except when otherwise agreed by parties who are not *consumers*):

- (1) give an *ECA recipient* the following information, clearly, comprehensibly and unambiguously, and prior to the order being placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors prior to the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;

- (2) indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
- (4) make available to an *ECA recipient* appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

[Note: articles 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

3.2.7

R

Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[Note: article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

3.2.8

R

The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[Note: article 10(4) and 11(3) of the *E-Commerce Directive*]

Guidance on the Distance Marketing Directive

This Annex belongs to ■ ICOBS 3.1.2 G

Q1. What is a distance contract?

To be a *distance contract*, a contract must be concluded under an 'organised distance sales or service-provision scheme' run by the contractual provider of the service who, for the purpose of the contract, makes exclusive use (directly or otherwise) of one or more means of distance communication up to and including the time at which the contract is concluded.

So:

- the *firm* must have put in place facilities designed to enable a *consumer* to deal with it exclusively at a distance; and
- there must have been no simultaneous physical presence of the *firm* and the *consumer* throughout the offer, negotiation and conclusion of the contract. So, for example, contracts offered, negotiated and concluded over the internet, through a telemarketing operation or by *post*, will normally be *distance contracts*.

Q2. What about a firm that normally operates face-to-face but occasionally uses distance means?

If a *firm* normally operates face-to-face and has no facilities in place enabling a *consumer* to deal with it customarily by distance means, there will be no *distance contract*. A one-off transaction effected exclusively by distance means to meet a particular contingency or emergency will not be a *distance contract*.

Q3. What is meant by "simultaneous physical presence"?

A *consumer* may visit the *firm's* local office in the course of the offer, negotiation or conclusion of a contract. Wherever, in the literal sense, there has been "simultaneous physical presence" of the *firm* and the *consumer* at the time of such a visit, any ensuing contract will not be a *distance contract*.

Q4. Does the mere fact that an intermediary is involved make the sale of a product or service a distance contract?

No.

Q5. When is a contract concluded?

A contract is concluded when an offer to be bound by it has been accepted. An offer in the course of negotiations (for example, an offer by an *insurer* to consider an application) is not an offer to be bound, but is part of a pre-contractual negotiation.

A *consumer* will provide all the information an *insurer* needs to decide whether to accept a risk and to calculate the *premium*. The *consumer* may do this orally, in writing or by completing a proposal form. The response by an *insurer*, giving a quotation to the *consumer* specifying the *premium* and the terms, is likely to amount to an offer of the terms on which the *insurer* will insure the risk. Agreement by the *consumer* to those terms is likely to be an acceptance which concludes the contract.

In other cases where the *insurer* requires a signed proposal form (for example, some *pure protection contracts*), the proposal form may amount to an offer by the *consumer* on which the *insurer* decides whether to insure the risk and in such cases the *insurer's* response is likely to be the acceptance.

Q6. What if the contract has not been concluded but cover has commenced?

Where the parties to a contract agree that insurance cover should commence before all the terms and conditions have been agreed, the *consumer* should be provided with information required to be provided before conclusion of the contract to the extent that agreement has been reached.

Q7. How does the Directive apply to insurance intermediaries' services?

The *FSA* expects the *Distance Marketing Directive* to apply to *insurance intermediaries'* services only in the small minority of cases where:

- the *firm* concludes a *distance contract* with a *consumer* covering its *insurance mediation activities* which is additional to any insurance contract which it is marketing; and
- that *distance contract* is concluded other than merely as a stage in the *effecting* or *carrying out* of an insurance contract by the *firm* or another *person*: in other words it has some continuity independent of an insurance contract, as opposed, for example, to being concluded as part of marketing an insurance contract.

Q8. Can you give examples of when the Directive would and would not apply to insurance intermediaries' services?

The *rules* implementing the *Distance Marketing Directive* will not apply in the typical case where an *insurance intermediary* sells an insurance contract to a *consumer* on a one-off basis, even if the *insurance intermediary* is involved in the *renewal* of that contract and handling claims under it.

Nor will the Directive apply if an *insurance intermediary*, in its terms of business, makes clear that it does not, in conducting *insurance mediation activities*, act contractually on behalf of, or for, the *consumer*.

An example of when the *Distance Marketing Directive* would apply would be a *distance contract* under which an *insurance intermediary* agrees to provide advice on a *consumer's* insurance needs as and when they arise.

Q9. When would the exception for successive operations apply?

We consider that the *renewal* of a *policy* falls within the scope of this exception. So, the distance marketing disclosure *rules* would only apply in relation to the initial sale of a *policy*, and not to subsequent *renewals* provided that the new *policy* is of the same nature as the initial *policy*. However, unless there is an initial service agreement in place, the exclusion would only apply where the *renewal* takes place no later than one year after the initial *policy* was taken out or one year after its last *renewal*. If the *policy* terms have changed, *firms* will need to consider what information should be disclosed about those changes in accordance with the requirement to disclose appropriate information about a *policy* (see ICOBS 6.1.5 R), as well as ensuring their effectiveness under contract law.

Distance marketing information

This Annex belongs to ■ ICOBS 3.1.3 R

Distance marketing information

The firm

- (1) The name and the main business of the *firm*, the geographical address at which it is established and any other geographical address relevant for the *consumer's* relations with the *firm*.
- (2) Where the *firm* has a representative established in the *consumer's* EEA State of residence, the name of that representative and the geographical address relevant for the *consumer's* relations with the representative.
- (3) When the *consumer's* dealings are with any professional other than the *firm*, the identity of that professional, the capacity in which he is acting with respect to the *consumer*, and the geographical address relevant for the *consumer's* relations with that professional.
- (4) An appropriate statutory status disclosure statement (GEN 4), a statement that the firm is on the *FSA Register* and its *FSA* registration number.

The financial service

- (5) A description of the main characteristics of the service the *firm* will provide.
- (6) The total price to be paid by the *consumer* to the *firm* for the financial service, including all related *fees*, charges and expenses, and all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.
- (7) Where relevant, notice indicating that the financial service is related to instruments involving special risks related to their specific features or the operations to be executed or whose price depends on fluctuations in the financial markets outside the *firm's* control and that past performance is no indicator of future performance.
- (8) Notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it.
- (9) Any limitations on the period for which the information provided is valid, including a clear explanation as to how long a *firm's* offer applies as it stands.
- (10) The arrangements for payment and for performance.
- (11) Details of any specific additional cost for the *consumer* for using a means of distance communication.

Distance marketing information

The distance contract

- (12) The existence or absence of a right to cancel under the cancellation *rules* (ICOBS 7) and, where there is such a right, its duration and the conditions for exercising it, including information on the amount which the *consumer* may be required to pay (or which may not be returned to the *consumer*) in accordance with those *rules*, as well as the consequences of not exercising the right to cancel.
- (13) The minimum duration of the contract, in the case of services to be performed permanently or recurrently.
- (14) Information on any rights the parties may have to terminate the contract early or unilaterally under its terms, including any penalties imposed by the contract in such cases.
- (15) Practical instructions for exercising any right to cancel, including the address to which any cancellation notice should be sent.
- (16) The *EEA State* or *States* whose laws are taken by the *firm* as a basis for the establishment of relations with the *consumer* prior to the conclusion of the contract.
- (17) Any contractual clause on law applicable to the contract or on the competent court, or both.
- (18) In which language, or languages, the contractual terms and conditions and the other information in this Annex will be supplied, and in which language, or languages, the *firm*, with the agreement of the *consumer*, undertakes to communicate during the duration of the contract.

Redress

- (19) How to complain to the *firm*, whether complaints may subsequently be referred to the *Financial Ombudsman Service* and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme.
- (20) Whether compensation may be available from the *compensation scheme*, or any other named compensation scheme, if the *firm* is unable to meet its liabilities, and information about any other applicable named compensation scheme.

[Note: Recitals 21 and 23 to, and article 3(1) of, the *Distance Marketing Directive*]

Abbreviated distance marketing information

This Annex belongs to ■ ICOBS 3.1.14 R

3

Abbreviated distance marketing information

- (1) **The identity of the *person* in contact with the *consumer* and his link with the *firm*.**
- (2) **A description of the main characteristics of the financial service.**
- (3) **The total price to be paid by the *consumer* to the *firm* for the financial service including all taxes paid through the *firm* or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the *consumer* to verify it.**
- (4) **Notice of the possibility that other taxes or costs may exist that are not paid through the *firm* or imposed by it.**
- (5) **The existence or absence of a right to cancel in accordance with the cancellation rules (ICOBS 7) and, where the right to cancel exists, its duration and the conditions for exercising it, including information on the amount the *consumer* may be required to pay (or which may not be returned to the *consumer*) on the basis of those rules.**
- (6) **That other information is available on request and what the nature of that information is.**

[Note: article 3(3)(b) of the *Distance Marketing Directive*]

Chapter 4

Information about the firm, its services and remuneration

4.1 General requirements for insurance intermediaries

Application: who?

4.1.1 **R** This section applies to an *insurance intermediary*.

Status disclosure: general

4.1.2 **R** Prior to the conclusion of an initial *contract of insurance* and, if necessary, on its amendment or *renewal*, a *firm* must provide the *customer* with at least:

- (1) its name and address;
- (2) the fact that it is included in the *FSA Register* and the means for verifying this;
- (3) whether it has a direct or indirect holding representing more than 10% of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
- (4) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing more than 10% of the voting rights or capital in the *firm*; and
- (5) the procedures allowing *customers* and other interested parties to register complaints about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *customers*.

[Note: article 12(1) of the *Insurance Mediation Directive*]

Status disclosure exemption: introducers

4.1.3 **R** A *firm* whose contact with a *customer* is limited to effecting introductions (see ■ PERG 5.6) need only provide its name and address and whether it is a member of the same *group* as the *firm* to which it makes the introduction.

4.1.4 **G** If a *firm* goes further than putting a *customer* in contact with another *person* (for example, by *advising* him on a particular *policy* available from the *firm*) the full status disclosure requirements will apply.

4.1.5 **R** [not used]

Scope of service

- 4.1.6 **R**
- (1) Prior to the conclusion of an initial *contract of insurance* and, if necessary, on its amendment or *renewal*, a *firm* must tell the *customer* whether:
 - (a) it gives advice on the basis of a fair analysis of the market; or
 - (b) it is under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings*; or
 - (c) it is not under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair analysis of the market.
 - (2) A *firm* that does not *advise* on the basis of a fair analysis of the market must inform its *customer* that he has the right to request the name of each *insurance undertaking* with which the *firm* may and does conduct business. A *firm* must comply with such a request.

[Note: article 12(1) of the *Insurance Mediation Directive*]

4.1.7 **R** Prior to conclusion of an initial *contract of insurance* with a *consumer* a *firm* must state whether it is giving a *personal recommendation* or information.

Guidance on using panels to advise on the basis of a fair analysis

- 4.1.8 **G**
- (1) One way a *firm* may give advice on a fair analysis basis is by using 'panels' of *insurance undertakings* which are sufficient to enable the *firm* to give advice on a fair analysis basis and are reviewed regularly.
 - (2) A *firm* which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a *firm* should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better *premium*, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market.
 - (3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the 'fair analysis' criteria. Selection should be based on product features, *premiums* and services offered to *customers*, not solely on the benefit offered to the *firm*.

Means of communication to customers

4.1.9

R

- (1) All information to be provided to a *customer* in accordance with this chapter must be communicated:
 - (a) on paper or on any other *durable medium* available and accessible to the *customer*;
 - (b) in a clear and accurate manner, comprehensible to the *customer*; and
 - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.
- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see ■ ICOBS 3.1.14 R).
- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[Note: article 13 of the *Insurance Mediation Directive*]



4.2 Additional requirements for protection policies for insurance intermediaries and insurers

Application: what?

4.2.1 **R** This section applies in relation to a *pure protection contract* or a *payment protection contract* for a consumer.

Ensuring customers can make an informed decision

4.2.2 **G** In considering a *customer's* information needs for the purposes of *Principle 7*, a *firm* should have regard to the importance of information for a *customer's* purchasing decision when deciding when and how to give it.

4.2.3 **G** If a *firm* provides elements of status disclosure information orally as part of an interactive dialogue, it should do so for all elements of the information. In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see **R** ICOB5 3.1.14 R).

Disclosing the limits of the service provided

- 4.2.4 **R**
- (1) In a sale that does not involve a *personal recommendation*, a *firm* must take reasonable steps to ensure a *customer* understands he is responsible for deciding whether a *policy* meets his demands and needs.
 - (2) If this is done orally, the information must be provided to the *customer* in writing or any other *durable medium* no later than immediately after the conclusion of the contract.
 - (3) If a *firm* anticipates providing, or provides, information on any main characteristic of a *policy* orally during a non-advised sale, taking reasonable steps includes explaining the *customer's* responsibility orally.
 - (4) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

Status disclosure for insurers

4.2.5

R

- (1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or *renewal*, an *insurer* must disclose to the *customer* at least:
 - (a) the statutory status disclosure statement (see ■ GEN 4);
 - (b) whose *policies* it offers; and
 - (c) whether it is providing a *personal recommendation* or information.

- (2) If this is done orally, the disclosure must be provided in writing or any other *durable medium* no later than immediately after the conclusion of the contract.

4.2.6

G

Insurers cannot carry on an *insurance mediation activity* in respect of a third party's products unless they can show a natural fit or necessary connection between their insurance business and the third party's products (see the restriction of business in ■ INSPRU 1.5.13 R).



4.3 Fee disclosure

4.3.1

R

- (1) A *firm* must provide its *customer* with details of the amount of any *fees* other than *premium monies* for an *insurance mediation activity*.
- (2) The details must be given before the *customer* incurs liability to pay the *fee*, or before conclusion of the contract, whichever is earlier.
- (3) To the extent that an actual *fee* cannot be given, a *firm* must give the basis for calculation.

4.3.2

G

The *fee* disclosure requirement extends to all such *fees* that may be charged during the life of a *policy*.



4.4 Commission disclosure for commercial customers

Commission disclosure rule

4.4.1

R

- (1) An *insurance intermediary* must, on a *commercial customer's* request, promptly disclose the *commission* that it and any *associate* receives in connection with a *policy*.
- (2) Disclosure must be in cash terms (estimated, if necessary) and in writing or another *durable medium*. To the extent this is not possible, the *firm* must give the basis for calculation.

4.4.2

G

An *insurance intermediary* should include all forms of remuneration from any arrangements it may have. This includes arrangements for sharing profits, for payments relating to the volume of sales, and for payments from premium finance companies in connection with arranging finance.

4.4.3

G

- (1) The commission disclosure *rule* is additional to the general law on the fiduciary obligations of an agent in that it applies whether or not the *insurance intermediary* is an agent of the *commercial customer*.
- (2) In relation to *contracts of insurance*, the essence of these fiduciary obligations is generally a duty to account to the agent's principal. But where a *customer* employs an *insurance intermediary* by way of business and does not remunerate him, and where it is usual for the *firm* to be remunerated by way of *commission* paid by the *insurer* out of premium payable by the *customer*, then there is no duty to account but if the *customer* asks what the *firm's* remuneration is, it must tell him.



4.5 Initial disclosure document

4.5.1

G

Using an *initial disclosure document* (see ■ ICOB4 Annex 1G) or *combined initial disclosure document* satisfies the status disclosure, scope of service and *fee* disclosure requirements if it is used in accordance with its notes and provided to the *customer* at the correct time.

4

Initial disclosure document

This annex belongs to ICOBS 4.5.1 G.

A *firm* should omit the notes and square brackets in the following *initial disclosure document*, but must not include the keyfacts logo unless it uses the *initial disclosure document* in full and in accordance with its notes. Subject to this, a *firm* may use its own house style and brand.

This annex consists only of one or more forms. Forms are to be found through the 'Forms' link at www.fsahandbook.info or through the Handbook section of the CD-ROM under Forms.

Chapter 5

Identifying client needs and advising



5.1 General

Eligibility to claim benefits: general insurance contracts and pure protection contracts

5.1.1

G

- (1) In line with *Principle 6*, a *firm* should take reasonable steps to ensure that a *customer* only buys a *policy* under which he is eligible to claim benefits.
- (2) If, at any time while *arranging a policy*, a *firm* finds that parts of the cover apply, but others do not, it should inform the *customer* so he can take an informed decision on whether to buy the *policy*.

Eligibility to claim benefits: payment protection contracts

5.1.2

R

A *firm* arranging a *payment protection contract* must:

- (1) take reasonable steps to ensure that the *customer* only buys a *policy* under which he is eligible to claim benefits; and
- (2) if, at any time while *arranging the policy*, it finds that parts of the cover do not apply, inform the *customer* so he can take an informed decision on whether to buy the *policy*.

5.1.3

G

For a typical *payment protection contract* the reasonable steps required in the first part of the *eligibility rule* are likely to include checking that the *customer* meets any qualifying requirements for different parts of the *policy*.

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 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 *customer* is asked clear questions about any matter material to the *insurance undertaking*.



5.2 Statement of demands and needs

Application: who? what?

5.2.1

R

This section applies to:

- (1) an *insurance intermediary* in relation to any *policy*; and
- (2) an *insurer* when it has given a *personal recommendation* to a *consumer* on a *payment protection contract* or a *pure protection contract*.

Statement of demands and needs

5.2.2

R

- (1) Prior to the conclusion of a contract, a *firm* must specify, in particular on the basis of information provided by the *customer*, the demands and the needs of that *customer* as well as the underlying reasons for any advice given to the *customer* on that *policy*.
- (2) The details must be modulated according to the complexity of the *policy* proposed.

[Note: article 12(3) of the *Insurance Mediation Directive*]

Means of communication to customers

5.2.3

R

- (1) A statement of demands and needs must be communicated:
 - (a) on paper or on any other *durable medium* available and accessible to the *customer*;
 - (b) in a clear and accurate manner, comprehensible to the *customer*; and
 - (c) in an official language of the *State of the commitment* or in any other language agreed by the parties.
- (2) The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.

- (3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see ■ ICOBS 3.1.14 R).
- (4) If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.

[Note: article 13 of the *Insurance Mediation Directive*]

Statement of demands and needs: non-advised sales

5.2.4

G

The format of a statement of demands and needs is flexible. Examples of approaches that may be appropriate where a *personal recommendation* has not been given include:

- (1) providing a demands and needs statement as part of an application form, so that the demands and needs statement is made dependent upon the *customer* providing personal information on the application form. For instance, the application form might include a statement along the lines of: "If you answer 'yes' to questions a, b and c your demands and needs are those of a pet owner who wishes and needs to ensure that the veterinary needs of your pet are met now and in the future";
- (2) producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy the product. For example, "This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future";
- (3) giving a *customer* a record of all his demands and needs that have been discussed; and
- (4) providing a *key features document*.



5.3 Advised sales

Suitability

5.3.1

R

A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment.

Suitability guidance for protection policies

5.3.2

G

In taking reasonable care to ensure the suitability of advice on a *payment protection contract* or a *pure protection contract* a firm should:

- (1) establish the *customer's* demands and needs. It should do this using information readily available and accessible to the *firm* and by obtaining further relevant information from the customer, including details of existing insurance cover; it need not consider alternatives to policies nor *customer* needs that are not relevant to the type of policy in which the *customer* is interested;
- (2) take reasonable care to ensure that a *policy* is suitable for the *customer's* demands and needs, taking into account its level of cover and cost, and relevant exclusions, excesses, limitations and conditions; and
- (3) inform the *customer* of any demands and needs that are not met.

Advice on the basis of a fair analysis

5.3.3

R

If an *insurance intermediary* informs a *customer* that it gives advice on the basis of a fair analysis, it must give that advice on the basis of an analysis of a sufficiently large number of *contracts of insurance* available on the market to enable it to make a recommendation, in accordance with professional criteria, regarding which *contract of insurance* would be adequate to meet the *customer's* needs.

[Note: article 12(2) of the *Insurance Mediation Directive*]

Chapter 6

Product Information



6.1 General

Responsibilities of insurers and insurance intermediaries

- 6.1.1 **R** An *insurer* is responsible for producing, and an *insurance intermediary* for providing to a *customer*, the information required by this chapter and by the distance communication *rules* (see ■ ICOBS 3.1). However, an *insurer* is responsible for providing information required on mid-term changes, and an *insurance intermediary* is responsible for producing price information if it agrees this with an *insurer*.
- 6.1.2 **R** If there is no *insurance intermediary*, the *insurer* is responsible for producing and providing the information.
- 6.1.3 **R** An *insurer* must produce information in good time to enable the *insurance intermediary* to comply with the *rules* in this chapter, or promptly on an *insurance intermediary's* request.
- 6.1.4 **R** These general *rules* on the responsibilities of *insurers* and *insurance intermediaries* are modified by ■ ICOBS 6 Annex 1 R if one of the *firms* is not based in the *United Kingdom*, and in certain other situations.

Ensuring customers can make an informed decision

- 6.1.5 **R** A *firm* must take reasonable steps to ensure a *customer* is given appropriate information about a *policy* in good time and in a comprehensible form so that the *customer* can make an informed decision about the arrangements proposed.
- 6.1.6 **G** The appropriate information *rule* applies pre-conclusion and post-conclusion, and so includes matters such as mid-term changes and *renewals*. It also applies to the price of the *policy*.
- 6.1.7 **G** The level of information required will vary according to matters such as:
 - (1) the knowledge, experience and ability of a typical *customer* for the *policy*;
 - (2) the *policy* terms, including its main benefits, exclusions, limitations, conditions and its duration;
 - (3) the *policy's* overall complexity;

- (4) whether the *policy* is bought in connection with other goods and services;
- (5) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in a sale made purely by written correspondence (see ■ ICOBS 3.1.14 R)); and
- (6) whether the same information has been provided to the *customer* previously and, if so, when.

6.1.8 G In determining what is "in good time", a *firm* should consider the importance of the information to the *customer's* decision-making process and the point at which the information may be most useful. Distance communication timing requirements are also relevant (for example, the distance communication *rules* enable certain information to be provided post-conclusion in telephone and certain other sales (see ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R)).

6.1.9 G Cancellation rights do not affect what information it is appropriate to give to a *customer* in order to enable him to make an informed purchasing decision.

6.1.10 G A *firm* dealing with a *consumer* may wish to provide information in a *policy summary* or as a *key features document* (see ■ ICOBS 6 Annex 2).

Providing evidence of cover

6.1.11 G Under *Principle 7* a *firm* should provide evidence of cover promptly after inception of a *policy*. *Firms* will need to take into account the type of *customer* and the effect of other information requirements, for example those under the distance communication *rules* (■ ICOBS 3.1).

Group policies

6.1.12 G Under *Principle 7*, a *firm* that sells a *group policy* should provide appropriate information to the *customer* to pass on to other *policyholders*. It should tell the *customer* that he should give the information to each *policyholder*.

Price disclosure: connected goods or services

- 6.1.13** R
- (1) If a *policy* is bought by a *consumer* in connection with other goods or services a *firm* must, before conclusion of the contract, disclose its *premium* separately from any other prices and whether buying the *policy* is compulsory.
 - (2) In the case of a *distance contract*, disclosure of whether buying the *policy* is compulsory may be made in accordance with the timing requirements under the distance communication *rules* (see ■ ICOBS 3.1.8 R, ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R).

Exception to the timing rules: distance contracts and voice telephony communications

6.1.14

R

Where a *rule* in this chapter requires information to be provided in writing or another *durable medium* before conclusion of a contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see ■ ICOBS 3.1.14 R and ■ ICOBS 3.1.15 R).



6.2 Pre-contract information: general insurance contracts

Application: what?

6.2.1 **R** This section applies in relation to a *general insurance contract*.

Non-life insurance directive disclosure requirements

6.2.2 **R** Before a *general insurance contract* is concluded, a *firm* must inform a *customer* who is a natural *person* of:

- (1) the law applicable to the contract where the parties do not have a free choice, or the fact that the parties are free to choose the law applicable and, in the latter case, the law the *firm* proposes to choose; and
- (2) the arrangements for handling *policyholders'* complaints concerning contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the *policyholders'* right to take legal proceedings.

[Note: article 31 of the *Third Non-Life Directive*]

6.2.3 **R** (1) If the *insurance undertaking* is an *EEA firm*, the *firm* must inform the *customer*, before any commitment is entered into, of the *EEA State* in which the head office or, where appropriate, the *branch* with which the contract is to be concluded, is situated.

- (2) Any documents issued to the *customer* must convey the information required by this *rule*.

[Note: article 43(2) of the *Third Non-Life Directive*]

6.2.4 **R** The contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, must state the address of the head office, or, where appropriate, of the *branch* of the *insurance undertaking* which grants the cover.

[Note: article 43(2) of the *Third Non-Life Directive*]

Disclosure of cancellation right

6.2.5

R

- (1) A *firm* must provide a *consumer* with information on the right to cancel a *policy*.
- (2) The information to be provided on the right to cancel is:
 - (a) its existence;
 - (b) its duration;
 - (c) the conditions for exercising it;
 - (d) information on the amount which the *consumer* may be required to pay if he exercises it;
 - (e) the consequences of not exercising it; and
 - (f) the practical instructions for exercising it.
- (3) The information must be provided in good time before conclusion of the contract and in writing or another *durable medium*.



6.3 Pre- and post-contract information: pure protection contracts

Life insurance directive disclosure requirements

6.3.1

R

- (1) Before a *pure protection contract* is concluded, a *firm* must inform a *customer* of the information in the table below.
- (2) The information must be communicated in a clear and accurate manner, in writing, and in an official language of the *State of the commitment* or in another language agreed by the parties.

Information to be communicated before conclusion

- (1) The name of the *insurance undertaking* and its legal form.
- (2) The name of the *EEA State* in which the head office and, where appropriate, the agency or *branch* concluding the contract is situated.
- (3) The address of the head office and, where appropriate, of the agency or *branch* concluding the contract.
- (4)* Definition of each benefit and each option.
- (5)* Term of the contract.
- (6)* Means of terminating the contract.
- (7)* Means of payment of *premiums* and duration of payments.
- (8)* Information on the *premiums* for each benefit, both main benefits and supplementary benefits, where appropriate.
- (9) Arrangements for application of the cancellation period.
- (10) General information on the tax arrangements applicable to the type of *policy*.
- (11) The arrangements for handling complaints concerning contracts by *policyholders*, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the right to take legal proceedings.
- (12) The law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the *insurance undertaking* proposes to choose.

6

Note: The *rule* on mid-term changes applies to items marked with an asterisk (see ICOBS 6.3.3 R).

[Note: Annex III(A) to the *Consolidated Life Directive*]

6.3.2

G

If the contract is concluded with a *commercial customer* by telephone, the information in this section may be provided immediately after conclusion.

Mid-term changes
.....

6.3.3

R

In addition to the *policy* conditions, both general and special, a *customer* must, throughout the term of a *pure protection contract*, receive:

- (1) any change in the name of the *insurance undertaking*, its legal form or the address of its head office and, where appropriate, of the agency or *branch* which concluded the contract; and
- (2) all the information marked '*' in the table of information to be communicated before conclusion, in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

[Note: Annex III(B) to the *Consolidated Life Directive*]



**6.4 Pre- and post-contract information:
protection policies**

Application: what?

6.4.1 **R** This section applies in relation to a *payment protection contract* or a *pure protection contract* except as otherwise stated.

Oral sales: ensuring customers can make an informed decision

6.4.2 **R** (1) If a *firm* provides information orally during a sales dialogue with a *customer* on a main characteristic of a *policy*, it must do so for all the *policy's* main characteristics.

(2) A *firm* must take reasonable steps to ensure that the information provided orally is sufficient to enable the *customer* to take an informed decision on the basis of that information, without overloading the *customer* or obscuring other parts of the information.

6.4.3 **G** (1) A *policy's* main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

(2) A significant exclusion or limitation is one that would tend to affect the decision of *customers* generally to buy. In determining what exclusions or limitations are significant, a *firm* should particularly consider the exclusions or limitations that relate to the significant features and benefits of a *policy* and factors which may have an adverse effect on the benefit payable under it. Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

Policy summary

6.4.4 **R** A *firm* must provide a *consumer* with a *policy summary* in good time before the conclusion of a contract.

Payment protection contracts: importance of reading documentation

6.4.5 **R** (1) A *firm* must draw a *consumer's* attention to the importance of reading *payment protection contract* documentation before the end of the cancellation period to check that the *policy* is suitable for the *consumer*.



- (2) This must be done orally if a *firm* provides information orally on any main characteristic of a *policy*.

Price information: general

6.4.6 **R** A *firm* must provide price information in a way calculated to enable the *customer* to relate it to a regular budget.

6.4.7 **G** Price information is likely also to include at least the total *premium* (or the basis for calculating it so that the *customer* can verify it) and, where relevant:

- (1) for *policies* of over one year with reviewable *premiums*, the period for which the quoted *premium* is valid, and the timing of reviews;
- (2) other *fees*, administrative charges and taxes payable by the *customer* through the *firm*; and
- (3) a statement identifying separately the possibility of any taxes not payable through the *firm*.

6.4.8 **G** Price information should be given in writing or another *durable medium* in good time before conclusion of the contract. This is in addition to any requirement or decision to provide the information orally. In the case of a *distance contract* concluded over the telephone, it may be provided in writing or another *durable medium* no later than immediately after conclusion.

Price information: premiums paid using a non-revolving credit agreement

- 6.4.9 **R**
- (1) This *rule* applies when a *premium* will be paid using a credit agreement other than a revolving credit agreement.
 - (2) A *firm* must provide price information in a way calculated to enable the *customer* to understand the additional repayments that relate to the purchase of the *policy*, and the total cost of the *policy*.
 - (3) Price information must reflect any difference between the duration of the *policy* and that of the credit agreement.
 - (4) A *firm* must explain to a *customer*, as applicable, that the *premium* will be added to the amount provided under the credit agreement and that interest will be payable on it.

Price information: policies sold in connection with revolving credit arrangements

- 6.4.10 **G**
- (1) This *guidance* applies to *policies* bought as secondary products to revolving credit agreements (such as store cards or credit cards).
 - (2) Price information should be given in a way calculated to enable a typical *customer* to understand the typical cumulative cost of taking out the *policy*. This does not require oral disclosure where there is a sales dialogue with a *customer*. However, consistent with *Principle 7*, a *firm* should ensure that

this element of price information is not undermined by any information given orally.

Mid-term changes

6.4.11

R

- (1) Throughout the term of a *policy*, a *firm* must provide a *customer* with information about any change to:
 - (a) the *premium*, unless the change conforms to a previously disclosed formula; and
 - (b) any term of the *policy*, together with an explanation of any implications of the change where necessary.
- (2) This information must be provided in writing or another *durable medium* in good time before the change takes effect or, if the change is at the *customer's* request, as soon as is practicable provided the *firm* explains the implications of the change before it takes effect.

6.4.12

G

- (1) When explaining the implications of a change, a *firm* should explain any changes to the benefits and significant or unusual exclusions arising from the change.
- (2) *Firms* will need to consider whether mid-term changes are compatible with the original *policy*, in particular whether it reserves the right to vary *premiums*, charges or other terms. *Firms* also need to ensure that any terms which reserve the right to make variations are not themselves unfair under the *Unfair Terms Regulations*.

Responsibilities of insurers and insurance intermediaries in certain situations

This annex belongs to ■ ICOBS 6.1.4 R

The table in this annex modifies the general *rules* on the responsibilities of *insurers* and *insurance intermediaries* for producing and providing to a *customer* the information required by this chapter.

Situation	<i>Insurance interme- diary's responsibili- ty</i>	<i>Insurer's responsi- bility</i>
(1) <i>Insurance intermediary operates from UK establish- ment</i>	Production and providing	None
<i>Insurer does not operate from UK establishment</i>		
(2) <i>Insurance intermediary does not operate from UK establishment, is not authorised, is selling connected contracts or is authorised professional firm carrying on non-mainstream regulated activities</i>	None	Production and providing (but no <i>policy summary</i> is required unless the <i>insurance interme- diary</i> does not oper- ate from a <i>UK es- tablishment</i>)
<i>Insurer operates from UK establishment</i>		
<i>Customer habitually resident in the EEA</i>		
(3) <i>As (2) but customer habitually resident outside the EEA and insurer not in contact with the customer</i>	None	None
(4) <i>As (2) but customer habitually resident outside the EEA and insurer in contact with the customer</i>	None	Production and providing
(5) <i>Insurance intermediary does not operate from UK establishment</i>	None	Production and providing
<i>Insurer does not operate from UK establishment</i>		

Policy summary for consumers

This annex belongs to ■ ICOBS 6.1.10 G and ■ ICOBS 6.4.4 R

1 Format

- 1.1 R (1) *A policy summary must be in writing or another durable medium.*
- (2) *A policy summary must be in a separate document, or within a prominent separate section of another document clearly identifiable as containing key information that the consumer should read.*
- 1.2 G The quality and presentation standard of a *policy summary* should be consistent with that used for other *policy* documents.

2 Content

- 2.1 R *A policy summary must contain the information in the table below and no other information.*

Policy summary content

- **Keyfacts logo in a prominent position at the top of the *policy summary*. Further requirements regarding the use of the logo and the location of specimens are set out in GEN 5.1 and GEN 5 Annex 1 G.**
- **Statement that the *policy summary* does not contain the full terms of the *policy*, which can be found in the policy document.**
- **Name of the *insurance undertaking*.**
- **Type of insurance and cover.**
- **Significant features and benefits.**
- **Significant or unusual exclusions or limitations, and cross-references to the relevant policy document provisions.**
- **Duration of the *policy*.**
- **A statement, where relevant, that the *consumer* may need to review and update the cover periodically to ensure it remains adequate.**
- **Price information (optional).**
- **Existence and duration of the right of cancellation (other details may be included).**
- **Contact details for notifying a claim.**
- **How to complain to the *insurance undertaking* and that complaints may subsequently be referred to the *Financial Ombudsman Service* (or other applicable named complaints scheme).**

- That, should the *insurance undertaking* be unable to meet its liabilities, the consumer may be entitled to compensation from the *compensation scheme* (or other applicable compensation scheme), or that there is no compensation scheme. Information on the extent and level of cover and how further information can be obtained is optional.

2.2 G A *policy summary* should properly describe the *policy* but, in line with *Principle 7*, should not overload the *consumer* with detail.

3 Significant or unusual exclusions or limitations

3.1 G (1) A significant exclusion or limitation is one that would tend to affect the decision of *consumers* generally to buy. An unusual exclusion or limitation is one that is not normally found in comparable contracts.

(2) In determining what exclusions or limitations are significant, a *firm* should, in particular, consider the exclusions or limitations that relate to the significant features and benefits of a *policy* and factors which may have an adverse effect on the benefit payable under it.

(3) Another type of significant limitation might be that the contract only operates through certain means of communication, e.g. telephone or internet.

Examples of significant or unusual exclusions or limitations

- Deferred payment periods
- Exclusion of certain conditions, diseases or pre-existing medical conditions
- Moratorium periods
- Limits on the amounts of cover
- Limits on the period for which benefits will be paid
- Restrictions on eligibility to claim such as age, residence or employment status
- Excesses

4 Key features document as an alternative to a policy summary

4.1 R A *firm* may provide a document that has the contents of a *key features document* instead of a *policy summary*. The document must include contact details for notifying a claim but need not include the title 'key features of the [name of product]'.

Chapter 7

Cancellation

7.1 The right to cancel

The right to cancel

- 7.1.1 **R** A *consumer* has a right to cancel, without penalty and without giving any reason, within:
- (1) 30 *days* for a *contract of insurance* which is, or has elements of, a *pure protection contract* or *payment protection contract*; or
 - (2) 14 *days* for any other *contract of insurance* or *distance contract*.

[Note: article 6(1) of the *Distance Marketing Directive* in relation to a *distance contract* and article 35 of the *Consolidated Life Directive* in relation to a *pure protection contract*]

- 7.1.2 **G** A *firm* may provide longer or additional cancellation rights voluntarily, but if it does these should be on terms at least as favourable to the *consumer* as those in this chapter, unless the differences are clearly explained.

Exceptions to the right to cancel

- 7.1.3 **R** The right to cancel does not apply to:
- (1) a travel and baggage *policy* or similar short-term *policy* of less than one *month's* duration;
 - (2) a *policy* the performance of which has been fully completed by both parties at the *consumer's* express request before the *consumer* exercises his right to cancel;
 - (3) a *pure protection contract* of six *months'* duration or less which is not a *distance contract*;
 - (4) a *pure protection contract* effected by the trustees of an *occupational pension scheme*, an employer or a *partnership* to secure benefits for the *employees* or the *partners* in the *partnership*;
 - (5) a *general insurance contract* which is neither a *distance contract* nor a *payment protection contract*, sold by an intermediary

who is an *unauthorised person* (other than an *appointed representative*); and

(6) a *connected contract* which is not a *distance contract*.

[Note: articles 6(2)(b) and (c) of the *Distance Marketing Directive* and 35(1) and (2) of the *Consolidated Life Directive*]

7.1.4

G

A 'similar short-term *policy*' is any *policy* where the event or activity being insured is less than one *month*'s duration. 'Duration' refers to the period of cover rather than the period of the contract.

Start of the cancellation period

7.1.5

R

The cancellation period begins either:

- (1) from the day of the conclusion of the contract, except in respect of a *pure protection contract* where the time limit begins when the *customer* is informed that the contract has been concluded; or
- (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[Note: article 35 of the *Consolidated Life Directive* and article 6(1) of the *Distance Marketing Directive*]

Exercising a right to cancel

7.1.6

R

If a *consumer* exercises the right to cancel he must, before the expiry of the relevant deadline, notify this following the practical instructions given to him. The deadline shall be deemed to have been observed if the notification, if on paper or another *durable medium*, is dispatched before the deadline expires.

[Note: article 6(1) and (6) of the *Distance Marketing Directive*]

7.2 Effects of cancellation

Termination of contract

- 7.2.1 **R** By exercising the right to cancel, the *consumer* withdraws from the contract and the contract is terminated.

Payment for the service provided before cancellation

- 7.2.2 **R**
- (1) When a *consumer* exercises the right to cancel he may only be required to pay, without any undue delay, for the service actually provided by the *firm* in accordance with the contract.
 - (2) The amount payable must not:
 - (a) exceed an amount which is in proportion to the extent of the service already provided in comparison with the full coverage of the contract; and
 - (b) in any case be such that it could be construed as a penalty.
 - (3) A *firm* must not require a *consumer* to pay any amount:
 - (a) unless it can prove that the *consumer* was duly informed about the amount payable; or
 - (b) if it commenced the performance of the contract before the expiry of the cancellation period without the *consumer's* prior request.
 - (4) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *pure protection contract*.
 - (5) A *consumer* cannot be required to pay any amount when exercising the right to cancel a *payment protection contract* unless a claim is made during the cancellation period and settlement terms are subsequently agreed.

[Note: article 7(1), (2) and (3) of the *Distance Marketing Directive*]

- 7.2.3 **G** The amount payable may include:
- (1) any sums that a *firm* has reasonably incurred in concluding the contract, but should not include any element of profit;
 - (2) an amount for cover provided (i.e. a proportion of the *policy's* exposure that relates to the time on risk);
 - (3) a proportion of the *commission* paid to an *insurance intermediary* sufficient to cover its costs; and
 - (4) a proportion of any *fees* charged by an *insurance intermediary* which, when aggregated with any *commission* to be repaid, would be sufficient to cover its costs.

7.2.4 **G** In most cases, the *FSA* would expect the proportion of a *policy's* exposure that relates to the time on risk to be a pro rata apportionment. However, where there is material unevenness in the incidence of risk, an *insurer* could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred.

7.2.5 **G** An *insurer* and an *insurance intermediary* should take reasonable steps to ensure that double recovery of selling costs is avoided, particularly where the contract for the *insurance intermediary's* services is a *distance contract*, or where both *commission* and *fees* are recouped by the *insurer* and *insurance intermediary* respectively.

Firm's obligation on cancellation

- 7.2.6 **R**
- (1) A *firm* must, without any undue delay and no later than within 30 days, return to a *consumer* any sums it has received from him in accordance with the contract, except as specified in this section.
 - (2) This period shall begin from the day on which the *firm* receives the notification of cancellation.

[Note: article 7(4) of the *Distance Marketing Directive*]

Consumer's obligation on cancellation

- 7.2.7 **R**
- (1) A *firm* is entitled to receive from a *consumer* any sums and/or property he has received from the *firm* without any undue delay and no later than within 30 days.
 - (2) This period shall begin from the day on which the *consumer* dispatches the notification of cancellation.

[Note: article 7(5) of the *Distance Marketing Directive*]

7.2.8 **G** If an *insurer* has made a charge for services provided, the sums and property to be returned by a *consumer* should not include any money or property provided in settling a claim.

Set off

7.2.9 **R** Any sums payable under this section are owed as simple contract debts and may be set off against each other.

Automatic cancellation of an attached distance contract

7.2.10 **G** A *consumer's* notice to cancel a *distance contract* may also operate to cancel any attached contract which is also a distance financial services contract. This is unless the *consumer* gives notice that cancellation of the contract is not to operate to cancel the attached contract. (See the *Distance Marketing Regulations*.) Where relevant, this should be disclosed to the *consumer* along with other information on cancellation.

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.

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) 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;
or
- (3) 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.

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 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.
- (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 1 of the *Fourth Motor Insurance Directive* and article 4(4)(4e) of the *Fifth Motor Insurance Directive*]

Requirement to appoint claims representatives

8.2.2

G

A *firm* must have a claims representative in each *EEA State* other than the *United Kingdom* (see *threshold condition 2A*).

Conditions for appointing claims representatives

8.2.3

R

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 4(1), (4) and (5) of the *Fourth Motor Insurance Directive*]

8.2.4

G

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

R

- (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 5(2) of the *Fourth 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

R

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 4(6) of the *Fourth Motor Insurance Directive* and article 4(4)(4e, first paragraph) of the *Fifth 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 4(6) of the *Fourth Motor Insurance Directive*. Regulation 6 of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 makes this *rule* actionable under section 150 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.
 - (2) Generally, this means that a *firm* handling a claim should not put itself in a position where its own interest, or its duty to anyone for whom it acts, conflicts with its duty to a *customer*. If it does so, it should have the *customer's* prior informed consent.
 - (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 consider whether it is possible to manage such a conflict through disclosure and consent. An example where these are unlikely to be sufficient is 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 **G** 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.

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ICOBS TP 1 Transitional Provisions

Fifth Motor Insurance Directive

- 1 R In relation to a claim by an *injured party* received by a *motor vehicle liability insurer* or its claims representative on or before 10 June 2007, the motor vehicle liability claims handling *rules* (see ICOBS 8.2.6 R to ICOBS 8.2.11 G) only apply if the claim results from an accident occurring in an *EEA State* other than the *injured party's EEA State* of residence which was caused by the use of a *vehicle* insured through an establishment in, and *normally based in*, an *EEA State* other than the *injured party's EEA State* of residence.

Initial disclosure document

- 2 R A *firm* may use the keyfacts logo on a document that meets the requirements for an *initial disclosure document* except that it includes the sentence "It requires us to give you this document" in section 1 of the document. This *rule* applies until 5 January 2009.

Sourcebook implementation period

- 3 R A *firm* need not comply with any provision of this sourcebook to the extent that it complies with the corresponding provision of *ICOB* (if any) as it applied on 5 January 2008. This *rule* applies until 5 July 2008.
- 4 G *Firms* should consider what kind of records should be made of their reliance on the sourcebook implementation period transitional provision, in particular where they rely on the transitional provision for only some of their *insurance mediation activities*, or the extent of reliance changes during the implementation period.

Pure protection contracts: record of election

- 5 R A *firm* is not required to make, and retain a record of, an election to comply with the Conduct of Business sourcebook (see ICOBS 1 Annex 1 G, Part 2, 3.1R(3)). This *rule* applies until 5 June 2008.

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Schedule 1 Record keeping requirements

Notes

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
ICOBS 1 Annex 1 G, Part 2 3.1R(3)	Record of election to comply with <i>COBS rules for pure protection policies</i> (including amendment or reversal)	Date of election and precise description of parts of the <i>firm's</i> business that will comply with <i>COBS</i> provisions	Not specified	Indefinitely

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Schedule 2 Notification requirements

(to follow)

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Schedule 3 Fees and other required payments

(to follow)

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Schedule 4 Powers exercised

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in this sourcebook:

section 138 (General rule-making power)

section 139(4) (Miscellaneous ancillary matters)

section 145 (Financial promotion rules)

section 149 (Evidential provisions)

section 156 (General supplementary powers)

regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706).

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in this sourcebook:

section 157(1) (Guidance).

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Schedule 5 Rights of action for damages

(to follow)

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Schedule 6 Rules that can be waived

(to follow)

