# INSURANCE CONDUCT OF BUSINESS (ICOBS)

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## 3. Insurance Conduct of Business (ICOBS)

The FCA has decided on a differentiated approach for insurance conduct of business regulation. This is to take into account the great variation of possible consumer detriment in the market for different insurance products.

ICOBS now differentiates between "Protection Products" (term assurance, critical illness, income protection and payment protection) and "General Insurance Products" (products which are not protection products including motor, household and PMI). "Protection Products" are classed as "higher risk" products and there are some additional rules to safeguard consumers.

The ICOBS rules have been summarised in the sections below.

- General rules
- Financial promotions (marketing)
- Compliant sales process (e.g. collecting information, providing advice and concluding the contract)
- Post new business and ongoing servicing

The format will be to document the rules applying to all products initially, followed by additional rules for "protection products".

Consumer Insurance Disclosure and Representations Act 2012

A number of amendments have been made to ICOBS to align the guidance to the Consumer Insurance Disclosure and Representations (CIDRA) Act 2012, which came into force on 6 April 2013. This is with particular reference to ICOBS 2, 5 and 8. In summary, the Act replaces the duty on the consumer to volunteer information material to the insurer's decision and replaces it with the duty to take *reasonable care* not to make misrepresentations at pre-contract stage. The will apply to a policy entered into or amended by a consumer, on or after 6 April 2013.



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## 3.1 General rules

This section confirms the application and purpose and covers the general rules with which a firm should comply.

### 3.1.1 Application and purpose

ICOBS implements, in part, the provisions contained in a number of EC directives:

a. The Insurance Mediation Directive
b. The Distance Marketing directive
c. The Consolidated Life Directive
d. The Non-Life Directives
e. The Motor Insurance Directives
f. Electronic Commerce Directive

### 3.1.2 General rules

**Client categorisation**

A policyholder is anyone who upon the occurrence of a contingency insured against can claim upon a policy of insurance.

For the purposes of these rules, only a policyholder or prospective policyholder who makes arrangements in preparation to him concluding a contract of insurance, can be classed as a customer.

Customers are either classed as consumers or commercial customers.

A consumer is any natural person who is acting for the purposes which are outside his trade or profession. Previously these were known as retail customers.

A commercial customer is a customer who is not a consumer.

If it is not clear whether a customer is a consumer or commercial customer then they must be treated as a consumer.

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.

For the purposes of ICOBS 5.1.4G and ICOBS 8.1.2R, if, in relation to a particular contract of insurance, the customer entered into it mainly for purposes unrelated to his trade or profession, the customer is a consumer.



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**Examples of customer classification**

| Capacity | Classification |
| --- | --- |
| Personal representatives, including executors, unless they are acting in a professional capacity, for example solicitor acting as an executor. | Consumer |
| Private individuals acting in personal or other family circumstances, for example, as trustee of a family trust. | Consumer |
| Trustee of a trust such as a housing or NHS trust | Commercial customer |
| Member of the governing body of a club or other unincorporated association such as trade body and a student union. | Commercial customer |
| Pension trustee. | Commercial customer |
| Person taking out a policy covering a property bought under a buy-to-let mortgage. | Commercial customer |
| Partner in a partnership taking out insurance for the purposes related to his profession. | Commercial customer |

**Communication with customers**

When a firm communicates with a customer it must take reasonable steps to communicate in a way that is clear, fair and not misleading.

When considering how to comply a firm should take into account the customer's knowledge of the contract of insurance the information relates.

All types of communication with a customer are covered e.g. oral, telephone calls and written.

Prominence of relevant information can play a key role in ensuring communication is clear, fair and not misleading. A firm should:

a. use materials and design to present the information legibly, accessibly and in a balanced way. This includes use of paper size, colour and font;
b. use emphasis sparingly; and
c. not use different font sizes or positioning so that the impact of certain information (e.g. significant conditions, exclusions, scope of cover or charges) is likely to be materially less than other information.



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**Inducements**

An inducement is a benefit offered to a firm, or any person acting for a firm with a view to that firm or person adopting a particular course of action. Inducements include (but not limited to): cash, cash equivalents, commission, goods, hospitability or training programmes.

Principle 8 requires all firms 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 the firm's duties to its customers.

A firm that offers an inducement should consider whether doing so conflicts with its obligations under Principles 1 and 6 to act with integrity and treat customers fairly.

A firm must therefore take reasonable steps to ensure that it, and any person acting on its behalf, does not offer, give, solicit or accept an inducement if it conflicts to a material extent with the duty the firm owes to its customers.

**Exclusion of liability**.

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

**Reliance on others**

A firm can be compliant with ICOBS rules by relying on third parties, provided it can show that it is compatible to do so with the rule and with Principles for Business and in particular with Principles 1 (integrity), 2 (skill, care and diligence) and 3 (management and control).

Any information that ICOBS rules require to be sent to the customer may be sent to another person on the instruction of a customer, provided the recipient is not connected with the firm.

There is no need for a firm to supply information to a customer where it has taken reasonable steps to establish that this has been done or will be supplied by another person e.g. policy documents being sent by an insurer.

However a firm cannot delegate its responsibility under the regulatory system to a third party. For example an insurer may use an outsource firm to handle claims promptly, however it will still retain its regulatory responsibility for ensuring this happens.



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**Application to electronic media and E-Commerce**

Where a firm conducts e-commerce activities e.g. use of websites to sell contracts of insurance, a firm should make the following easily and permanently accessible to the customer:

- its name and address;
- contact details including email addresses;
- statutory status disclosure including a statement that it is on the FCA register and how it can be checked; and
- where it undertakes an activity subject to VAT, its VAT number.

If the firm refers to price this must be clear, unambiguous and clearly indicate whether it is inclusive of tax and delivery costs.

Commercial communications should:

- be clearly identifiable as such;
- clearly identify the person to whom the communication is made;
- clearly identify any promotional offers and qualifying conditions that must be met (they must be easily accessible and presented clearly and unambiguously); and
- clearly identify promotional competitions or games and any conditions for participation. These must be easily accessible and presented clearly and unambiguously.

Unsolicited email communications must be clearly identifiable as an unsolicited commercial communication by the recipient as soon as they are received.

Where a contract can be concluded, the firm must provide in a clear and unambiguous manner:

- the different technical steps to conclude the contract;
- whether the concluded contract will be filed by the firm and whether it is accessible;
- any technical means for identifying and corrected input errors before placing the order;
- relevant codes of conduct to which it subscribes and how these codes can be consulted;
- acknowledge receipt of the customer’s order without undue delay and by electronic means;
- effective and accessible means to correct input errors before placing the order; and
- contractual terms and conditions provided by the firm must be made available in away that allows the customer to store and reproduce them.



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Where the contract is concluded exclusively by exchange of emails, then the above rules do not apply. However in these circumstances firms should still consider whether it:

- has in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication. It must be able to verify the authenticity and integrity of the communication together with time sent and received. Arrangements should take into account the level of risk in the firm;
- is be able to demonstrate that the customer wishes to be communicated with electronically; and
- if entering into an agreement, make it clear that a contractual relationship has been created with legal consequences.

**Record keeping**

The Senior Management Arrangements, Systems and Controls sourcebook contains high level record keeping requirements. See the Senior Management, Systems and Controls chapter of this manual, section 2.2.11 Record Keeping for further information.

There are no detailed record-keeping requirements in ICOBS. 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.

Firms should however bear in mind that to deal with requests for information from the FCA and their own customers they may require evidence such as:

- the reasons for a personal recommendation;
- documentation provided to a customer; and/or
- how claims have been settled and why.



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## 3.2 Financial promotions (marketing)

This section deals with the standards required relating to promoting the firm and its services when dealing with customers.

When a firm communicates with a customer it must takes reasonable steps to communicate in a way that is clear, fair and not misleading.

### 3.2.1 What is a financial promotion?

A financial promotion is any invitation or inducement to engage in any insurance undertaking.

### 3.2.2 Media of communication

Financial promotions may be communicated by means of:

a. product brochures;
b. general advertising in magazines, newspapers, radio and television programmes and websites;
c. mail shots;
d. written correspondence;
e. sales aids which themselves constitute a financial promotion; and
f. other publications which may contain non-personal recommendations as to acquisition, retention or disposal of non-investment insurance contracts.

### 3.2.3 General rules

Firms are also subject to the requirements of The Advertising Codes. The codes are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). CAP is responsible for writing and maintaining the UK Code for Non-broadcast Advertising, Sales Promotion and Direct Marketing. BCAP is responsible for writing and maintaining the UK Code for Broadcast Advertising. The Advertising Standards Authority (ASA) is the independent body that administers the Codes and investigates complaints. It is not a voluntary system - all ASA upheld adjudications are strictly enforced by a range of industry sanctions – and it is entirely funded by industry.

CAP has published rules for financial marketing communications that are not regulated by the FCA or the OFT and to marketing communications for debt advice. All financial marketing communications are, however, subject to Code rules that cover non-technical elements of communications; for example, serious or widespread offence, social responsibility and the truthfulness of claims that do not relate to specific characteristics of financial products.

If in the course of financial promotion a personal recommendation is made, then the firm is subject to the rules contained in ICOBS 4 to 6.



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Before a firm approves a financial promotion it must make sure that it is clear, fair and not misleading. If they subsequently become aware that it is not clear, fair and not misleading, they must withdraw its approval and notify anyone relying on its approval as soon as possible.

A non-investment financial promotion which includes a pricing claim e.g. implying or indicating that the customer would be able to receive a reduction in premium or the firm can provide the cheapest premium or reduce customer costs must ensure that it:

- is consistent with the result that the majority of customers could reasonably expect e.g. if the promotion states that customers can expect a 25% reduction in premium then this should apply to the majority of customers who would respond to the promotion. The only exception to this is where the promotion prominently states the proportion of customers that would achieve the result, e.g. if in the example above only 25% of customers can expect a 25% reduction in premium then this would need to be stated;
- state prominently the basis for any claimed benefits and any significant limitations; and
- comply with other relevant legislative requirements.

The following are guidelines on how firms could achieve a clear, fair and not misleading financial promotion:

a. ensure that the promotional purpose is not disguised in any way;
b. any premiums quoted should be representative of the premium that would be charged to consumers likely to respond to the promotion. Where the premium would not be available to all members of the target audience it should be accompanied by a prominent statement making it clear that it is an estimate only and the actual premium will depend on individual circumstances;
c. where possible, if an opinion is stated, the firm obtains the consent of person providing the opinion;
d. any facts of comparison or contrast are verified or alternatively presented in a fair and balanced way with any assumptions being disclosed;
e. ensure that it does not contain any false information;
f. the design, format or content does not disguise or obscure or diminish any significance of statement, warning or any other significant fact, e.g. limitations are not placed in very small print and savings in very large print;
g. matters are not omitted where the omission would cause the promotion to be misleading or unclear;



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h. the accuracy of material facts, quotes and claims can be substantiated; and

i. if the general insurance contract provides benefits for the customer's care in the event of the customer's disability or incapacity, the promotion should avoid using terms that imply that the policy will be available for the customer to claim on in the long term i.e. after the policy has expired. Expressions such as long-term care and life-time care should be avoided. The firm should make it clear that the long-term aspect relate only to the availability of benefits in the event of a claim and not to the duration of the policy.

3.2.4 Websites

Firms should be aware of the difficulties that can arise with reproduction of colours, fonts and printing of certain types of text. A financial promotion via this media still needs to conform to rules applying to other forms of communication.

3.2.5 Use of third party financial promotions

A firm must ensure that all financial promotions adhere to the FCA rules. However should they wish they can outsource this to a third party. An example of this is where the intermediary may decide to use the financial promotions of an insurer. He may do this provided the insurer has ensured that the financial promotion adheres to all FCA regulations.

3.2.6 White labelling of Insurance Products

White labelling is an arrangement whereby a product or service is offered under the brand of one company (the distributor) while a separate company (the producer) actually makes the product or provides the service.

This is allowable under the FCA rules, however if a firm decides to white label its products then it must ensure that the customer is clear who is actually providing the service or producing the product. Firms must therefore make it very clear in their financial promotions who the insurance provider is.

3.2.7 The Financial Promotions Team

The Financial Promotions Team at the FCA is responsible for reviewing financial promotions. The team identifies any promotions that are misleading and/or pose the greatest risk to the consumer. The FCA has powers under the Financial Services and Markets Act 2000 to ban misleading financial promotions. Promotions may be immediately removed from the market, or prevented from being used in the first place, without going through the enforcement process.

The use of this power is determined by the specific promotion and not used against the firm as a whole. It can be used on its own or before they take



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enforcement action against a firm and works from the FCA's general disciplinary powers, which are used firms fail to comply with FCA rules and their overall systems and approach are poor.

**How do these powers work?**

1. FCA will 'give a direction' to an authorised firm to remove its own financial promotion or one it approves on behalf of an unauthorised firm, setting out their reasons for banning it.
2. Firms can make representations to the FCA if they think the decision is wrong.
3. The FCA will then decide whether to confirm, amend or revoke the direction. If it is confirmed, they will normally publish information about the direction, along with a copy of the promotion and the reasons behind their decision. At this point the firm can refer the matter to the Upper Tribunal if the FCA decide not to revoke the direction.

**Publication of directions under this power**

After the period for making representations has ended (Step 3 in the process outlined above), the FCA will normally publish information about the direction. They can decide not to publish if they consider that publication would be unfair to the firm or would be prejudicial to the interests of consumers. Where they have decided to revoke the direction, they will normally publish details of that revocation.

In all cases, publication will generally include placing the relevant text of the direction on the FCA website and this may be accompanied by a press release.

As with other supervisory notices, directions on financial promotions and related press releases that are published on the FCA's website will be reviewed on request. The FCA will decide at that time whether continued publication is appropriate, or whether notices and related press releases should be removed or amended. Generally The FCA supervisory notices and related press releases that have been published for less than six years would not be removed from the website.

**Reporting a Misleading Promotion**

The FCA also likes to utilise the knowledge within firms to bring misleading adverts to their attention. If you see an advert (of any media) that you feel is unfair, unclear or misleading, then you can report this to the FCA by completing a reporting form. This will allow the FCA to investigate it further. Where possible the FCA will request copies of the promotions you believe to be non-compliant. The form can be found on the FCA website under http://www.fca.org.uk/firms/being-regulated/financial-promotions/report-misleading-promotions



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### 3.3 Compliant sales process

ICOBS 4 to 6 set out the rules for advising and selling. These rules cover both consumers and commercial customers. There are however, differences in the way consumers and commercial customers are dealt with. The rules also cover "Protection Products" and "General Products". Additional rules for "Protection Products" are detailed in the sections following the general rules applicable to all products. The activities covered are:

- introducing business;
- arranging insurance; and
- advising.

The purpose of the rules is to ensure:

a. customers are adequately informed about the nature of the service that they have received from an intermediary. In particular the scope and type of products and the insurance undertakings on which their service is based;
b. where a personal recommendation is given it is suitable for the customer's demands and needs;
c. customers receive a statement of their demands and needs and the reasons for any personal recommendation;
d. if requested by a commercial customer the insurance intermediary discloses commission.

This section will take you through the sales process and identify the FCA requirements at each stage.



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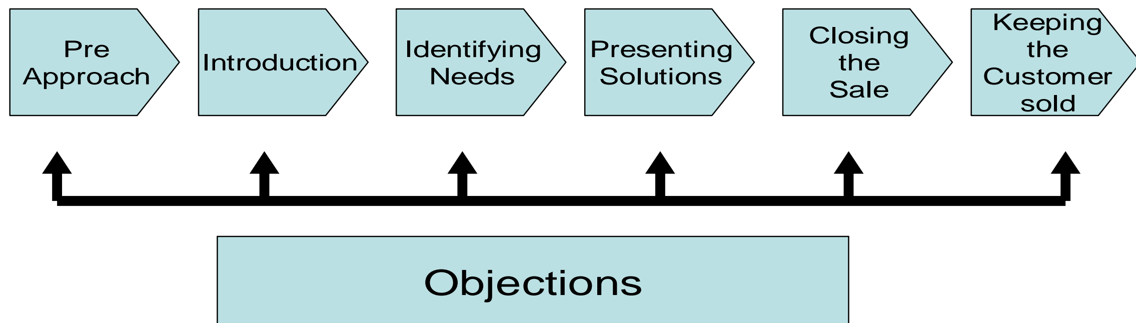
The process flow below shows the sales process.




3.3.1 <u>Pre approach</u>

**Who is your customer?**

Customers will be classified into one of two categories: consumers or commercial customers. The definitions are below and are not influenced by turnover.

The FCA defines a *consumer* as an individual acting outside his business, trade or profession and a *commercial customer* as a customer that is not a *consumer.* Any policy effected in the name of a limited company is therefore, by definition, always a *commercial customer.*

For partnerships, if they are effecting cover for business purposes then they would be treated as a commercial customer.

Where there is a doubt as to whether a customer should be treated as consumer or commercial customer, a suitable test is to consider the capacity in which the insurance is bought and the purpose for which it is bought.

If a customer buys a contract which covers him in both a private and a business capacity, (called a mixed use policy), then he would be regarded as a commercial customer.



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**Examples of customer classification**

A taxi driver (operating as a sole trader) buys motor insurance policy for a car which will only be used in his business as a taxi driver. The taxi driver will be a commercial customer.

A taxi driver buys motor insurance for a car for his use (as a sole trader taxi driver) and for his wife to use for taking the children to school. The taxi driver is classed as a commercial customer.

An individual taking out a motor policy for social, domestic and pleasure use only will be classed as a consumer.

A company that takes out private medical insurance for its employees would be classed as a commercial sale but the individual employees are classed as 'consumer beneficiaries' and when they claim or complain they should be treated as a consumer.

**What products do you sell?**

You need to know which category your general insurance product falls into and whether any are protection products e.g. term assurance, income benefit, critical illness or payment protection. Protection products have additional rules and a longer cancellation period (30 days as opposed to 14 days).

**Do you sell on an advised or non-advised basis?**

A firm gives advice when it makes a personal recommendation to the customer and in doing so the firm is required to explain why the particular product and/or provider would meet the customer's demands and needs. This will be specific and individual advice to the customer and should not be generic.

A non-advised sale is when no personal recommendation is made to the customer. The customer must, however, still receive sufficient information on the product to enable them to make an informed decision as to whether it meets their own demands and needs.

Firms can easily confuse customers by inadvertently providing advice when they have said they are making a non-advised sale, or vice versa.

For a non-advised sale this can occur when the customer asks the adviser: "What do you think? Which one is best? Which product would you choose? Do you think I should go for this one?" Faced with these questions, the person making the sale should confirm to the customer that the decision is theirs and that he/she cannot provide any advice. They should not answer these questions as this would be providing advice.

Any firm providing advice when they don't have the appropriate permission is acting outside their scope of permission.



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3.3.2 Introduction

**Status disclosure**

On initial contact with the customer you need to disclose certain information about your firm or the firm you represent. This is called status disclosure and will include the following information:

a. your firm's name and address;
b. the fact that it is included on the FCA register and how the customer can verify this;
c. details of the firm's complaints procedure including the Financial Ombudsman Service (FOS). Where the FOS does not apply (commercial customer with a business turnover of greater than £1m) information about the out of court complaint and redress procedures available for the settlement of disputes between the firm and its customers;
d. any holdings in and by insurers representing more than 10% of the voting rights.

**Scope of Service**

In addition to the general status disclosure information the firm will also need to tell the customer whether it:

- provides advice on the basis of a fair analysis of the market; or
- it is under contractual obligation to conduct insurance mediation business exclusively with one or more insurers; or
- it is not under a contractual obligation to conduct insurance mediation business with one or more insurers however it does not give advice on the basis of a fair analysis of the market.

Where the sale is to a consumer the firm will also need to tell them whether it is giving a personal recommendation or is providing information. This information needs to be provided in writing before conclusion of the contract unless the **contract is concluded by telephone**.



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Recent industry guidance, effective from 1 April 2009, provides further information on what should be provided to commercial customers. The FCA is concerned that commercial customers are not clear regarding the service provided to them by they broker. They have identified three outcomes specifically relating to disclosure of services:

- commercial customers should have clearer and more comparable information about the services intermediaries are providing;
- commercial customers should have clearer information about the capacity in which the intermediary is acting; and
- commercial customers should be made aware when there is a chain of intermediaries.

Although this guidance refers directly to commercial customers we would recommend that you follow the same principles with consumers.

Full details of the industry guidance can be found in the Special Topics section of this manual.

If the contract is concluded over the phone, provided you have the explicit consent from the customer to give limited disclosure, the following information needs to be provided verbally:

a. the name of the firm;
b. (if the contact is initiated by the firm) the commercial purpose of the call;
c. the name of the person contacting the customer and his link with the firm;
d. that any other information is available on request; and
e. for commercial customers their right to request commission disclosure on request.

This must be followed up by full disclosure in a durable medium (i.e. in writing) immediately after conclusion of the contract.

If you do not receive explicit consent then full disclosure must be given before conclusion of the contract.

For certain types of general insurance contract, such as motor insurance, it is customary for a customer to contact various intermediaries for quick quotes. In these circumstances it is not necessary for the intermediary to give status disclosure at the time of the quick quote provided, if the quote cannot be accepted (and the contract cannot be formed) without the intermediary obtaining further information.



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**Terms of Business Agreement**

One way of achieving status disclosure is to produce a Terms of Business Agreement document.

The Terms of Business Agreement (TOBA) document should include the following information and applies both to consumers and to commercial customers:

1. the name and address of the firm and where relevant, the name and address of the appointed representatives;
2. the statutory status of the firm including a short description of the business for which the firm has permission;
3. a statement to show that items 1 and 2 above can be checked on the FCA's register by visiting the page http://www.fsa.gov.uk/register/home.do or by contacting the FCA on 0845 606 9966;
4. a statement as to whether the firm, introducer or appointed representative has any holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the brokerage, introducer or appointed representative;
5. a statement as to whether an insurance undertaking or parent of an insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the firm;
6. in relation to the contract provided, whether the firm intends to provide advice or information :
   a) on the basis of a fair analysis of the market; or
   b) from a limited number of insurance undertakings; or
   c) from a single insurance undertaking.

If a) applies, the firm must analyse a sufficiently large number of contracts available in the relevant sector or sectors of the market to be able to give advice or provide information on a contract which is adequate to meet the customer's needs.

If b) or c) applies, the firm must also disclose whether it is contractually obliged to conduct broking activity in this way. The customer may also request a list of insurers used.

7. if the contract provided has not been selected on the basis of a fair analysis of the market, the customer can request a copy of the list of the insurance undertakings the firm selects from or deals with in relation to the contract provided;
8. for commercial customers the capacity in which the intermediary is acting;
9. for commercial customers if a chain of intermediaries are being used;



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10. guidance on how to complain to the firm. For consumers and commercial customers with an annual income of less than two million euros and fewer than ten employees or a trust or charity with an annual income of below £1m complaints may subsequently be referred to the Financial Ombudsman Service;
11. details of whether a fee is paid for services and, if it is, a description of what each fee is for and when it will become payable. If the firm is offering more than one service then they may aggregate the fees payable and identify the services for which no fee is payable.

Many firms will use generic TOBAs. However if this is the case, then you must be able to make it very clear which service the customer is being provided for the contract being sold. Therefore if you use a fair analysis of the market for some contracts and only one insurer for others it must be clear when the contract is sold which scope of service applies.

This information may be provided verbally if immediate cover is required or the customer requests it. The information must then be provided in writing immediately after conclusion of the contract.

The intermediary may also use the FCA's initial disclosure document (IDD), examples of which can be found on the FCA website at the following link: http://www.fca.org.uk/firms/firm-types/intermediaries/disclosure

If this IDD is used then the key facts logo may only be used if the if the intermediary uses the text/format on the FCA website in full and makes no changes to it.

If the customer is dealing with an appointed representative of the insurance intermediary then the insurance intermediary is responsible for ensuring that the appointed representative (AR) makes the appropriate disclosures. The intermediary should ensure that:

a for item 1 the AR provides its own name and address;
b for item 2 the AR makes it clear that it is an appointed representative of the firm in line with Gen 4 Annex 1 (4);
c for item 4 the AR discloses its own holding and not that of the insurance intermediary;
d for item 5 the holding disclosed is that for the AR and not the insurance intermediary;
e for item 6 the AR discloses the basis on which it provides advice or information;
f for item 10 the details provided are details of how to complain to the AR.

An example of a TOBA is included in the template section at the end of this chapter (ICOBS Template 1).



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**Special considerations for introducers**

Where the contact by the firm with the customer is limited to introducing the customer to an insurance intermediary the customer must be given the following information in good time before the introduction is made:

- the name and address of the firm; and
- whether the firms are members of the same group.

**Fair Analysis**

An intermediary cannot state that they are providing advice or information on a fair analysis of the market unless they have considered a sufficiently large number of insurance contracts in the relevant sector. This consideration must be based on criteria which reflect adequate knowledge of the relevant sector of the market.

One way of achieving this may be to use panels of insurers. In deciding whether the panel is sufficiently large enough, the intermediary should base their selection on product features, premiums and services offered by the insurer and not just the benefits to the intermediary.

The intermediary would need to ensure that their selection of insurers and contracts is kept up to date. For example, they would need to update their selection process if they became aware of a new product with improved features or benefits had become generally available. The frequency of updating the selection panel will depend on the extent to which new products become available.

**An intermediary may provide advice or information on a different basis to the same customer. For example, a fair analysis of the market may be provided for motor insurance and from a single insurer for household insurance. The status disclosure to the customer must make it clear whether information or advice is being provided for each product and whether it is fair market analysis or single selection.**



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**Additional Requirements for "Protection Products" sold to a Consumer**

Ensuring consumers can make an informed decision

- A firm should consider the importance of the information being given to the customer's purchase decision when deciding how and when to give the information.
- If a firm provides elements of the status disclosure orally, as part of an interactive discussion, then it should do so for all elements of the information. For telephone selling, limited disclosure may be given provided the firm has obtained the consumers explicit consent to do so.

Disclosing the limits of the service provided

- Where a personal recommendation is not being made, then the firm should ensure that the consumer understands that he is responsible for deciding whether the policy meets his demands and needs.
- If this is done orally then the information must be provided in a durable medium immediately after conclusion of the contract.

3.3.3 Statement of demands and needs

**Identifying needs**

The firm will need to identify the demands and needs of its customer in relation to general insurance products.

Firms should consider the following:

- asking the customer what his requirements are;
- collecting all the relevant information;
- checking if it already holds details about the customer; and
- asking about any relevant existing insurance.

The firm must also explain to the customer what he needs to disclose (including what facts the insurer would regard as material facts, in relation to private medical insurance for example, this would include any existing medical condition).

In assessing the customer's demands and needs, the firm must take into account all the relevant facts disclosed by the customer.



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### Eligibility to claim benefits

General Insurance Contracts and Pure Protection Contracts

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

Payment Protection Products (PPI)

A firm **must** take reasonable steps to ensure that the customer only buys a policy under which he is eligible to claim benefits. For a typical PPI product reasonable steps will include checking that the customer meets any qualifying requirements for different parts of the policy e.g. finding out whether the customer has any pre-existing illnesses that may be excluded. If at any time while arranging the policy the firm finds that parts of the cover do not apply it should inform the customer so he can take an informed decision on whether to buy the policy.

Disclosure of Information

A firm should ensure that it has explained the customer's duty to answer questions put to them regarding the policy carefully and truthfully and the consequences of not doing this. To assist the customer they should ensure that they ask clear questions regarding any matter relating to the policy.

Changes as a result of CIDRA require that firms should bear in mind the restriction on rejecting claims. To ensure that a customer knows what he must disclose, there are a number of things that firms can do including:

a. explaining to a commercial customer that there is a 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;
b. ensuring that the commercial customer is asked clear questions about any matter material to the insurance undertaking;
c. explaining to the customer the responsibility of consumers to take reasonable care not to make a misrepresentation and the possible consequences if a consumer does not answer the insurer's questions carefully, or if a consumer deliberately makes a misrepresentation; and
d. asking the customer clear and specific questions about the information relevant to the policy being arranged or varied



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**Making a personal recommendation (advised sales)**

The firm must take reasonable steps to ensure that if, in the course of discussing the customer's demands and needs, he makes any personal recommendations to a customer to buy, sell, subscribe for or underwrite a contract, the personal recommendation is suitable for the customer's demands and needs. These recommendations must be based on the scope of the service disclosed in the status disclosure (TOBA) document.

Additional Guidance for Protection Products

In establishing the demands and needs of a customer, the firm should use information readily available and accessible to them and also by obtaining further information from the customer, including details of existing cover. The firm need not consider alternatives to policies or needs that are not relevant to the policy the customer in interested in.

In assessing whether a contract is suitable to meet the customer's demands and needs, a firm must take into account whether the level of cover is sufficient for the risks that the customer wishes to insure, the cost (if this is relevant) and the relevance of any exclusions, excesses, limitations or conditions in the contract.

A contract does not have to meet all the demands and needs of the customer, provided a statement is made to this effect. A firm may therefore make a personal recommendation of a contract that does not meet all of the customer's demands and needs, provided that there is no contract in the firm's scope that will satisfy them and the firm tells the customer the demands and needs are not met by the contract that he has personally recommended.

**Statement of demands and needs**

A statement of demands and needs must be provided to all customers whether a personal recommendation is made or not.

A statement of demands and needs must:

- set out what the customer wants from the product; their demands and needs;
- confirm whether the firm has personally recommended the contract;
- where a personal recommendation has been made it should explain the reasons for the recommendation;
- where no advice has been given this should be clearly stated with a generic statement confirming what the product selected will offer the customer; and
- clearly reflect what was discussed.

It is important not to overcomplicate the letter or statement.



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Examples of demands and needs statements are included in the template section at the end of this chapter (ICOBS Template 2 and 3). These show two different approaches to providing demands and needs.

Where a firm is providing advice the recommendation must be specifically tailored to the customer's needs and the demands and needs statement must reflect this. Providing a demands and needs statement which appears to the customer as generic with no tailored recommendation will not constitute a proper advised sale.
For non-advised sales the format of the demands and needs statement is flexible. The following approaches may be appropriate in this instance:

- providing the demands and needs as part of the application form by use of the following wording: "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 veterinary needs of your pet are met now and in the future"
- producing a demands and needs statement in the product documentation that would be appropriate for anyone wishing to buy the product e.g. "This product would meet the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future"
- giving the customer a record of his demands and needs that have been discussed and providing a key features document.

**When must the demands and needs statement be provided?**

The demands and needs statement must be given to the customer before the conclusion of the contract, unless it is a telephone sale. If it is a telephone sale then the demands and needs statement needs to be provided immediately after conclusion of the contract.

The demands and needs statement must be given in a durable medium e.g. in writing or by email or by fax, except when requested verbally or immediate cover is required. It must then be followed up in writing immediately after the contract has concluded.

3.3.4 Presenting the solution

This section applies to the sale, renewal and certain changes to general insurance contracts (contracts) with consumers or commercial customers (customers).

**Ensuring the customer can make an informed decision**

A firm must ensure that a customer is given appropriate information regarding a policy in good time and in an easy to understand form so that they can make an informed decision about whether or not to buy the policy. This should include the **price** of the policy. This rule will also apply at renewal and mid term adjustment.



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The level of the information provided will depend upon the following:

- the knowledge, experience and ability of the typical customer for the policy;
- the policy terms, including its main benefits, exclusions, limitations and its duration;
- the policy's overall complexity;
- whether the policy is bought with other goods and services;
- whether it is a telephone sale;
- whether the customer has been provided with the information previously and if so when.

Firms need to decide what information the customer would need to make an informed decision and also when would be the most useful/appropriate time to give it to them.

Although there are no definitive requirements on what needs to be disclosed, other than **price,** we would recommend that for consumers, the firm provide the following information:

- Details of the main benefits; and
- Details of the main exclusions

For consumers, firms may decide to continue to issue policy summaries for all contracts.

When a policy is bought by a consumer in connection with other goods or services, then the firm must disclose the premium for the policy separately from the other prices, even if the policy is compulsory.

For telephone sales, firms will still need to provide sufficient information regarding the policy to enable the customer to make an informed decision including the price.



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**General Insurance Contracts – Pre-Contract Information**

All customers must be provided with:

- the name and address of the insurer or underwriter (this will need to included on any document providing cover).

Consumers should also be provided with:

- the law applicable to the contract
- information regarding cancellation rights; including:
    - existence;
    - duration e.g. 14 days;
    - conditions for exercising it;
    - amount they may need to pay to exercise it;
    - consequences of not exercising it; and
    - practical instruction on how to exercise it
- details on how the consumer can complain including information on the Financial Ombudsman Service.

For telephone sales only information on cancellation rights needs to be provided prior to conclusion of the contract. All information will however need to be provided in a durable medium immediately after conclusion of the contract.

**Pure Protection Products – Pre-Contract Information**

The following information must be provided to a customer before conclusion of a contract:

- the name of the insurance undertaking and its legal form;
- the name of the EEA state in which the head office and the address is, and if appropriate, that of the branch concluding the contract;
- the definition of each benefit;
- the term of the contract;
- the means of terminating the contract;
- the means of payment of premiums and duration of payments;
- information on the premiums for each benefit including the main and supplementary benefits;
- details of the cancellation period and how to cancel e.g. 30 days;
- general information on the tax arrangement applicable to the type of policy;
- complaint handling arrangements including policyholder, life assureds and beneficiaries; and
- the law applicable to the contract.

If the contract is concluded over the phone with a commercial customer then this information may be provided immediately after conclusion of the contract.



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**Protection Policies – Pre-Contract Information**

Oral Sales

If a firm provides information orally, during a sales dialogue on the main characteristics of a policy it must ensure that it includes all the main characteristics.

A firm must take reasonable steps to ensure the information provided orally is sufficient to enable the customer to make an informed decision without overloading them with information or obscuring other parts of the information,

The policies main characteristics would include:

- significant benefits;
- significant exclusions and limitations;
- its duration; and
- price information.

A significant exclusion or limitation would be one which would tend to generally affect the decision of customers to buy the product. Firms should consider those exclusions that relate to significant features or benefits of the policy or could adversely affect the benefits payable. However, it should also consider limitations such as the means of contact during the lifetime of the policy e.g. only via telephone or internet.

Policy Summary

Consumers must be provided with a policy summary in good time before conclusion of the contract.

If the policy summary is not set out in a separate document it must be in a prominent place within other documentation and be clearly identifiable as the policy summary and separate from the other content of the document in which it is included. It is the responsibility of the insurer to ensure that the policy summary is produced in good time for the firm to provide it to the customer. The summary should contain:

1. a statement that it does not include all the terms and conditions which can be found in the policy document;
2. the name of the insurance undertaking;
3. the type of insurance cover;
4. any significant features and benefits;
5. any significant or unusual exclusions or limitations;
6. cross references from 5 to the related sections of the policy document;
7. the duration of the non-investment insurance contract and the means by which it is terminated;



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8. for policies of two or more years, a statement where relevant, that the customer may need to review and update his cover periodically to ensure it remains adequate;
9. the existence or absence of the right of cancellation and, where applicable, the duration;
10. a telephone number or address to which a claim may be notified;
11. how to complain to the insurance provider and whether complaints may subsequently be referred to the Financial Ombudsman Service or any other applicable named complaints scheme;
12. whether or not compensation may be available from the compensation scheme should the insurance provider be unable to meet its liabilities, and from any other applicable named compensation scheme. For each applicable scheme, the firm must describe the extent and level of cover and how further information can be obtained; and
13. the key facts logo. The FCA has developed a common 'key facts' logo to be used on significant pieces of information directed to customers. When reproducing the logo, firm may use colour, providing this does not diminish the prominence of the logo. A specimen of the 'key facts' logo can be obtained from the FCA website:

    http://www.fca.org.uk/site-info/contact/logos-and-photos/keyfacts

Price Information

A firm must provide a customer with the price information in a way which enables the customer to relate it to a regular budget.

It should also provide the total price as well as where appropriate the monthly premium and where relevant:

- for policies of greater than one year duration and with reviewable premiums, the period for which the premium quoted is valid for and the timings of the reviews;
- other fees, administrative charges and taxes payable by the customer through the firm; and
- a statement identifying separately, the possibility of other taxes not payable through the firm.

Where the premiums are paid using a non revolving credit agreement the firm should:

- 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;
- price information must reflect the difference between the duration of the policy and the credit agreement; and



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- if applicable, the firm must explain that the premium will be added to the amount under the credit agreement and that interest will be payable on it.

Where policies are bought as secondary products to a revolving credit agreement, then the price information should be provided in a way to enable a typical customer to understand the typical cumulative cost of taking out the policy.

Payment Protection Policies – Importance of Reading Documentation

When selling payment protection policies the firm must draw a consumer's attention to the importance of reading the policy documentation before the end of the cancellation period to check that the policy is suitable for them.

If the firm provides information on the main characteristics on the policy orally, then the firm must also inform them of the importance of reading the policy documentation orally as well.

**Other information – All Contracts**

Information on fees

The firm must provide a customer with details of the amount of fees for any sales activity before the customer incurs any liability to pay the fee, or before conclusion of the contract, whichever is earlier. "Fee" means all fees throughout the distribution chain between the insurer and the customer, which are in addition to the premium. The firm must ensure that its charges to consumers are not excessive.

HMRC imposes IPT on broking and administration fees charged to individuals buying insurances in a personal capacity. This excludes fees on cancellations or mid term adjustments. IPT will continue to be collected directly from insurers.

Commission disclosure for commercial customers

Before the conclusion of a contract, or at any other time, if a commercial customer requests, commission must be promptly disclosed in writing. The commission that must be disclosed is that received by the firm itself and any commission received by an associated company in respect of the insurance arranged. Insurers are exempt from this requirement. Commission disclosure for consumers is expected under Law of Agency.

From 1 April 2009 industry guidance in respect of "conflicts of interest, transparency and disclosure in the commercial market" was published. Full details of this guidance can be found in the Special Topics section of this manual. However, details of the guidance about commission disclosure to commercial customers have been included here.



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Firms must have in place policies, written procedures and systems to be able to disclose commission on request. These procedures must be clearly communicated to all relevant staff. It is not sufficient for firms to rely on the fact that disclosure has not been requested as a reason not to have these processes and systems in place. An example of how you could provide this information to customers has been included in the template section at the end of this chapter (ICOBS Template 9)

Commission disclosure should include all functions that a firm will be remunerated for which may not just be for the sale of the product. For example you may be provided with commission for work you have undertaken on behalf of the insurer such as policy documentation production and issue or claims handling. This may include profit share arrangements and volume override arrangements. You will need to disclose **all** of this to the customer, however you may wish to show the commission for work transfer separately from that for the sale of the policy in your disclosure to the customer.

You need to ensure that you inform the customer of their right to request commission disclosure in writing at regular intervals. Just relying on a statement in your terms of business is not sufficient. You should ensure that you bring this information to the attention of the customer. It is recommended that at intervals of not more than 12 months that you provide information on this to the customer in either:

- a covering letter with a quotation or renewal terms;
- a document of not more than one page; or
- orally – where circumstances would not allow the disclosure to be made in writing before conclusion of the contract. Written disclosure must be provided immediately after conclusion of the contract.

Suitable wording would be:

“In good time before the conclusion of each insurance contract, or upon renewal, we will remind you of your right to be informed of the level of commission which we receive from underwriters”

“You are entitled at any time to request information regarding any commission which we may have received as a result of placing your insurance business.”



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**Client money**

You must provide details of your policy on the retention of client monies. This should include:

- whether you hold client money and, if not, whether you have risk transfer with your insurers;
- if you do hold client money, whether it is held in a statutory or non-statutory trust;
- whether you transfer client monies to a third party;
- whether interest is earned on the client monies; and
- if applicable, whether such funds are retained by you, passed to the insurer or returned to the client.

The FCA does not stipulate how this information should be conveyed to the client. However, the words in ICOBS Template 1 may be added into your Terms of Business Agreements. This wording covers every scenario. You should only use the wording applicable to how you will handle customer's premiums.

**Overseas Business for UK Consumers**

If a firm is conducting business in respect of contracts from an office outside the UK with or for a consumer who is in the UK he is required to provide a written statement to the effect that some or all of the respects of the regulatory system applying, including any compensation arrangements, will be different from those of the UK. The statement may also indicate the protections or compensation available under another system of regulation.

3.3.5 Closing the sale

**Post Sale Contract Information – All Contracts**

Evidence of Cover

Firms must provide the customer with evidence of cover immediately after conclusion of the contract.

This would include:

- certificate of insurance; and
- full policy documentation

Group Policies

If the firm has sold a group policy they should provide the customer with appropriate product information for them to pass on to other policyholders or beneficiaries. The firm should instruct the customer to pass the information on.



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## Cancellation Rights

Insurers and insurance intermediaries are responsible for cancellation rights in respect of insurance contracts referred to in this section.

A consumer has a right to cancel a contract or distance contract in accordance with the 'Cancellation period' section below.

The firm must provide the customer with the following in writing before conclusion of the contract:

- the duration of the cancellation period;
- the conditions for exercising the right to cancel, including a clear statement of the amount which the consumer may be required to pay;
- the consequence of not exercising the right to cancel; and
- how the right to cancel may be exercised, including the address to which notification of cancellation should be sent

## Cancellation period

The period of cancellation is:

- 30 days for a protection contract; for example term assurance, critical illness, income protection, payment protection or
- 14 days for a general insurance contract, for example home and contents insurance.

The cancellation period begins (the later of):

- the day of the conclusion of the contract (for general insurance contracts),
- the day after the customer was informed that the contract was concluded (for pure protection contracts);
- if later, the day after the customer receives full policy documentation by durable medium.

## Notification of Cancellation by the Customer

A customer who has a right to cancel may cancel the contract by notifying the Insurer or Servicing Company in accordance with the practical instructions given to him; this should be done within the cancellation period notified to him.

Where the notice of cancellation is in writing it must be treated as being served on the insurer or service company on the date it is despatched by the customer.



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**Effects of cancellation**

Where a consumer exercises his right to cancel a firm must allow the consumer to withdraw from the contract.

Where a consumer exercises this right, the firm is entitled to receive from the consumer without undue delay, and no more than 30 days from the date that the consumer served notice, any sums, property, or both, received from the firm in relation to the cancelled contract.

In addition, the firm must return to the consumer without undue delay, and no more that 30 days after the date on which the firm received notice, any sums it has received from the consumer in relation to the cancelled contract, except in the following circumstance:

- where a consumer exercises a right to cancel a contract a firm is permitted to require the consumer to pay, in accordance with the contract, for the service he actually provided. The amount payable must not, however, exceed an amount which is in proportion to the extent of the service already provided and be such that it could be construed as a penalty.

The firm must not require a consumer to pay any amounts owed unless it can prove that the consumer was duly informed about the amounts payable on cancellation in accordance with the rules on cancellation rights and disclosure.

A consumer cannot be required to pay any amounts when cancelling a pure protection policy.

If they are cancelling a payment protection policy, they cannot be required to pay any amounts unless they have made a claim under the policy during the cancellation period and settlement terms have been agreed.

For other products the amount payable can include:

- any sums reasonably incurred in concluding the contract but should not include any element of profit.
- an amount for cover provided (i.e. a proportion of the policy's exposure that relates to the time on risk)
- a proportion of the commission paid to the intermediary sufficient to cover its costs
- a proportion of the fees charged by the intermediary, which when aggregated with the commission to be repaid, would be sufficient to cover its costs.

An insurer and insurance intermediary should take reasonable steps to ensure that double recovery of selling costs is avoided.

If the insurance is taken out and you provide finance to the consumer to pay the insurance premium then you may wish to enter into an agreement with the insurer or service company that all premiums come back to you or to the finance company.  This should be made clear to the consumer.



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## 3.4 Ongoing servicing

### 3.4.1 Renewals

On renewal the firm should provide the following information to customers in good time before renewal. This is to enable the customer to make an informed decision regarding whether to buy the policy:

- Status disclosure – where this has changed or was not provided previously;
- Information on the scope of service (where it has changed)*, i.e. whether it :
    - provides advice on the basis of a fair analysis of the market; or
    - it is under contractual obligation to conduct insurance mediation business exclusively with one or more insurers; or
    - it is not under a contractual obligation to conduct insurance mediation business with one or more insurers however it does not give advice on the basis of a fair analysis of the market.
- A statement of demands and needs;
- Sufficient information to make an informed decision regarding whether to buy the policy. We would suggest that this includes:
    - A record of any changes to the terms of the policy; and
    - An explanation of those changes, where necessary.
- Cancellation rights; and
- The price, provided separately from any connected service (see guidance on "add on products" in section 3.6 below).

Where a policy summary has been provided previously then firms should consider whether it would be prudent to send another.

After conclusion of the contract evidence of cover should be issued immediately.

* You should remember that if you originally provided the policy on a fair analysis of the market or a selection of companies, but at renewal you decided not to do this but to merely provide the customer with the renewal terms provided by the insurer then your scope of service has changed. This may of course still be the best solution for the customer however you would need to inform the customer that you have only looked at the one insurer.

In addition you may have sold the original policy on an advised basis, however if the renewal is on a non-advised basis you will need to inform the customer.



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### 3.4.2 Claims handling

The information about the claims handling process that the firm must provide to the consumer is:

- the address;
- telephone number or other point of contact for notifying a claim; and
- the information the consumer must provide to the insurer when notifying a claim.

The firm is only responsible for the administration and performance activities that he carries out on behalf of a customer in connection with a claim.

**Duties of the firm**

A firm, when acting for a customer in relation to a claim, must act with due care and skill.

The firm must forward the claim notification to the insurer promptly or tell the customer immediately that it cannot deal with the notification.

A firm must not, in connection with any claim, put himself in a position where his own interest, or his duty to any person for whom he acts, conflicts with his duty to any customer, unless:

a) he made proper disclosure to his customer of all the information needed to put his customer in a position where he can give informed consent to the arrangement; and
b) he has obtained the prior informed consent of the customer.

A firm must decline to act for the person or customer, unless in the particular circumstances of the case, disclosure and informed consent are sufficient to enable him to reconcile the conflict.

An example of where disclosure and consent are unlikely to be sufficient and when a firm may consider that it should not act for the customer, is where the firm knows that its customer will, to obtain a quick payment, accept a low amount in settlement of the claim and also knows that the insurer is willing to settle for a higher amount.

If the firm acts for the insurer and not the customer in relation to a claim e.g. where it has delegated authority for claims handling and deals with a claim in relation to a contract that it had sold to the customer, then it must inform the customer of this.



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**Claims handling: general**

The following sections outline the duties of an insurer in respect of claims. However if an insurance intermediary administers claims on behalf of an insurer these duties will apply to the insurance intermediary.

An insurer must:

- carry out claims handling promptly and fairly;
- give the customer reasonable guidance to help him make a claim under his policy;
- not unreasonably reject a claim (including terminating or avoiding a policy); and
- settle claims promptly once settlement terms have been agreed.

**Consumers**

Rejection of a consumers claim is unreasonable except where there is evidence of fraud, if it is for:

1. the non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed in relation to contracts entered into or variations agreed on or before 5 April 2013, for:
    a. non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or
    b. non-negligent misrepresentation of a fact material to the risk; or
2. in relation to contracts entered into or variations agreed on or after 6 April 2013, for misrepresentation by a customer and the misrepresentation is not a qualifying misrepresentation; or
3. for breach of warranty or condition unless the circumstances of the claim are connected to the breach and unless (for a pure-protection contract):
    a. under a 'life of another' contract, the warranty relates to a statement of fact concerning the life to be assured and if the statement had been made by the life to be assured under an own life contract the insurer could have rejected the claim under this rule or
    b. the warranty is material to the risk and was drawn to the attention of the consumer at or before the conclusion of the contract.



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**The following is *guidance* on handling claims for consumers (not specific FCA rules)**

An insurer must respond promptly to a notification by a consumer of a claim. Generally a prompt response would be within 5 business days of the claim being made, although in some circumstances a prompt response would be sooner than this e.g. a road assistance policy.

Information to be provided by the insurer to the customer:

- whether or not the type of claim notified is normally covered by the policy and, if it is one that is clearly outside the scope of the policy, that this is the case;
- the action that will be taken by the insurer, and when that action will be taken; and
- if the insurer appoints any other parties, he must provide their name, their function and the work that the other party will carry out in relation to the claim. If the purpose of the appointment is to investigate the validity of the claim the information need not be given if it would limit or prevent effective investigation.

The insurer must keep the customer reasonably informed about the progress of the claim.

**Determining the claim**

An insurer must notify the customer as soon as practicable whether it will reject the claim, or reject the claim but, without prejudice to the rejection, make an offer in compromise or accept all or part of the claim.

If the insurer accepts all or part of the customer's claim, it must notify the customer as soon as practicable whether:

- the parts it accepts, it agrees to provide the money sum, property or service claimed by the customer in full, or
- it makes some other offer in compromise. In that event, it must notify the customer of the terms of the offer.

Unless the insurer accepts the customer's claim in full, the insurer must explain why it rejects all or part of the customer's claim or makes an offer of compromise, specifying any relevant term of the policy. The insurer must offer the customer the choice of receiving the information in writing or not.

The insurer must, in respect of each part of the claim that it accepts, inform the customer whether the claim will be settled by paying him, or by paying another person to provide goods or services, or by providing those goods or services.



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**Settlement of the claim**

Settlement terms are agreed when the insurer accepts the consumer's claims and the consumer accepts the insurer's offer of settlement.

An insurer must settle a claim by a customer promptly. The insurer may pay a claim before the customer has finally agreed settlement terms.

If an insurer has not informed the customer that payment will not be made until outstanding premiums have been paid, then they cannot delay the claim settlement on these grounds.

**Handling third party claims**

Any person who has a right to claim directly on the insurer is a policyholder. When dealing with claims under group policies the insurer should consider whether the person claiming is a commercial customer or a consumer and apply the rules appropriately. This is important as the firm may have sold the policy to a commercial customer, however the person claiming may be treated as a consumer.

When an insurer deals directly with a third party who claims against his customer because the third party has a right to bypass the customer and claim directly against the insurer (e.g. certain motor claims or insolvency of the customer) these rules do not require the insurer to treat the third party as a customer. However the insurer should not deal with the claim in any way less favourably than it would have done had the claim been proceeded against its customer.

3.4.3. Mid term adjustments

**All Contracts**

A customer must be provided with sufficient information to make an informed decision regarding the mid term adjustment, including any increase in premium:

**Pure Protection Policies**

Throughout the term of the policy the customer must be informed if there is 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.



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Before conclusion of a mid term adjustment if there has been a change in law or policy condition the following must be provided to the customer:

- definition of each benefit and option;
- term of the contract;
- means of terminating the contract;
- means of payment of premiums and duration of payments; and
- information on the premiums for each benefit including main and supplementary benefits.

**Protection Policies**

Throughout the term of the policy the firm must provide the customer with information about any change to:

- premium - unless the change conforms to a previously disclosed formula e.g. reviewable premiums where the premium increase is in line with the formula disclosed at sale; and
- any term of the policy together with an explanation of what the implication of the change.

This information needs to be provided in a durable medium, in good time before the change takes place. If the change is being made at the request of the customer, then the firm should inform them of the implication of the change as soon as is practicable, provided this is before it takes effect.

When explaining the implications of the change the firm should explain any changes to benefits and significant and unusual exclusions arising from the change.

Firms will also need to consider whether mid term changes are compatible with the original policy particularly whether it has reserved the right to vary premiums, charges or other terms and to ensure that where they have reserved the right to make changes these are not unfair under the Unfair Terms Regulations.



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### 3.5 Insurer disclosure exemptions

Insurers need not provide status disclosure to a client, provided that when the contract is concluded over the telephone points a. to c. below are disclosed.

a. the name of the firm;
b. (if the contact is initiated by the firm) the commercial purpose of the call; and
c. the name of the person in contact with the customer and his link with the firm.

Insurers are only required to issue a statement of demands where a personal recommendation has been made under a protection policy.

Insurers are also exempt from the need to disclose commission to a commercial customer on request.

### 3.6 Add on products

Where a firm sells “add on” products or optional extras with a general insurance product being sold, for example, household insurance or car insurance with legal expenses cover, they need to ensure that the following points are covered:

a. Often, although the main product may be an advised sale, the optional extra product is not advised. If you are not making a personal recommendation then for the optional extra this is a non-advised sale and your status disclosure documentation and demands and needs statement should reflect this.

b. A firm should still ensure that it assesses the customer’s needs for the optional extra and ensure it is suitable for the customer regardless of whether the sale is advised or non-advised.

c. A firm must make it clear that optional extra is optional.

d. The statement of demands and needs should clearly identify the needs of the customer as regards the optional extra and, if you are recommending this product, the reasons for the recommendation.

e. The customer should be provided with clear and not misleading information regarding the optional extra to enable an informed decision without overloading them with extra documentation.

f. The price of the optional extra should be separate from the main general insurance contract and it should be clear that this is an optional product.

On renewal the price of the optional extra should be separate from the main product and should clearly state that it is optional.



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Motor Legal Expenses

In June 2013, the FCA published the results of a thematic review of Motor Legal Expenses Insurance (MLEI). The complexity of MLEI can make it difficult for the consumer to understand. It is also the add-on to the motor policy most commonly sold on an opt-out basis, meaning the cover is pre-selected by the firm rather than actively selected by a customer. This leaves the practice open to suggestion that it is more motivated by generating revenue rather than meeting the needs of customers.

In addition to the general guidance above, based on the review findings, when selling MLEI products, firms should also consider the following:

a. where MLEI is automatically included, firms need to provide a clear explanation of what the product covers and what it does not;

b. "bundling" products, whereby a bundle of two or more add-on products is automatically added to the core policy is not considered to be consistent with fair customer treatment. The FCA's expectation is that firms engaging in these practices will cease to do so;

c. firms should review their practices to ensure that customers are provided with an appropriate amount of information. Customers who want further information should be able to find it easily; and

d. the explanation of the product should be as clear as possible at each stage of the sales process, to include both the MLEI policy wording and the motor policy. In particular, the explanation of MLEI should:

    i. Make it clear that the policy operates when the policyholder is not at fault for an accident (e.g. phrases such as 'non-fault accident' could be made easier to understand by the use of plain language such as 'an accident for which the policyholder is not at fault';

    ii. make it clear that the recovery of uninsured losses is from the driver at fault for the accident; and

    iii. give appropriate prominence to the Reasonable Prospect of Success (RPS) test. The explanation of what exactly the RPS test is should be explained in a way that is clear and understandable.

Firms need to be able to give a clear account of the nature of the review they have undertaken and the reasoning for any decision, particularly where it is not consistent with the general industry direction of travel e.g. should they retain opt-out selling or continue to provide sales incentives heavily geared to the selling of MLEI and other add-ons.



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## 3.7 “Contract Certainty”

### 3.7.1 How is Contract Certainty achieved?

There are two main elements of achieving contract certainty. Firstly, and most importantly, all terms and conditions must be agreed between the insurer and the customer or their authorised representative before cover commences for both new business and renewals.

Secondly, suitable evidence of cover must be issued in a timely manner. For consumers documents must be issued within 7 working days of inception and for commercial business within 30 elapsed days. Insurers must aim for commercial business to send out documents within 21 days to allow intermediaries time to check the contract and forward it to the customer.

Contract certainty principles should also be applied to mid term adjustments.

### 3.7.2 Contract Certainty Code of Practice

The industry published a Code of Practice in October 2005 that does not have statutory backing. This code sets out the standards that the Association of British Insurers (ABI), the British Insurance Brokers’ Association (BIBA) and the Institute of Insurance Brokers (IIB) recommend that their members adhere to in order to meet “Contract Certainty”. The code applies to all general insurance contracts incepted or renewed after 1 October 2005. Full compliance was not anticipated until December 2006.

Conforming to the code is not mandatory, however adoption of the principles will assist intermediaries to demonstrate compliance to ICOBS and manage operational risk. Failure by the insurance industry to demonstrate sufficient progress in achieving Contract Certainty will result in the FCA imposing its own solution to the industry.

**Contract Certainty standards**

1. Confirmation of agreed wording to be used:
    a. must be agreed at or before cover commences and confirmed in writing by the insurer;
    b. clarity must exist about which form of wording and endorsements are being agreed;
    c. “to be agreed” and synonymous terms can only be used up until policy inception. By that time all risks must be documented and agreed so that the insured has Contract Certainty;
    d. if insurers require more information within a specified timescale then cover for risk is only provided under agreed terms for that specified timescale.



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2. Standard for delivery of correct policy wording in a durable medium to the insured:
    a. consumer – 7 working days from date of inception or renewal date;
    b. commercial – 30 elapsed days from date of inception or renewal date.
3. Error correction standards:
    a. insured or their agent to inform the insurer of errors within 14 elapsed days if receipt of policy documentation;
    b. insurer to correct and reissue policy documentation within 14 elapsed days of notification of the errors;
    c. errors identified outside of this period are outside the scope of the code but will be corrected on a best endeavours basis.

**Contract Certainty principles**

There are 7 principles that need to be adhered to:

**A. When entering into the contract**

The insurer and intermediary must ensure that all terms are clear and unambiguous by the time the offer is made to enter into the contract or the offer is accepted. All terms must be clearly expressed, including any conditions or subjectivities.

- Members of ABI, BIBA and IIB should provide submissions that satisfy the Contract Certainty definition and a checklist to obtain firm quotes and place firm orders. Members should use the Contract Certainty checklist and model presentation which can be found on the BIBA, ABI and IIB websites. .
- Each insurer will be satisfied that the submission meets the Contract Certainty definition and checklist before formally committing to the contract, ensuring that any conditions or subjective are clearly expressed.
- A firm quote should only be given where an insurer has agreed that the submission meets the Contract Certainty definition.
- Issues may remain outstanding after inception, for example, an outstanding survey requirement. Subjectivities should be imposed within the quotation with the responsibilities, timescales for resolution and consequences of failure clearly specified.
- Brokers will notify all terms to their client's agreement before inception unless they have authority from the client to agree on their behalf.



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### B. After entering into the contract

Contract documentation must be provided to the insured promptly.

- Brokers and insurers will ensure that appropriate evidence of cover is issued within **30** days of inception for commercial customers and **7** working days for consumers. Appropriate evidence of cover can be a combination of:
    a. full policy wording and schedule for new business; or
    b. revised schedule of cover with either references and/or full text of endorsements of mid term adjustments and renewals.

### C. Demonstration of performance

Insurers and brokers must be able to demonstrate their achievement of A and B above.

Brokers need to be able to demonstrate performance of:

- The agreement of all terms by the time of entering into the contract;
- The achievement of the above by inception date;
- Prompt issue of policy documentation; and
- How exceptions are identified and resolved.

The method used should be consistent and typically be based on:

- Inception date of the contract
- Date on which the insured and insurer enter the contract
- Where there is more than one insurer, the date the final insurer entered the contract.

Examples of how brokers can demonstrate compliance with A and B would be:

- Verification against a checklist
- Sample or file audits
- Systems and controls – such as those used within a website to validate collection of data and issue of documentation
- Contract certainty logging form – which can be found in the template section at the end of this chapter (ICOBS Template 10).


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**D. In respect of contract changes**

Contract changes need to be certain and documented promptly.

This means:

- Complete and final agreement of the change by the insured or their agent by the time the parties commit;
- Maintaining certainty of the contract;
- Providing documentation in respect of the change to the insured promptly thereafter; and
- Brokers and insurers must ensure that post-inception amendments are documented and agreed as endorsements.

*Where there is more than one participating insurer*

**E. When entering into the contract**

The contract must include an agreed basis on which each insurer's final participation will be determined.

**F. After entering into the contract**

The final participation must be provided to each insurer promptly. This needs to be completed within 30 calendar days of inception or completion of placement.

**G. Where the contract has not met the principles.**

The insurer and broker have a responsibility to resolve exceptions to any of the above principles as soon as is practicable and without undue delay.

Where there have been errors, then the following protocol should be adhered to:

- the insured or their agent to inform the insurer of errors within 14 elapsed days of receipt of policy documentation;
- the insurer to correct and reissue policy documentation within 14 elapsed days of notification of the errors;
- any errors identified outside of this period are outside the scope of the code but will be corrected on a best endeavours basis; and
- if there is a delay in the issue of corrected documentation, and this is likely to be significantly outside the above protocol, then the broker must keep the insured informed of the position.



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## 3.8 OFT Guidelines on Sales of Payment Protection Insurance

The OFT implemented the 'Payment Protection Insurance Market Investigation Order 2011' on 6 April 2011.

These requirements are in addition to FCA rules and requirements set out in ICOBS.

### 3.8.1 Information in Marketing Communications and Statements

For the purposes of these requirements a Marketing Communication is an oral or written communication containing a marketing statement which can either be made directly to a particular consumer or to consumers in general, indirectly by using intervening media such as newspapers or broadcast advertisements.

A marketing statement is a promotional message, invitation or inducement to purchase PPI consisting of any of the following items:

- Price Information including (but not limited to) an expression of the cost of PPI as an exact, indicative or illustrative amount.
- Significant benefits including "claims of peace of mind", details of cover and any other claim or assertion intended to influence the consumer to buy the policy.
- Significant exclusions or limitations.
- Duration of the policy or time benefits are paid under the policy.

Intermediaries must ensure that the marketing communication and statement uses a prescribed format to disclose price and includes, dependent on the type of policy being sold, prescribed statements.

The cost must be expressed prominently as a monthly cost per £100.00 of monthly benefit. In addition for PPI sold to cover a credit card the cost must be expressed as a monthly cost per £100 of the balance owed by the consumer.

For payment protection policies sold to cover a credit card, mortgage or personal loan the following statement must be included:

> *"This Payment Protection Insurance is optional. There are other providers of Payment Protection Insurance and other products designed to protect you against loss of income. For impartial information about insurance, please visit the website at www.moneyadviceservice.org.uk "*



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For standalone PPI or short term PPI the following statement must be included:

> *"There are other providers of Payment Protection Insurance [Short-Term Income Protection] and other products designed to protect you against loss of income. For impartial information about insurance, please visit the website at www.moneyadviceservice.org.uk "*

Where the monthly benefit is only payable for a duration of less than 12 months the following statement must be included:

> *"The monthly benefit payable under this policy is for a duration of less than 12 months."*

### 3.8.2 Annual Review/Reminder

An annual review must be sent to the policyholder for all policies. If the intermediary does not have direct contact with the customer then responsibility for this requirement will revert to the product provider. There is a prescribed format for issuing these reviews. For full details on this and the timings please refer to **PAYMENT PROTECTION INSURANCE MARKET INVESTIGATION ORDER 2011** which can be found on the OFT website (www.oft.gov.uk) under Treating Customers Fairly – Payment Protection.

### 3.8.3 Quotations

The Order requires firms to provide the consumer with a personal quote set out in a required format. For full details please refer to the OFT website.

### 3.8.4 Prohibition of sale of PPI at the Credit Sale

PPI can no longer be sold with a sale of credit. The intermediary may provide a PPI personalised quote but may not actually sell the insurance until 7 days after the credit sale has completed.

### 3.8.5 Single Premium PPI

Intermediaries can no longer sell single premium PPI.



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### 3.8.6 Compliance Officer

All intermediaries selling PPI should have appointed a compliance officer, and informed the OFT of the name of this person.

The duties of the Compliance Officer must include:

- monitoring compliance by the firm with this Order;
- responsibility for compilation and submission of the Compliance Report to the OFT – if required;
- facilitation of the provision of information to the OFT – if required; and
- acting as a point of contact for the OFT.

## 3.9 Consumer Insurance Disclosure and Representations Act 2012 (CIDRA)

What procedures can I put in place to comply with the new guidance?

CIDRA removes the duty on consumers to disclose any facts that may be material to an insurer's decision, and instead replaces it with a duty to take reasonable care not to make misrepresentations. In determining whether a consumer has "taken reasonable care", consideration will be given to whether or not the questions asked of them at policy inception were clear and specific. The desire for a quick and efficient sales process must therefore be balanced with the requirement to gather accurate information about the consumer, allowing for accurate pricing of the risk and reducing the risk of disputed claims or claims being turned down.

ICOBS Template 11 contains guidance on improving practices and provides examples of questions to reduce the likelihood of consumers making misrepresentations. Documentation changes must be completed for all new business from 6th April 2013. Firms who have not updated their documentation for all personal lines business from this date may be in breach of ICOBS rules.

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