

Insurance: Conduct of Business

Chapter 7

Cancellation

7.2 Effects of cancellation

Termination of contract

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

Payment for the service provided before cancellation

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

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

- 7.2.3 **G** The amount payable may include:
- (1) any sums that a *firm* has reasonably incurred in concluding the contract, but should not include any element of profit;
 - (2) an amount for cover provided (i.e. a proportion of the *policy's* exposure that relates to the time on risk);

- (3) a proportion of the *commission* paid to an *insurance intermediary* sufficient to cover its costs; and
- (4) a proportion of any *fees* charged by an *insurance intermediary* which, when aggregated with any *commission* to be repaid, would be sufficient to cover its costs.

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

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

Firm's obligation on cancellation

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

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

Consumer's obligation on cancellation

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

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

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

Set off

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

Automatic cancellation of an attached distance contract

7.2.10

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