

Insurance: Conduct of Business

Chapter 2

General matters

2.1 Client categorisation

Introduction

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

Customer to be treated as consumer when status uncertain

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

Customer covered in both a private and business capacity

- 2.1.3 **G**
- (1) Except where paragraph (2) applies, if a *customer* is acting in the capacity of both a *consumer* and a *commercial customer* in relation to a particular *contract of insurance*, the *customer* is a *commercial customer*.
 - (2) For the purposes of **ICOBS 5.1.4 G** and **ICOBS 8.1.2 R**, 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*.

Customer classification examples

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

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

2.2 Communications to clients and financial promotions

Application

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

Clear, fair and not misleading rule

2.2.2 **R** When a *firm* communicates information, including a *financial promotion*, to a *customer* it must ensure that is clear, fair and not misleading.
[Note: article 17(2) of the *IDD*]

Marketing communications

2.2.2A **R** A *firm* must ensure that, in relation to *insurance distribution*, marketing communications are always clearly identifiable as such.
[Note: article 17(2) of the *IDD*]

Approving financial promotions

2.2.3 **R**

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

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

2.2.4 **G**

- (1) This *guidance* applies in relation to a *financial promotion* that makes pricing claims, including *financial promotions* that indicate or imply that a *firm* can reduce the *premium*, provide the cheapest *premium* or reduce a *customer's* costs.
- (2) Such a *financial promotion* should:

- (a) be consistent with the result reasonably expected to be achieved by the majority of *customers* who respond, unless the proportion of those *customers* who are likely to achieve the pricing claims is stated prominently;
- (b) state prominently the basis for any claimed benefits and any significant limitations; and
- (c) comply with other relevant legislative requirements, including the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008.

The reasonable steps defence

2.2.5

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If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it is fair, clear and not misleading then:

- (1) the *firm* will not contravene ■ ICOBS 2.2.2R where:
 - (a) the recipient is a *customer* that does not make the arrangements preparatory to the conclusion of the *contract of insurance*; or
 - (b) the communication is made in relation to activities other than *insurance distribution*; and
- (2) a contravention of the clear, fair and not misleading rule (■ ICOBS 2.2.2R) does not give rise to a right of action under section 138D of the *Act*.

2.3 Inducements

2.3.1

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

2.4 Record-keeping

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2.4.1

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- (1) The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) contains high-level record-keeping requirements (see ■ SYSC 3.2.20 R, ■ SYSC 9.1.1 R and ■ SYSC 9.1.1 AR).
- (2) This sourcebook does not generally have detailed record-keeping requirements: *firms* will need to decide what records they need to keep in line with the high-level record-keeping requirements and their own business needs.
- (3) *Firms* should bear in mind the need to deal with requests for information from the *FCA* as well as queries and complaints from *customers* which may require evidence of matters such as:
 - (a) the reasons for *personal recommendations*;
 - (b) what documentation has been provided to a *customer*; and
 - (c) how claims have been settled and why.

2.5 Acting honestly, fairly and professionally, exclusion of liability, conditions and warranties

2.5.-1 **R** A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *customer*.
 [Note: article 17(1) of the *IDD*]

Exclusion of liability and conditions

2.5.1 **R** (1) A *firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or other *policyholder* unless it is reasonable for it to do so and the duty or liability arises other than under the *regulatory system*.
 (2) A *Solvency II firm* must ensure that general and special policy conditions do not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.
 [Note: article 187 of the *Solvency II Directive*]

2.5.2 **G** The general law, including the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) and the *CRA*, also limits the scope for a *firm* to exclude or restrict any duty or liability to a *consumer*.

Conditions and warranties in policies

2.5.2A **R** An *insurer* must ensure that any condition or warranty included in a *policy* with a *consumer*:
 (1) has operative effect only in relation to the types of crystallised risk covered by the *policy* that are connected to that condition or warranty; and
 (2) (for a warranty in a *pure protection contract*) is material to the risks to which it relates and is drawn to the *customer's* attention before the conclusion of the contract.

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

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

Reliance on others

2.5.3 **G** (1) Where it is compatible with the nature of the obligation imposed by a particular *rule*, including the *customer's best interests rule*, and with the *Principles*, in particular *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.

(2) For example, where a *rule* requires a *firm* to take reasonable steps to achieve an outcome, it will generally be reasonable for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* or a *professional firm*, unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information. However, a *firm* cannot delegate its responsibility under the *regulatory system*. For example, where a *rule* imposes an absolute obligation (such as the requirement for an *insurer* to handle claims promptly and fairly) although a *firm* could use outsourcing arrangements to fulfil its obligation, it retains regulatory responsibility for achieving the outcome required.

Other requirements

2.5.4 **G** *Firms* are reminded of their obligations in ■ SYSC 19F.2 to ensure remuneration arrangements do not conflict with their duty to act in the *customer's best interests*.

2.6 Distribution of connected contracts through exempt persons

2.6.1

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(1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met.

(1) The requirements referred to in (1) are:

- (a) ■ SYSC 19F.2 (Remuneration and insurance distribution activities);
- (b) ■ ICOBS 2.2.2R and ■ ICOBS 2.2.2AR (Clear, fair and not misleading rule and marketing communications);
- (c) ■ ICOBS 2.5.-1R (Customer's best interests);
- (d) ■ ICOBS 4.1.2R(1)(a) and (c) (Status disclosure: general information provided by insurance intermediaries or insurers);
- (e) ■ ICOBS 5.2 (Demands and needs);
- (f) ■ ICOBS 6.1.5R(4) (Ensuring customers can make an informed decision: the appropriate information rule);
- (g) ■ ICOBS 6.1.10AR (How must IPID information be provided?) (see also ■ ICOBS 6.1.10BG); and
- (h) ■ ICOBS 6A.3 (Cross-selling).

[Note: article 1(4) of the *IDD*]

2.6.2

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To comply with the relevant chapter of *SYSC* or *Principle 3*, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with ■ ICOBS 2.6.1R.