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Notes on FSA PS04/1 Insurance Selling and Administration

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PART I

Commercial Customers – where sale is non-advised rules will not require insurers to provide a demands & needs statement. Where the insurer makes a personal recommendation – the commercial customer may opt NOT to receive a demands & needs statement. Where an intermediary makes a personal recommendation a demands & need statement MUST be given to the commercial customer (the IMD does not permit otherwise.)

Intermediary Chains – ICOB rules will apply to the insurer providing the product and the intermediary in contact with the customer. ICOB rules will not apply to intermediaries in the middle of the chain – although they ARE likely to be carrying out regulated activities so they WILL need to be authorised. Also rules in the other FSA sourcebooks (e.g. complaint handling, etc.) WILL still apply to these mid-chain intermediaries. (see ICOB 1.2.3R)

Connected Contracts – e.g. travel insurance sold by a travel agent in connection with a holiday. ICOB rules will not apply to the travel agent – i.e. they won't cover the sale. However, they will still apply to the insurer providing the connected contract (in this case travel insurer). However, because the sale itself is not covered the insurer will not be obliged to:-

- Produce a policy summary;
- Extend cancellation rights to face-to-face sales of such products.

Group Policies – ICOB rules will only apply in full to the Legal Holder of a group policy. They will not apply in full to beneficiaries under the group policy other than the legal holder (i.e. won't need to provide full disclosures to every member insured under a group scheme.) The legal holder will be given product information to pass on to the individual members (ICOB 5.4.8R). All members, if they make a claim, will receive the protection of the ICOB rules on claims handling (ICOB 7.2.1G)

Distance non-investment mediation contracts – following consultation FSA accept that these will rarely exist. The rules and guidance have been revised and moved to a separate chapter (ICOB 8) to reflect this.

Pure Protection Contracts – Except for long term care contracts, Pure Protection Contracts will be governed by ICOB (a long term insurance contract may be either a Pure Protection contract or a designated investment contract). Term assurance is treated as an investment if it is for more than 10 years or if it ends after the life insured is 70 years old – otherwise it is Pure Protection and governed by ICOB.

Unfair Inducements – FSA have not prohibited any form of inducement but instead have provided guidance to firms on how they should decide whether an inducement is unfair or not. This guidance illustrates what is meant by an inducement and in what circumstances it might be considered unfair. FSA will continue to review this policy and if supervision suggests it is necessary the approach may be revised (ICOB 2.3)

Insurance selling and administration & other misc. amendments

Status Disclosure – as a result of feedback to the consultation:-

Status disclosure requirements have been reduced for intermediaries making introductions;

The volume of information on the compensation scheme required to be given pre-sale has been reduced;

The status disclosure need not be given for “quick quotes” provided the quote cannot be accepted and a contract formed on the basis of the quick quote only.

Demands & Needs Statements –These are an IMD requirement so FSA cannot waiver them. However, won't be prescriptive about the format and indicate that the Demands & Needs Statement could be generic statements in the product documentation aimed at anyone wishing to buy a product. The final rules state that the duty to keep a record of demands & needs statements exists only where the customer has acted on a personal recommendation.

Excessive charges – in response to feedback FSA have clarified that this does not apply to premiums but does apply to fees (including fees an intermediary charges when he sells a product net of commission.) No guidance has been given on what FSA mean by excessive because the appropriate charge for a service will depend on the type of service offered.

Commission Disclosure – the position remains that commission must be disclosed to commercial customers on request but that there is no duty to disclose commission to retail customers (although fees/charges, etc. MUST be disclosed separately.)

Unsolicited Services – this embraces, but expands on, previous draft rules on “Tacit Renewals”. The requirements stem from the Distance Marketing Directive (DMD) so are to some degree outside FSA's control. Rather than just renewals, the rules will apply to all unsolicited services. However, unlike the original draft FSA rules which applied to all contracts, the ICOB rules will now only apply to distance sales (as required by the DMD). The rules also now exclude those tacit renewals where the firm has a right to renew the contract without the prior request of the customer. This may already exist or firms may wish to revise contracts to provide such a right when they make a sale, or at the next renewal (for existing contracts). Where a firm does not have the right (as above) it will need to get the prior consent of the customer before supplying the financial service. This consent will need to be express or deduced (see ICOB 4.7.3G(3)) It will NOT be enough to assume consent where a customer has not responded. This rule will apply under ICOB to contracts taken out or renewed after 14/1/2005. However, the DMD comes into effect 9/10/2004 – so firms may wish to take early action to ensure compliance.

Financial Promotion rules (ICOB 3) – The only change to the draft rules is to make it clear that firms are required to check that promotions comply with the rules. This includes a rule allowing one firm to rely on the confirmation (in writing) of compliance from another firm (e.g. intermediary can rely on confirmation of compliance from the insurer.)

Product Disclosure (ICOB 5)

Following consultation the rules have been revised to remove the obligation on insurers to provide directive-required information to customers where there is an intermediary between the insurer and the customer AND FSA regulate both the intermediary and the sale.

Insurers remain generally responsible for producing the information and for its content while intermediaries are generally responsible for providing the information to customers. (where the intermediary or sale is NOT regulated by FSA the obligation to provide the information will reside with the insurer.)

There is an exception in respect of DMD required information which the intermediary has a duty under the DMD to provide to the customer (i.e. the intermediary MUST still do this.)

If the intermediary is not regulated by FSA; or, the sale involves a CONNECTED CONTRACT; or, the intermediary is an APF (Authorised Professional Firm) carrying out non-mainstream regulated activities; or, the intermediary is not established in the UK – In these cases FSA do not require the insurer to provide retail customers with a Policy Summary. (This would be inappropriate as in these situations FSA do not regulate the sales process.)

Policy Summary – The requirement to provide this to retail customers (except in situations described above) remains. The policy summary can be generic although firms may personalise it if they wish. Although the policy summary can form part of another document, provided it is in a distinct section, but FSA have prescribed the content and this CANNOT be added to as this may result in the core information being “lost”. The policy summary must disclose significant and unusual exclusions and include signposting to the policy document.

Oral Disclosure – This ruling remains but has been simplified. In face to face sales situations the firm must now draw the customer’s attention to the importance of reading the policy summary and, in particular, the section on significant and unusual exclusions. (As part of their competence for the role, staff giving advice must understand the implications of any significant and unusual exclusions.)

Group Policy Sales – In the light of feedback the requirements here have been clarified and simplified. The rules now apply to all group policies sold to commercial customers which have members who are policyholders (in this context policyholder means any member who can make a claim directly.) The rule requires that the firm must provide to the legal coverholder (i.e. the commercial customer) policy summary which the coverholder must pass on to the policyholder members. There is no requirement for the policy wording to be passed on in this way automatically, although the members MUST be informed that the full policy terms are available on request.

Renewal Information –

Retail Customers: Despite some doubts in the feedback FSA have decided to maintain the requirement that renewal terms are advised to retail customers at least 21 days before the renewal is due.

Insurance selling and administration & other misc. amendments

Commercial Customers: FSA have maintained their requirement that renewal terms be notified to Commercial Customers in “good time” before the contract expires (or of the intention not to invite renewal.) No 21-day rule has been set because of practical difficulties in implementing this. However, it is suggested that the market should develop its own solution to the problem of late notification – in the same way that ABI and BIBA have recently agreed renewal service standards for EL and PL insurance requiring the insurer to notify the intermediary at least 21 days before renewal of the renewal terms or intention not to renew.

White Labelling – ICOB 5.6 includes guidance on this, requiring that where a contract is “white labelled” the customer is clear who the insurer is.

Cancellation Rights - This relates to cancellation rights given in respect of Retail Customers only.

Under European Directive requirements all sales of Pure Protection contracts, and all distance sales of general insurance and non-investment mediation contracts are subject to minimum cancellation rights. FSA rules (ICOB 6) will require that these rights also apply to face-to-face sales of general insurance contracts (except where a connected contract is involved or where the intermediary is not regulated by FSA.)

The ability to levy a reasonable charge where a general insurance contract (but NOT a Pure Protection contract) is cancelled under the cancellation rights remains and is explained in ICOB 6.4.

Claims Handling

Third Party Claimants – Following feedback FSA has dropped its requirement to treat third party claimants as if they were retail customers (to do so would not align well with current insurance law.)

Group Policyholders – for “members” with rights to claim directly the ICOB claims handling rules will apply (i.e. they will be treated as if retail customers.)

Notification requirements:

- At notification stage the insurer is required to tell the customer if their claim is clearly not covered;
- Intermediaries who arranged the policy and act for the insurer in relation to the claim must tell the customer at point of claim that they are acting for the insurer.
- Intermediaries who do not deal with claims must tell the customer so at point of notification OR pass the notification on promptly to the insurer
- Insurers who appoint other parties to help handle claims must tell the customer if that other party is going to contact them on the insurer’s behalf. However, they need not do so if it would interfere with the effective validation of the claim (e.g. if appointing a fraud investigator)
- Insurers must keep records and details of claims and information pertinent to settlement or rejection (but not necessarily all correspondence in relation to the claim.)
- FSA have not prescribed time periods for insurers handling claims but have maintained the requirement for claims to be dealt with “promptly”
- They have also required insurers, as part of their systems and controls, to prepare for likely peaks in demand (e.g. storm and flood claims.)

Complaints Handling – No changes have been made following consultation. The requirement for insurance intermediaries to be subject to FOS Compulsory Jurisdiction remains. No alteration has been made to the definition of Eligible Complainant.

FOS Charging – FOS has not yet concluded the levies it will require from intermediaries. However, for 2004/2005 no levy will apply, instead the full case fee of £550 will apply to each case closed in 2004/2005. This case fee will only apply to the third and subsequent complaints closed (effectively the first 2 are free). FOS hopes that by autumn 2005 its 6 month's experience of the larger jurisdiction will enable it to consider refinements in its levy/charge structure for 2006/2007 – a fuller review is expected in 2007 with a full year's experience to hand.

Record making and keeping – FSA have maintained their proposed approach that records should be retained for 3 years. There have been a few simplifications/clarifications:-

- Firms will not be required to keep demands and needs statements unless the customer has acted on the personal recommendation
- It will not be necessary for a firm to keep individual copies of generic documents on each customer record. However, they must keep a customer-specific record of the version of the generic document used for that customer
- Insurers will not need to keep a record of all communications relating to a claim – but must keep a record of information pertinent to the claim's settlement or rejection

Transitional Provisions –

- Firms will be given 6 months from 14/1/2005 in which to delete reference to GISC and replace with references to FSA in letterheads.
- Where firms are regulated for mortgages from 31/10/04 and will be regulated for GI from 14/1/2005 there is nothing to stop them complying with all or part of ICOB voluntarily before 14/1/2005 EXCEPT that they must not use the CIDD (Combined Initial Disclosure Document.)
- If they choose to use the IDD to disclose status for insurance before 14/1/2005 they must qualify the standard text. For example they could say "We will be authorised and regulated by the FSA for insurance activities from 14 January 2005."
- The firm must NOT use the FSA's key facts logo or section 1 of the IDD before 14/1/2005
- See table 8.1 in Part 1 of PS04/1 for a summary of the potential for early implementation of ICOB rules

Money Laundering – No change to the draft rules. The anti money laundering rules are not to be applied to intermediaries in respect of general insurance and Pure Protection business (which is deemed to be low risk in this respect.)

**PART II
COMBINED INITIAL DISCLOSURE DOCUMENT (CIDD)**

- The CIDD was proposed to be used where a firm is selling mortgages and packaged products at the same time.
- The option was proposed to include non-investment insurance contracts (general insurance and Pure Protection) in the CIDD from 14/1/2005 onwards where firms wished to meet most of their status disclosure obligations

Following consultation, FSA have decided not to make use of the CIDD mandatory but to provide firms flexibility as to whether to use it or individual IDD's – as it may not be clear to a firm at the commencement of a sale that other products/services would also be included. There will be further consultation on this but ICOB DOES include final rules on use of the CIDD for firms providing general insurance and pure protection services.

No one will be permitted to use the CIDD for mortgage/general insurance until 14/1/05 (from 31/10/04 mortgage firms must use the individual mortgage IDD to avoid confusion.)

**PART III
EXEMPT PROFESSIONAL FIRMS**

The Professional Firms Sourcebook (PROF) already has provisions in respect of designated investment business for certain professional firms to carry on certain regulated activities integral to their professional services, without the need for FSA authorisation PROVIDED requirements in part XX of PROF are met. In simple terms these require that the profession's Designated Professional Body (DPB) is responsible for supervising and regulating its Exempt Professional Firms (EPFs) in their conduct of the exempt regulated activities.

PROF is to be extended to embrace these principles for general insurance (and Pure Protection) and mortgages too.

Each DPB must make rules governing the conduct of the exempt regulated activities and these rules must be approved by the FSA. EPFs should contact their DPB with any queries on the new regime. FSA is working with the DPBs at present to establish and agree the rules.

FSA have made very few changes to the draft rules proposed in CP187.

ICOB 1

Outlines to whom and in what circumstances the ICOB rules apply (**ICOB 1.2.1R**):-

1. An Insurance Intermediary or an insurer when it carries on insurance mediation activities for a customer.
2. An insurer when acting as a product provider for general insurance or pure protection (GI or PP).
3. A firm when it manages the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's (for GI or PP)
4. A firm which communicates OR approves a financial promotion for GI or PP
5. A motor vehicle liability insurer; and
6. the Society in relation to motor vehicle liability insurance business

ICOB 1.2.6R :- if it is not clear whether a customer is a Retail Customer or a Commercial Customer, they **MUST** be treated as a Retail Customer

ICOB 1.2.13R – ICOB does not apply to reinsurance contracts.

ICOB 1.2.14R – ICOB does not apply to contracts of large risks where the risk is located outside the EEA.

ICOB 1.2.15R – Group Policies – Only ICOB 7 (Claims Handling) applies to a policyholder other than the legal holder of the policy (i.e. members who are able to claim directly).

Except that – if a firm makes a personal recommendation that a person becomes a policyholder (member) of a group policy ICOB 4.3 and 4.4 apply to that personal recommendation to join, in the same way as if the contract were being concluded. (i.e. suitable disclosures need to be made to any potential member who is being recommended to join the group policy, as if they were an individual customer.)

This requirement applies regardless of how the member joins the group policy, i.e. whether they become a member automatically due to their contract of employment or voluntarily as part of a flexible benefits package.

ICOB 1.3 - looks at the territorial scope of the ICOB rules.

ICOB 1.4 – looks at how the E-Commerce Directive affects ICOB. e.g. the territories involved,

ICOB 1.6 – Appointed Representatives. In determining whether a firm has complied with ICOB provisions, FSA will consider whether its ARs have complied. Any action or breach by the firm's ARs will be considered by FSA to have been committed by the firm.

ICOB 1.7 - looks at the application of the Distance Marketing Regulations (derived from the DMD). Whilst ICOB itself implements the majority of the DMD's requirements the Distance Marketing Regulations apply **IN ADDITION** to ICOB, in particular:-

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- Regulation 11 – Automatic cancellation of an attached distance contract; and
- Regulation 13 – Payment cards

Definition of “DISTANCE CONTRACT”

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

What does this mean?

To be caught by the DMD:

a) an intermediary must have put in place facilities designed to enable a retail customer to deal with it **EXCLUSIVELY** at a distance (e.g. facilities to deal with it solely by post, ‘phone, fax or internet.) If a firm normally deals face to face and has no facilities to enable customers normally to deal with it by distance means – the DMD does not apply.

b) There must have been no face-to-face (simultaneous physical presence) of the intermediary and the customer at any time throughout the offer, negotiation and conclusion of the contract. (So contracts offered, negotiated and concluded entirely over the internet, by ‘phone or by post are normally Distance Contracts.) If at any time at or before conclusion there has been simultaneous physical presence, the contract will not be a Distance Contract. The contract is concluded when an offer to be bound by the insurance has been accepted.

Distance non-investment mediation contracts

Expected to affect only a small minority of cases (dealt with in ICOB 8). Only relevant where:

- an Insurance Intermediary concludes a distance contract with a retail customer covering its insurance mediation activities which is **ADDITIONAL** to any insurance contract it is marketing; **AND**
- the intermediary’s distance contract is concluded other than merely as a stage in the effecting or carrying out of an insurance contract by the firm or another person. i.e. it has to have some continuity **INDEPENDENT** of an insurance contract, as opposed to be concluded as part of marketing an insurance contract.
- An example might be where an intermediary advises on and “sells” a home insurance policy to a retail customer on behalf of an insurer but, **INDEPENDENTLY** of this, also agrees to provide advice on the retail customer’s insurance needs as and when they arise.

Annex 1G to ICOB 1 - Is a table summarising which parts and chapters of ICOB apply in various circumstances, dependent upon the nature of the customer, the location of the firm and of the risk, the nature of the service, etc.

Annex 2G to ICOB 1

Summarises the handbook provisions and how the impact on insurance intermediaries.

ICOB 2 – GENERAL RULES (and unfair inducements)

ICOB 2.2 deals with Communication and states requirements to ensure information is communicated in a way that is clear, fair and not misleading.

ICOB 2.2.2R – A firm must not use the key facts logo unless it is required by a rule.

ICOB 2.2.3R – Clear, fair and not misleading communication.

- This covers all communications with customers (written statements, oral statements, 'phone calls and correspondence) OTHER THAN Financial Promotions (see ICOB 3)
- In considering clarity and fairness, FSA will look at the prominence of information in the context of the communication as a whole. (Appropriate use of positioning of text, background, type size and text colour, etc.)
- To achieve this firms should:
 - use materials and design (paper size, font type & size, tone, colour, volume, etc.) to present written information legibly, accessibly and in a balanced way.
 - Use emphasis sparingly
 - Not use different font sizes so that the impact on the customer of some information (e.g. significant conditions, exclusions or charges) is likely to be less than other provisions, parts or pages of the document

ICOB 2.3 – Inducements

ICOB 2.3.2R Requires a firm to take reasonable steps to avoid offering, giving or soliciting an inducement or directing or referring any potential or actual business to another person if this is likely to conflict with any duty the firm owes to its customers.

- An inducement is a benefit offered to a firm, or anyone acting on its behalf, with a view to that firm or person adopting a particular course of action. This may include (but is NOT limited to): cash, cash equivalents, commission, goods, hospitality or training programmes.
- It does NOT prevent a firm:
 - assisting an intermediary so that the quality of the intermediary's service to the customer is enhanced; or
 - giving or receiving indirect benefits (such as gifts, hospitality or promotional competition prizes.)
 - Provided this is not likely to give rise to a conflict with the duties the recipient owes to the customer. In particular, it must not be of a kind or value which would impair the ability of the firm to act in compliance with any ICOB rules, such as the suitability requirements (ICOB 4.3)
- The inducement does not need to be related to the sales process for these rules to apply. For example an inducement which could impair the firm's ability to act with due care, skill and diligence at the claims stage would also be caught.

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- Incentives offered to staff should NOT encourage sales staff to sell products unsuited to the customer's needs.
- Firms should have in place internal procedures for identifying unfair inducements. (e.g. to identify situations where an inducement has caused a course of action in conflict with the duty to the customer – e.g. placing risk at a higher premium as commission or profit commission likely to accrue to the firm would be improved where the lower premium product would have equally satisfied the suitability tests.)

ICOB 2.4 – Reliance on Others

ICOB 2.4.2R – A firm will be complying with any rule in ICOB requiring it to obtain information if it can show that it was reasonable for it to rely on information provided in writing to it by another person.

The other person providing the written information should be:

- a) not connected with the firm and competent to provide the information;
OR
 - b) Only providing information given by the customer or the insurer
- In taking reasonable steps to ensure a or b above is met, the firm will be complying with rule 2.4.2R.

ICOB 2.4.4R

1. Any information which ICOB requires to be sent to the customer may, ON THE INSTRUCTION OF THE CUSTOMER, be sent to another person
2. A firm is not obliged to supply information to a customer where it has taken reasonable steps to ensure that this has been or will be supplied by another person

ICOB 2.5 – Exclusion of Liability

ICOB 2.5.2R – a firm must not in any communication seek to exclude or restrict any duty or liability it may have to the customer under the regulatory system.

ICOB 2.5.3R – a firm must not in any communication seek to exclude or restrict any duty or liability NOT referred to in 2.5.2R UNLESS it is reasonable for it to do so.

ICOB 2.6 – Application to electronic media

- ICOB allows that communications required to be “in writing” may be by electronic media – although in certain circumstances this must also be in a DURABLE MEDIUM as required by the DMD and IMD.
- A firm must have in place appropriate arrangements, including contingency plans, to ensure security of transmission and receipt of electronic communications and to verify authenticity and integrity together with the date and time sent and received.
- In order to use electronic media the firm must be able to demonstrate that the customer wishes to communicate using this medium; and
- If entering an agreement electronically, must make clear to the customer that a contractual relationship with legal consequences will be created

ICOB 2.7 – General Provision related to distance contracts

ICOB 2.7.1R – In making a distance contract with a retail customer for GI or PP:

1. The firm must, if the customer requests, provide a paper copy of the contractual terms and conditions; and
2. If the customer requests, change the means of distance communication, provided it remains compatible with the GI or PP contract

ICOB 2.8 – Record Keeping

General record keeping standards can be found in SYSC 3.2.20R. An overall view of record keeping requirements in ICOB is in ICOB Schedule 1.

ICOB 2.8.2R – the records which ICOB requires a firm to keep must be readily accessible for inspection by the FSA.

- A record is readily accessible if it can be made available for inspection within 2 business days of its request
- Where a firm keeps standard, generic documents as records, it must be able to identify which version, by date or reference number, was provided to the customer in question.
- Firms may keep records in such form as it chooses (subject to the above)
- Where records are kept in electronic form, the firm must take reasonable steps to ensure that:
 - the electronic record accurately records the original information, and
 - the electronic record cannot be altered accidentally or without authorisation
- Where ICOB requires records to be kept they must be kept for a minimum of 3 years. A firm can retain records for longer than this minimum period and should consider what is a reasonable retention period where complaints or claims may occur some time after inception.

ICOB 3 – FINANCIAL PROMOTION

This chapter explains the regulations and requirements applicable to financial promotions in respect of GI and PP contracts and services. The rules don't apply to financial promotions to persons outside the UK (see ICOB 3.4) and to certain exempt financial promotions (as detailed in ICOB 3.1.2 and 3.3.6R).

ICOB 3.1.2 – includes a table identifying certain types of financial promotion which are exempt from the Financial Promotions Order, and so exempt from the ICOB 3 rules.

e.g. A financial promotion is exempt (under Article 24) if it contains the following information:

- full name of the insurance undertaking;
- country or territory in which the insurance undertaking is incorporated;
- If different from above, the country or territory in which the insurance undertaking's principal place of business is located;
- whether or not the insurance undertaking is regulated in respect of its insurance business;
- If regulated, the name of the regulator in its principal place of business;
- Whether any other transaction to which the financial promotion relates would be covered by a dispute resolution scheme or compensation scheme – with details where applicable.

Other exemptions relate to:

- Reinsurance contracts
- contracts of large risks
- financial promotions communicated in the course of personal visits, 'phone conversations or other interactive dialogues (but not exchange of letters or emails or in publications)

ICOB 3.2 – Who?

ICOB 3.2.1R - states that ICOB 3 applies to every firm which communicates or approves GI/PP financial promotions.

- a firm is responsible for financial promotions communicated by its ARs
- ICOB 3 does NOT apply to an APF communicating a financial promotion PROVIDING:
 - the firm's main business is the practice of its profession
 - the financial promotion is for the purpose of, and incidental to, the firm's provision of:
 - Its professional services (regulated by its DPB, or which don't constitute regulated activity); OR
 - its non-mainstream regulated activities; and
 - the financial promotion is not communicated on behalf of another person who could not lawfully communicate the promotion itself in the course of its business

ICOB 3.3

"Communicate" is as defined in AUTH App 1.6 and means that a person is *communicating* where he gives material to the recipient or where, in certain

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circumstances (see AUTH App 1.6.5G), he is responsible for transmitting the material on behalf of another *person*.

“Non investment Financial Promotion” means: Financial promotions which relate to non-investment insurance contracts. A non-investment financial promotion is, by definition, not a real time financial promotion.

- There is no restriction on the media of communication to which ICOB 3 applies, it applies to GI/PP financial promotions communicated by any means, including printed advertising, radio and TV broadcasting, email, the internet and electronic media such as digital and other forms of interactive TV and media. Both solicited and unsolicited communications are covered.
- Financial communications may be communicated, for example by:
 - Product brochures;
 - general advertising in magazines, newspapers, radio and TV programmes and websites;
 - mailshots (whether by post, fax, email or other media);
 - written correspondence;
 - sales aids which themselves constitute a financial promotion; and
 - other publications which may contain non-personal recommendations as to the acquisition, retention or disposal of non investment insurance contracts

ICOB 3.3.6R – Further exempt forms of financial promotion:-

- financial promotion to a commercial customer that:
 1. is made only to recipients who the firm has taken reasonable steps to establish are commercial customers; or
 2. may reasonably be regarded as directed only at recipients who are commercial customers
- which can lawfully be communicated by an unauthorised communicator without approval;
- communicated from outside the UK and which would be exempt if the communicator were a separate unauthorised person
- a “one off” financial promotion where the conditions in a-c below are satisfied:
 - a) communicated only to one recipient or only to one group of recipients in the expectation that they would engage in any investment activity jointly;
 - b) the identity of the contract to which the promotion relates has been determined according to the particular circumstances of the recipient;
 - c) the promotion is not part of an organised marketing campaign
- a non investment financial promotion which contains ONLY one or more of the following:
 - the name of the firm (or its AR);

- the name of the non-investment insurance contract;
- a logo;
- a contact point;
- a brief, factual description of the firm's (or AR's) activities;
- a brief, factual description of the firm's products

ICOB 3.3.7R – a firm may rely on more than one exemption in relation to the same financial promotion

ICOB 3.4 – Where?

Generally, ICOB 3 applies only to financial promotions communicated to a person in the UK and approval of financial promotions to be communicated to a person in the UK.

Where there is some exemption on territorial grounds the financial promotion will still be subject to the requirements on clear, fair and not misleading communications.

ICOB 3.5 – Purpose

A person must not communicate a financial promotion unless:

- He is an authorised person; OR
- the content of the financial promotion has been approved by an authorised person

ICOB 3.6 – General

A firm communicating a financial promotion may be subject to other regulations outside the FSA's remit, such as:

- the codes issued by the Advertising Standards Authority
- regulations from any overseas regulator if the firm intends to market from the UK to any other country; and
- The Privacy and Electronic Communications (EC Directives) Regulations 2003 (SI 2003/2426)

ICOB 4 – ADVISING & SELLING STANDARDS

ICOB 4.1.5G When a contract of insurance is renewed the parties enter into a new contract of insurance, even if the terms and conditions of the new contract are identical to the old one. ICOB 4, therefore, applies to the renewal as it would to the original contract of insurance (unless otherwise stated in ICOB 4.2.20R)

The purpose of ICOB chapter 4 is to ensure that:

1. Customers are adequately informed about the nature of the service they receive from an intermediary – particularly the scope and type of products and insurance undertakings the service is based upon;
2. Where a personal recommendation is made, it is suitable for a customer's demands and needs;
3. Customers receive a statement of their demands and needs and the reasons for any personal recommendation made;
4. The charges an intermediary imposes on a retail customer are not excessive;
5. If a commercial customer requests, the intermediary discloses the commission; and
6. Retail customers are not charged for distance contracts concluded without their prior consent.

ICOB 4.2 – Status Disclosure

Before or immediately after a contract is concluded, the status of the intermediary must be disclosed to the retail or commercial customer.

ICOB 4.2.2R –

1. An intermediary must provide the information detailed in **ICOB 4.2.8R** to the customer in DURABLE MEDIUM at any time BEFORE the conclusion of a GI/PP insurance contract UNLESS:
2. The information is disclosed orally to the customer before the contract is concluded because:
 - a. the customer requests it; or
 - b. the customer requires immediate cover
3. The service is provided on the 'phone and the customer wishes to enter into an insurance contract and gives his explicit consent to receiving only limited disclosure in which case the intermediary must provide the following information on the 'phone:
 - a. name of the intermediary;
 - b. commercial purpose of the call (if the call is initiated by the intermediary);
 - c. the identity of the person in contact with the retail customer and his relationship with the intermediary; and
 - d. that other information is available on request, and the nature of the information
4. Where exemption 2 or 3 (above) applies, the customer must be provided with the full information required by ICOB 4.2.8R in Durable Medium immediately after the contract is concluded.

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ICOB 4.2.4 G – Although FSA have not made the use of an IDD (Initial Disclosure Document) mandatory for GI and PP under ICOB (although it is for mortgages and investments under MCOB and COB), a draft insurance IDD does form part of ICOB and can be used in whole or in part to satisfy the status disclosure requirements of ICOB. Post 14/1/05 where an intermediary is providing a service on GI/PP and feels they may also provide advice etc on mortgages or investments a combined IDD (CIDD) may be used to cover the mandatory requirements on mortgages and/or investments, in tandem with the voluntary IDD for GI/PP.

ICOB 4.2.5R – If an intermediary elects to use the IDD for GI/PP it **MUST NOT** include the key facts logo and the heading and text in section 1 of the document **UNLESS** it is using the IDD in full with no changes other than those permitted in the notes accompanying the IDD.

ICOB 4.2.6R – If an intermediary uses the IDD and includes the key facts logo, this logo:

1. Must be positioned as shown in ICOB 4 Ann 1G;
2. Must be accompanied by the words “about our insurance services” (see ICOB 4 Ann1G)
3. May be a different size to that in ICOB 4 Ann1G but must be reasonably prominent and proportions not distorted; and
4. May be in colour, but this must not diminish its prominence

ICOB 4.2.7R – If the combined CIDD is used, the document **MUST** be used in full with no changes to text other than those allowed by notes to the document in ICOB 4 Ann2R.

ICOB 4.2.8R – This describes the information which **MUST** be disclosed before or immediately after conclusion of the contract (as outlined in ICOB 4.2.2R):-

1. Name and address of Intermediary
2. Intermediary’s statutory status in accordance with GEN 4 Ann1R (Statutory status disclosure)
3. That 1 & 2 above can be checked on the FSA’s register at <http://www.fsa.gov.uk/register> or by contacting FSA on 0845 606 1234
4. Unless the intermediary is an insurer – **MUST** disclose details of any holding (direct or indirect) that an intermediary has that represents more than 10% of the voting rights or of the capital in any insurance undertaking
5. Unless the intermediary is an insurer – **MUST** disclose details of any holding (direct or indirect) that an insurance undertaking or parent of an insurance undertaking has that represents more than 10% of the voting rights or of the capital in the intermediary
6. Whether any advice or information the intermediary provides on GI/PP is:
 - 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

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if b or c applies the intermediary must also disclose whether it is contractually obliged to conduct insurance mediation activity in this way (e.g. its relationship with its single insurer is exclusive and prevents it from dealing with any other insurer for the service in question.)

7. If the contract has not been provided on the basis of a fair analysis of the market – that the customer can request a copy of the list of insurance undertakings the intermediary selects from or deals with for the contract provided
8. How to complain to the intermediary and that complaints may subsequently be referred to the FOS
9. That the customer may be entitled to compensation from the Compensation Scheme should the intermediary be unable to meet its liabilities

Additional Notes

1. If the customer is dealing with an AR of an intermediary, the intermediary is responsible for ensuring that the AR makes the appropriate disclosures (ICOB 1.6). The intermediary must ensure that:
 - a) the AR provides its own name and address (for item 1)
 - b) the AR makes the disclosure required by Gen 4 Ann1R(4) (for item 2)
 - c) the AR discloses its own holding (for item 4) not that of the intermediary
 - d) the holding disclosed (for item 5) is in the AR and not the intermediary
 - e) that for item 6 the basis the AR discloses is that on which it provides advice or information
 - f) For item 8 – that the details provided are how to complain to the AR
2. Under item 1, if the intermediary trades under a name other than that under which it is authorised, it must disclose the name under which it is authorised and listed on the FSA register. (For an AR the same goes, it must disclose the name under which it is listed on the FSA register.)
3. Under item 1, the address given should be that of the head office, or if appropriate, the principal place of business from which the intermediary or AR expects to conduct business with the customer
4. In addition to the item 9 disclosure, the intermediary must, where relevant, describe the extent and level of compensation cover and how further information can be obtained, after the conclusion of the contract and in durable medium (can provide it before conclusion if so chooses.)

ICOB 4.2.9R – Disclosure by intermediaries when introducing

Where the contact by the intermediary is limited to introducing the customer to another intermediary or insurer, the customer must be given the following information in good time BEFORE the introduction is made:

1. The information in ICOB 4.2.8R (1) & (2) – i.e. name and address of intermediary;
2. Details of any fees the customer will be charged for the service provided; and

3. Whether the intermediary is introducing the customer to a member of the same group

ICOB 4.2.11R – Fair Analysis

An intermediary CANNOT hold itself out as giving advice or information based on a fair analysis of the market unless:

- 1) It has considered a sufficiently large number of insurance contracts available in the relevant sector(s) of the market; and
- 2) the consideration in 1) is based on criteria reflecting adequate knowledge of the contracts in that sector(s) of the market

ICOB 4.2.12G Although FSA have not been prescriptive about how an intermediary can ensure it complies with 4.2.11R in terms of analysing a sufficiently large proportion of the market sector(s), it does suggest one way of achieving this would be by using a panel of insurers and reviewing the panel on a regular basis. It would need to review its arrangements, for example, if it discovered that an insurance contract had become generally available offering an improved product feature not currently reflected in its panel. The frequency that this sort of updating will be required will be dependent upon the extent to which new contracts are made available on the market.

In selecting a panel, the intermediary would need to consider product features, premiums and services offered by the insurance undertakings to customers (not just the benefit the undertakings offer to the intermediary.)

ICOB 4.2.14R – Information to be provided to customers on request

1. an intermediary must maintain and keep up to date for each type of contract it deals with, a list of the insurance undertakings it selects from or deals with.
2. A copy of this list must be provided in durable medium on request to a customer.

ICOB 4.2.15R – Retail customers and commercial customers information on fees

Before a customer becomes liable to pay any fee, or before conclusion of the contract if earlier, the intermediary MUST provide a customer with details of the amount of any fees for insurance intermediation activity or where the amount cannot be provided, details of the basis on which the fees will be calculated.

This means that fees charged over the life of the contract by the intermediary (not just at the outset) must be disclosed before conclusion of the contract.

This information must be provided on durable medium immediately after conclusion of the contract.

(Fees for this purpose do not include premiums or commissions that are part of premiums.)

ICOB 4.2.19R – Overseas business for UK retail customers

1. An intermediary must NOT conduct mediation activities :
 - a. from an office of its own or of any AR outside the UK;
 - b. With or for a retail customer who is in the UK

Unless it has, where relevant, made the necessary disclosure to the customer in accordance with 2. below

2. The required disclosure means a written statement making it clear that in some or all respects the regulatory system applying, including complaints handling and compensation arrangements, will differ from that in the UK. The statement may also indicate the protection or compensation available under another regulatory system.

ICOB 4.2.20R – application for renewals and amendments where information has already been provided

1. The requirements under 4.2 do not apply to renewing or amending a contract of insurance IF the required disclosure has already been given to the customer at the initial contract stage and remains accurate and up to date.
2. If the information has changed the intermediary **MUST** give the customer the updated information in accordance with ICOB 4.2 but is not under any obligation to provide the other information required by ICOB 4.2 (i.e. the unchanged information)

ICOB 4.3 – Suitability

ICOB 4.3.1R

1. In making any personal recommendation the intermediary must ensure that the recommendation made is suitable for the customer's demands and needs at the time of that recommendation
2. This recommendation must be based on the scope of service disclosed in accordance with the status disclosure
3. An intermediary **MAY** make a personal recommendation of a contract which does not meet **ALL** of the customer's demands and needs, but only if:
 - a. there is no contract in the intermediary's scope to meet **ALL** of the customer's demands and needs; and
 - b. the intermediary identifies to the customer at the time of the recommendation the demands and needs that are not met by the contract it is recommending

Information about the customer's demands and needs

ICOB 4.3.2R – In assessing the customer's demands and needs the intermediary must:

1. seek information about the customer's circumstances and requirements as might reasonably be expected to be relevant to identifying the customer's requirements.
2. Take into account other relevant details about the customer readily available to the intermediary – e.g. through early advice or information provided to the same customer
3. Explain the customer's duty to disclose material circumstances and the consequences of failure to disclose, both before the contract commences and throughout its duration. The intermediary must take account of the information the customer discloses.

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The intermediary should base his recommendation on what the customer tells him. The intermediary is not required to take into account the customer's existing insurance cover or details, if the customer is not able to provide this information.

ICOB 4.3.5R – If the intermediary is aware that the customer's existing cover is likely to significantly affect the suitability of any personal recommendation, the intermediary must either:

1. Not make a personal recommendation until details of the existing cover are made available to him; OR
2. If he makes a recommendation, explain to the customer that this may not be suitable because it does not take into account full details of the customer's existing cover

ICOB 4.3.6R – Assessing the suitability of a contract

The intermediary must take into account at least:

1. Whether the level of cover is sufficient for the risks the customer wishes to insure;
2. the cost of the contract, where this is relevant to the customer's demands and needs;
3. the relevance of any exclusions, excesses, limitations or conditions to the contract .

ICOB 4.4 – Statement of Demands and Needs

ICOB 4.4.1R

1. Unless ICOB 4.4.2R applies, where an intermediary arranges a contract (including renewal) it must before the contract is concluded provide the customer with a statement that:
 - a. sets out the customer's demands and needs
 - b. confirms whether or not the intermediary has made a personal recommendation
 - c. Where a recommendation has been made, provide reasons why
2. The statement in 1. must reflect the complexity of the contract proposed
3. Unless 4. applies the statement described in 1. must be in durable medium
4. The statement may be provided orally if:
 - a. the customer requests it; or
 - b. the customer requires immediate coverIn both a and b, it must be provided in durable medium immediately after conclusion of the contract

Exemptions

ICOB 4.4.2R

1. Commercial Customers

- a. ICOB 4.4.1R does not apply to an intermediary that is an insurer when dealing with a commercial customer, unless the insurer makes a personal recommendation to that commercial customer

- b. If an intermediary who is an insurer makes a personal recommendation to a commercial customer it need not provide a demands and needs statement, provided that:
- i. it has obtained the commercial customer's consent not to receive a demands and needs statement; and
 - ii. It has explained the consequences of giving such consent before it is given

2. Telephone Sales

Where a contract is concluded by 'phone with a customer the statement of demands and needs:

- a) must be provided immediately after conclusion of the contract, in durable medium;
- b) may also be given orally before the contract is concluded

ICOB 4.4.3G

- the demands and needs statement may be provided by the intermediary as part of another document, such as an application form.
- for quick quotes there is no need for the intermediary to produce a demands and needs statement – but it must be provided before contract conclusion

Demands and Needs statement for non-advised sales

ICOB 4.4.4G there is flexibility here. Where no personal recommendation has been given, the demands and needs statement requirement may be fulfilled by:

1. Providing the statement as part of an application form – so that it is made dependent upon the customer providing certain personal information on the application form. E.g. "If you answer 'yes' to questions a, b & c your demands and needs are those of a pet owner who wishes and needs to ensure that the veterinary needs of your pet are met now and in the future."
2. Producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy that product. E.g. "This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future." and
3. Giving the customer a record of all his demands and needs that have been discussed.

Demands and needs statement when a personal recommendation is made

ICOB 4.4.5G

1. Where a personal recommendation is made the demands and needs statement needs to record the reasons for the recommendation as well as the customer's demands and needs;
2. In accordance with ICOB 4.4.7R, the demands and needs statement provides the record the intermediary needs to retain to demonstrate that the recommendation he has given is suitable.

ICOB 4.4.6G – this gives guidance on the content required in a demands and needs statement:-

1. Explain clearly why the personal recommendation is viewed as suitable to the customer's demands and needs
2. The style and presentation is not prescribed – it can be designed to work best in the intermediary's own market. It is most likely to be effective if it:
 - a. is simple and in plain English
 - b. Is concise with clear messages
3. In constructing the statement following a personal recommendation an intermediary should take into account:
 - a. explain why the demands and needs combine to make the recommendation suitable. (It must link to the customer's demands and needs in explaining why it is being recommended.)
 - b. If the intermediary offers contracts from more than one insurance undertaking it should include why the particular undertaking has been recommended (e.g. unique features, price, service levels.)

Record keeping following a personal recommendation

ICOB 4.4.7R – If the customer follows the personal recommendation a record should be retained by the intermediary (together with a copy of the demands and needs statement) of the reason for the recommendation. To be retained for a minimum of 3 years from the date of the recommendation.

ICOB 4.5 – Excessive charges to retail customers

ICOB 4.5.1R – An intermediary must ensure that its charges to retail customers are not excessive.

FSA are not prescriptive about what is excessive but suggest that in assessing this the intermediary should take into account:

- The amount of its charges compared to those of others in the market
- Whether the charges are an abuse of the customer's trust
- The nature and extent to which the charges are disclosed to the customer

ICOB 4.6 – Commission disclosure for Commercial Customers

ICOB 4.6.1R – If at any time a commercial customer asks, the intermediary MUST promptly disclose the commission he (and any associate of his) receives in connection with the contract in question. The disclosure must be in cash terms and in durable medium.

ICOB 4.7 – Unsolicited Services (term wider than the original term used of "Tacit Renewals")

ICOB 4.7.1R – Rules that, unless 4.7.2R (below) applies, an intermediary OR an insurer must NOT in relation to a GI/PP Insurance contract that is also a Distance Contract:-

1. Advise on, arrange, enter into, RENEW, carry out OR assist in administration and performance of the contract for a Retail Customer

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UNLESS there has been a prior request from the customer, when the supply of such a service includes a request for immediate or deferred payment; OR

2. Enforce any obligation against a Retail Customer in the event of unsolicited supply of such services, the absence of a reply does NOT constitute consent.

ICOB 4.7.2R – 4.7.1R does NOT prevent an intermediary or insurer from exercising any right they may have, by contract or otherwise, to renew a distance contract with a Retail Customer without any request made by or on behalf of the retail customer.

What does this mean?

Note the rules only apply to “Distance Contracts”

Definition of “DISTANCE CONTRACT”

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

So if at any time before the contract is concluded there has been face to face contact the contract is not a distance one, and the above rules don’t apply (the rules are to implement the DMD.)

If the contract IS a Distance Contract, if the contract includes rights enabling the intermediary or insurer to RENEW the contract without seeking prior consent from the Retail Customer – then there is no requirement under the rules to seek further consent from the customer.

If the contract IS a Distance Contract, and there are no rights to renew without the customer’s prior consent. Then the Retail Customer’s prior consent MUST be obtained BEFORE the contract can be “automatically” renewed (or indeed any other action of advising, arranging, etc. which would incorporate a request for immediate or deferred payment from the retail customer, taken.)

If the contract is paid by regular instalments (e.g. by direct debit) UNLESS the contract includes rights enabling the insurer or intermediary to continue to provide the cover after renewal (thereby incurring a cost for the customer) without prior consent from the customer then the intermediary or insurer MUST refer to the retail customer for consent to renew.

This means either the renewal cannot be processed automatically – it would need consent from the customer; OR, the contract terms must be changed and agreed with the customer to permit automatic renewal at future renewals.

ICOB 5 – PRODUCT DISCLOSURE

The purposes of this chapter are to:

- Reinforce Principle 7 (Communications with Clients) by ensuring a firm pays due regard to the needs of its clients and communicates with them in a way which is clear, fair and not misleading
- Ensure that customers have the necessary information to make an informed choice about whether or not to buy a specific GI/PP contract and whether that contract continues to meet their needs
- In addition, the chapter also implements relevant requirements of Directives (DMD, Consolidated Life Directive and Third non-life Directive.)

ICOB 5.2 – Specifies the information to be disclosed to the customer. Whether the responsibility for producing and providing this information to the customer rests with the insurer, the intermediary, etc. varies dependent on whether both are located in the UK, are authorised, exempt, etc.

In straightforward cases, where the intermediary and insurer are both based in the UK, the insurer will be responsible for the production of the information and the intermediary for providing the information to the customer. (The situation with cross-border sales, non-UK based insurers/intermediaries, etc. is dealt with in ICOB 5.2.3 to 5.2.8)

ICOB 5.2.9R The information to be provided to customers is:-

1. A POLICY SUMMARY (ICOB 5.5.1R to 5.5.13G);
2. Directive-required information (ICOB 5.5.16R to 5.5.26G). This need not be a separate document – it may be part of the policy document or part of a wider document including the policy summary;
3. A POLICY DOCUMENT (ICOB 5.5.27R to 5.5.28G)
4. Information on the CLAIMS HANDLING PROCESS (ICOB 5.3.9R to 5.3.11G)
5. Information (where relevant) on CANCELLATION RIGHTS (ICOB 5.3.12R to 5.3.14G); and
6. For any compensation scheme mentioned in the policy summary, the extent and level of compensation available and how to obtain further information – unless this is already included in the Policy Summary.

ICOB 5.2.12R – If an intermediary is required by these rules to provide information to the customer – then the insurer must produce it in “good time” to enable the intermediary to comply with this OR must produce it promptly on request from the intermediary.

PROVISION OF INFORMATION TO RETAIL CUSTOMERS

Where the GI/PP Contract is NOT a Distance Contract
The following must be provided to the customer in “good time” before the contract is concluded:
1) In Durable medium
a) POLICY SUMMARY (ICOB 5.5.1R to 5.5.13G)
b) STATEMENT OF PRICE (ICOB 5.5.14R to 5.5.15G)
c) Relevant DIRECTIVE-REQUIRED INFORMATION (ICOB 5.5.20R)
2) Orally advise the customer of the importance of reading the policy summary, especially the significant and unusual exclusions or limitations
The following information must be provided in durable medium immediately after the contract is concluded:
1) a POLICY DOCUMENT (ICOB 5.5.27R to 5.5.28G)
2) Information about the CLAIMS HANDLING PROCESS (ICOB 5.3.9R to 5.3.11G)
3) Information, where relevant, about CANCELLATION RIGHTS (ICOB 5.3.12R to 5.3.14G)
4) Details of any applicable COMPENSATION SCHEME – the extent and level of cover and how further information can be obtained

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Where the GI/PP Contract IS a Distance Contract
The following must be provided to the customer in “good time” before the contract is concluded:
1) In Durable medium
a) POLICY SUMMARY (ICOB 5.5.1R to 5.5.13G)
b) STATEMENT OF PRICE (ICOB 5.5.14R to 5.5.15G)
c) Relevant DIRECTIVE-REQUIRED INFORMATION (ICOB 5.5.20R)
d) the POLICY DOCUMENT (ICOV5.5.27R to 5.5.28G)
e) Information about the CLAIMS HANDLING PROCESS (ICOB5.3.9R to 5.3.11G)
f) Information, where applicable, on CANCELLATION RIGHTS
EXCEPT IN CASES OF:
2) Telephone Sales – in which case the following information must be given orally before the contract is concluded; or
3) Certain other distance communication means (not telephone – but which also make provision of the information in durable medium impossible) – in which case the following information must be given by other means before the contract is concluded:-
i) Name of the insurance undertaking
ii) Type of insurance and cover
iii) Significant features and benefits
iv) Significant and unusual exclusions or limitations
v) TOTAL PRICE to be paid by the customer (or if exact price cannot be given, the basis for calculating it)
vi) Notice of possibility other taxes or costs may exist that are not payable via the intermediary or imposed by him
vii) Existence or absence of CANCELLATION RIGHTS – and details where it does exist
viii) a telephone number or address to which a CLAIM may be notified
Immediately after conclusion of a contract which is a Distance Contract the following information must be provided in durable medium to the retail customer
Information about the claims handling process (ICOB 5.3.9R), including:- 1) the address, ‘phone number or other point of contact for initial notification; 2) the information the retail customer will need to provide to the insurance undertaking when notifying a claim These two must be provided in the same document (ICOB 5.3.10R)
Information about CANCELLATION (ICOB 5.3.4R or 5.3.6R) including: 1) the existence or absence of CANCELLATION RIGHTS (ICOB 6.2.1R); and 2) Where Cancellation Rights exist: a) Duration of cancellation period (ICOB 6.2.2R) b) Conditions for exercising right to cancel, including any amount the retail customer may be required to pay c) Consequences of not exercising right to cancel; and d) How the right to cancel may be exercised, including the address to which notification of cancellation should be sent.

ICOB 5.2.15R to 5.3.23G – RENEWALS

if a contract with a duration of no more than one year is due for renewal, ICOB 5.3.16R to 5.3.23G apply in place of ICOB 5.3.1R to 5.3.8R.

Automatically renewable one-month (or less) policies

For policies with a term of one month or less which provide for automatic monthly “renewal” e.g. by direct debit and for cancellation at the customer’s option ICOB 5.3.1R to 5.3.8R and 5.3.18R to 5.3.23G do not apply. (Although if the policy carries cancellation rights, ICOB 5.3.12R to 5.3.14G DO apply and, if any changes are made to the terms or conditions of the policy at one of the “renewals” ICOB 5.3.21R applies.

Renewals of policies with a term of more than one month but no more than one year (i.e. all ANNUAL POLICIES)

- If the insurance undertaking is willing to invite renewal of the policy, the intermediary **MUST** provide the retail customers with renewal terms in durable medium at least 21 days before expiry/renewal (**ICOB 5.3.18R(1)**)
- If the insurance undertaking is **NOT** willing to invite renewal of the policy, or the intermediary no longer deals with the insurance undertaking, the retail customer must be notified of this at least 21 days before expiry (**ICOB 5.3.18R(2)**) (This also applies if the insurance undertaking is not willing to invite renewal through the intermediary in contact with the customer)

Renewals of policies of more than one year’s duration

In these cases the “renewal” must be treated as a new sale.

ICOB 5.3.21R - The information to be provided within the “renewal terms” (ICOB 5.3.16R or 5.3.18R) is:-

- 1) Statement of any changes to the policy terms;
- 2) An explanation of the changes, where necessary;
- 3) Any changes to the directive-required information;
- 4) The Statement of Price;
- 5) Information about cancellation; and
- 6) A prominent notice of the retail customer’s right to request a new policy document

ICOB 5.3.22R – ICOB 5.3.18R and ICOB 5.3.21R do NOT apply where:

- 1) the intermediary has reason to believe the customer does not wish to renew the policy through it (e.g. where the policy was for single trip travel or for Creditor tied to the term of a loan; OR, if the intermediary contacts a retail customer at least 21 days before renewal to check whether they want to renew and the customer says they do not, or if the customer fails to contact the intermediary by a specified date to discuss the renewal, having been sent a request to do so in durable medium)
- 2) the intermediary has notified the retail customer that it does not wish to act for him at renewal;

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- 3) the retail customer has already been notified that the insurance undertaking will not invite renewal; or
- 4) the retail customer requests an extension to the policy for a period less than the original policy term (e.g. a 3 month extension to an annual policy)

Mid Term Changes

ICOB 5.3.24R – During the policy term the intermediary must notify a retail customer of:

- 1) Any changes to premium (unless these conform to a previously disclosed formula);
- 2) Changes to any of the contracts terms or conditions – together with an explanation of the implications, where necessary (Particularly any changes to benefits or to significant and unusual exclusions arising from the change); and
- 3) Changes to the directive-required information where the contract is a pure protection contract

ICOB 5.3.25R

- 1) If an insurance undertaking changes the premium or any terms of the contract – the intermediary must provide the retail customer with the information required by ICOB 5.3.24R In DURABLE MEDIUM and in GOOD TIME before the changes take effect;
- 2) If the change in 1) above is made at the retail customer's request and it is impractical to provide the information in Durable Medium before the change takes effect, the intermediary MUST:
 - a) Explain the implications of the change(s) to the customer BEFORE they take effect; and
 - b) Provide the retail customer with the information in durable medium promptly after the change takes effect.

PROVISION OF INFORMATION TO COMMERCIAL CUSTOMERS

At Inception/pre-contract

Before Conclusion of the contract (ICOB 5.4.1R to 5.4.3G)
The intermediary must provide to the commercial customer:
1) Sufficient information to enable the customer to make an informed decision about the contract being proposed;
2) The Directive-required information must be provided in writing (unless the contract is being concluded by telephone, in which case it must be provided immediately after conclusion);
3) The PREMIUM and any FEES relating to the contract
On conclusion of the contract (ICOB 5.4.4R to 5.4.7G)
If it was not given prior to conclusion the intermediary must provide the commercial customer with the information in ICOB 5.4.1R(2) &(3) IN WRITING immediately after the contract is concluded.
The intermediary MUST provide the commercial customer with a POLICY DOCUMENT promptly after conclusion.

Group Policies to Commercial Customers

ICOB 5.4.8R – Where the group policy is held by a commercial customer but the terms of the contract provide that other persons can become “policyholders” (i.e. with direct rights under the contract, e.g. to submit claims), the intermediary **MUST** promptly after conclusion of the contract:

- 1) Provide a **POLICY DOCUMENT** and a **POLICY SUMMARY** to the Commercial Customer;
- 2) Inform the Commercial Customer that he should provide the **POLICY SUMMARY** to each policyholder and inform them that a copy of the **POLICY DOCUMENT** is available on request; and
- 3) If the group policy replaces a previous group policy – advise the Commercial customer that he should inform each policyholder of any changes to the information in the **POLICY SUMMARY**.

ICOB 5.4.9G

(1) “policyholder” in this context refers to an insured member under the group policy who has rights to submit a claim direct to the insurer – rather than just to submit a claim on his employer or the trustee, etc.

(2) The policy summary information may be provided by the Commercial Customer to the “policyholders” in any form, e.g. on an employer’s intranet, in a staff handbook or separate booklet – provided it is **IN WRITING**.

At Renewal (for Commercial Customers)

Where a Commercial Customer’s contract is due for renewal **ICOB 5.4.11R** to **ICOB 5.4.14R** apply in place of **ICOB 5.4.1R** to **5.4.7G** (which apply to Retail Customers).

ICOB 5.4.11R – Unless the Intermediary has reason to believe that the commercial customer does not wish to renew, or the intermediary has notified the commercial customer that it does not wish to act for him from renewal, the Intermediary **MUST** in **GOOD TIME BEFORE THE EXPIRY** (note – there is no minimum 21 days as for retail customers):-

- (1) Provide renewal terms to the commercial customer; OR
- (2) Notify the Commercial Customer that the Insurance Undertaking is not willing to invite renewal or that the intermediary no longer deals with the undertaking.

ICOB 5.4.13R – A commercial customer may consent to not receive the renewal information in **5.4.11R** IF the intermediary has explained the consequences before the consent is given.

ICOB 5.4.14R – if the contract is for no more than one month and provides for automatic renewal and cancellation at the commercial customer’s option – rules **5.4.11R** and **5.4.13R** do not apply but the commercial customer **MUST** be advised of any changes to the terms, conditions and premium **BEFORE** the changes take effect.

Mid Term Changes (for Commercial Customers)

ICOB 5.4.15R – Throughout the duration of any Pure Protection contract for a commercial customer, the Intermediary **MUST** notify the commercial customer of any changes to the information in ICOB 5.5.20R(22) (name, address, location of insurance undertaking, definition of benefits, term of the contract, means of termination, means of paying premium, amount of premium)– and should take reasonable steps to do so **BEFORE** the change takes effect.

INFORMATION FORM AND CONTENT

POLICY SUMMARY

ICOB 5.5.1R – This rule prescribes the content of the policy summary. It **MUST** contain the information specified by ICOB 5.5.5R in respect of the GI/PP Contract.

It **MAY** contain (decision is down to the insurer/intermediary:-

- a) STATEMENT OF PRICE (ICOB 5.5.14R)
- b) COMPENSATION SCHEME information (ICOB 5.5.5R(12))
- c) Information on CANCELLATION (ICOB 5.3.12R)

ICOB 5.5.2R – Provides that the policy summary should be provided as a separate document **OR**, if included within another document, must be in a prominent place and clearly identified as key information that the Retail Customer should read. It must also be separate from the other content of the document.

ICOB 5.5.3G – Provides some guidance that:

The **POLICY SUMMARY** is a generic document, although the insurer or intermediary **MAY** personalise it with details of the insurance being provided to a particular retail customer, if they wish.

The **POLICY SUMMARY** is designed to be an informative document but it is **NOT** intended to communicate the full policy terms and conditions. It must not overload the customer with detail.

ICOB 5.5.4R – May be of interest to firms where general insurance/pure protection is not their core business – and who are more involved in regulated investment business. These firms are likely to be used to using a key features document in compliance with COB 6 and this may be used in place of a **POLICY SUMMARY** – but it **MUST** include the information required by ICOB 5.5.5R (6), (10) & (13).

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ICOB 5.5.5R – the following table specifies the content required in the POLICY SUMMARY:-

POLICY SUMMARY CONTENT	
(1)	State that the policy summary does NOT include the full terms and conditions of the insurance contract, which can be found in the policy document
(2)	Name of the Insurance Undertaking
(3)	Type of insurance and cover (<i>e.g. form motor insurance whether Comp. or TP; for home insurance, whether AD included, etc. A policy summary may be generic so, for example a motor summary may describe both comp. and TP cover – this is acceptable provided the customer is informed when given the summary, of the type of cover he is being offered.</i>)
(4)	Significant features and benefits
(5)	Significant and unusual exclusions or limitations (<i>What constitutes a significant or unusual exclusion or limitation should be considered by the firm, alongside the nature and complexity of the insurance, in producing the Policy Summary. A significant exclusion or limitation is one that would tend to affect the customer's decision to buy the product. An exclusion relating to a significant feature or benefit, as described in 4 above, is likely to be significant. An UNUSUAL exclusion or limitation is one not normally found in comparable contracts.</i>)
(6)	Cross-references from (5) to the sections of the policy document relating to the significant and unusual exclusions and limitations
(7)	The duration of the insurance contract
(8)	(Where the policy is for more than one year) a statement, where relevant, that the retail customer may need to review and update the cover periodically to ensure it remains adequate.
(9)	The existence of absence of cancellation rights and, where applicable, the duration of the cancellation period
(10)	A telephone number or address to which a claim may be notified
(11)	Information on how to complain to the insurance undertaking and that complaints may be subsequently referred to the FOS
(12)	That the retail customer may be entitled to compensation from the compensation scheme should the insurance undertaking be unable to meet its liabilities
(13)	The KEY FACTS logo (<i>This must be shown in a prominent position at the top of the POLICY SUMMARY – as for the IDD. If the Policy Summary forms part of another document – the logo should be shown in a prominent position at the top of the relevant section.</i>)

ICOB 5.5.13G – The policy summary should be produced to a standard of quality and presentation consistent with the other documentation relating to that contract to avoid retail customers being deterred from reading it. (E.g. if the other documentation is glossy and full colour, it would not be acceptable for the Policy Summary to be a black and white photocopy.)

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STATEMENT OF PRICE

ICOB 5.5.14R – This must include the following:-

Statement of Price Content	
(1)	Total amount of PREMIUM for the insurance contract (if premium cannot be indicated the basis for its calculation must be shown to enable the retail customer to verify it) <i>(e.g. on a creditor policy where the premium varies according to the level of debt – e.g. on a credit card – the customer should be given the rate instead so that they can check the premium against each statement.)</i>
(2)	For contracts of more than one year, how long the premium is valid and whether it will be reviewed and, if so, when it will be reviewed
(3)	FEES, admin charges and taxes which the retail customer will be required to pay via the intermediary in ADDITION to the premium. <i>(e.g. charges for any credit arrangement, etc.)</i>
(4)	A statement separately identifying the possibility of any taxes NOT payable via the intermediary
(5)	Where the insurance is purchased in connection with other goods or services: The premium for the insurance contract SEPARATELY from all other prices in relation to the other goods or services, if an additional price is charged; AND Whether buying the insurance contract is a requirement of buying the other goods or services or not <i>(i.e. whether the customer has an option to buy/not buy the insurance);</i> AND
(6)	The TOTAL PRICE to be paid by the Retail Customer for the insurance contract

DIRECTIVE-REQUIRED INFORMATION

ICOB 5.5.16R – This and the ensuing rules and guidance set out the information which is required to be given to the customer to fulfil the requirements of a number of directives. Where the information has already been given to the customer in another document (e.g. the policy summary) it is not necessary to repeat it unless required by a specific rule.

ICOB 5.5.18R & 5.5.19R – clarifies that some of the required information, specifically that laid down in ICOB 5.5.20R (2) and (3) need not be provided if the risk is outside the UK.

NOTE: *FSA have not been prescriptive about where (as in which document) the directive-required information or the statement of price needs to be disclosed - although both are required to be given in "good time" before conclusion of the contract (except for those distance contracts where this is not possible before conclusion.)*

We know it cannot be part of either of the "Key facts" documents (i.e. the IDD or Policy Summary) as the content of these is specified within the rules. However, FSA have said that the Policy Summary may form part (albeit a distinct part) of a larger document, and this larger document could also include the directive required info and the statement of price.

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ICOB 5.5.20R – The following details the directive-required information to be provided to customers:-

Directive-required information to be provided to customers	
For general insurance contracts (Third Non-Life Directive) other than certain ¹ distance contracts with retail customers	
(1)	If the insurance undertaking is an EEA firm:
	(a) The home state of the insurance undertaking and, if appropriate the EEA state of the branch through which the contract will be concluded ² ; and
	(b) the address of the insurance undertaking's head office (and branch, if appropriate)
(2)	The law applicable to the contract (where the policyholder is a natural person). <i>(This should state the law applicable where the parties do not have free choice. Where the parties DO have free choice it should state the law the insurance undertaking proposes to choose);</i> and
(3)	The arrangements for complaints handling, including the existence of a complaints body (e.g. FOS) where appropriate.
Note 1: The information at (1) to (3) need not be provided for Distance Contracts where information is provided under the DMD or its equivalent.	
Note 2: The information in (1) MUST be stated in the policy document and any other document granting cover.	
For Pure Protection Contracts (Consolidated Life Directive) ³ other than certain ⁴ distance contracts with retail customers.	
(4)	the name and legal form of the Insurance Undertaking
(5)	the name of the EEA State in which the Insurance Undertaking has its head office and, where appropriate, the state in which the agency or branch concluding the contract is situated
(6)	the address of the insurance undertaking's head office (and of its agency or branch, if appropriate)
(7)	the definition of each benefit and each option
(8)	the term of the insurance contract
(9)	the means of terminating the insurance contract
(10)	Method of payment of premiums and duration of payments
(11)	Information on premiums for each benefit, both main benefits and supplementary benefits, where appropriate
(12)	Information about cancellation in accordance with ICOB 5.3.12R
(13)	General information about tax arrangements applicable to the type of insurance contract
(14)	Complaints handling arrangements for policyholders, lives assured or beneficiaries under policies – including existence of complaints body (e.g. FOS)
(15)	The law applicable to the contract (where the policyholder is a natural person). <i>(This should state the law applicable where the parties do not have free choice. Where the parties DO have free choice it should state the law the insurance undertaking proposes to choose)</i>

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Note 3: The information in (4) to (15) MUST be in English unless the customer requests it to be, and the insurance undertaking agrees for it to be, in another language.	
Note 4: The information in (4) to (15) need not be provided for distance contracts where the information is provided under the DMD or its equivalent	
For GI/PP Insurance contracts with Retail Customers concluded by a means of distance communication OTHER than by telephone (DMD)	
(16)	The Insurance Undertaking
	(a) The name and main business of the insurance undertaking and the address of its head office and branch, where appropriate
	(b) the trade register in which the insurance undertaking is entered and its registration number or equivalent (<i>e.g. FSA register number</i>)
	(c) Where the insurance undertaking's activity requires authorisation, the particulars of the supervisory authority (<i>e.g. FSA</i>)
(17)	The Financial Service
	(a) a description of the main characteristics of the insurance contract
	(b) TOTAL PRICE to be paid by the retail customer to the intermediary, including all related fees, charges, taxes. Where the exact price cannot be indicated – the basis for calculation must be given to enable the customer to verify it
	(c) Notice of the possibility that other taxes or costs may exist which are not paid via or imposed by the intermediary
	(d) any limits on the period for which the information provided remains valid
	(e) the arrangements for payment and for performance of the insurance contract
	(f) any specific additional cost to the retail customer of using the means of distance communication
(18)	the Distance Contract
	(a) Information about CANCELLATION (ICOB 5.3.12R)
	(b) Information on any early termination rights the insurance undertaking OR the retail customer may have, including any penalties applicable
	(c) The EEA State or States whose laws the Insurance Undertaking takes as a basis for the relationship with the retail customer PRIOR to conclusion of the Distance Contract
	(d) Any contractual clause relating to the law applicable and/or competent court
	(e) The language in which the contract terms and conditions and disclosures are to be supplied and which language the insurance undertaking will use for any communications during the life of the policy
(19)	Redress
	(a) whether or not an out of court complaint redress mechanism exists for the retail customer, and, if so, how to access it
	(b) the existence of guarantee funds or compensation arrangements

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For GI/PP insurance contracts concluded by telephone with a retail customer who has agreed to receive limited information before conclusion of the contract (DMD):	
(20)	Before conclusion of the contract: The information specified in ICOB 5.3.6R(2)(a) other than ICOB 5.3.6R(2)(a)(viii)
(21)	Immediately after conclusion of the contract: The information referred to in sub-paragraphs (16) to (19) of this table
Provisions applying during Pure Protection insurance contracts:	
(22)	Any change to the information in sub-paragraphs (4) to (11) of this table.

ICOB 5.5.21R – where an insurance contract is effected jointly, the information required by the above table need only be sent to the first-named customer.

ICOB 5.5.22R – where the insurance contract is underwritten by more than one insurance undertaking, only the information about the first-named insurance undertaking HAS to be provided before conclusion BUT details of ALL of the insurance undertakings providing cover must be provided promptly after conclusion of the contract.

POLICY DOCUMENT

ICOB 5.5.27R – the Policy Document MUST contain all of the contractual terms and conditions. (The Policy Document may consist of more than one document – but all must be provided to the customer at the same time.)

WHITE LABELLING

ICOB 5.6.1G – The rules in ICOB 4 and 5 require that the customer be advised of the identity of both the insurance undertaking and the intermediary. An insurance intermediary MUST clearly communicate the identity of the Insurance Undertaking to the customer.

RECORD KEEPING

ICOB 5.7.1R – The insurer (or if the insurance undertaking does not operate from the UK, the intermediary) must keep for at least 3 years after the information has been provided to the customer:

- (1) a POLICY SUMMARY; and
- (2) a POLICY DOCUMENT

In relation to each insurance contract concluded.

Guidance: If the policy summary and/or policy document are generic documents the insurer or intermediary need only retain one copy of each. But if a schedule specific to the customer is produced – a copy of this MUST be retained for 3 years.

Retention for longer than 3 years is encouraged where this may assist with later complaints, claims or legal action.

ICOB 6 – CANCELLATION

This chapter of ICOB sets out cancellation rights that a firm **MUST** offer to a retail customer on inception or renewal of specified contracts.

NB. a “renewal” only occurs when a further policy is entered into at expiry of an existing policy. e.g. a creditor policy that remains in existence from month to month until the policyholder attains a certain age, until cancelled by either party, or until lapsed because of non-payment of premiums would **NOT** be considered as a policy with a “monthly renewal” under ICOB rules.

ICOB 6.1.4R – this chapter applies to all GI and PP insurance contracts unless these are exceptions under ICOB 6.1.5R.

ICOB 6.1.5R – this chapter does **NOT** apply to the following insurance contracts:

- (1) Travel and baggage insurance (or similar short term policy) of less than one month’s duration; *(this means the period of cover is less than 1 month, so even if a travel insurance for a 2 week holiday is taken out 2 months before the trip it will be exempt UNLESS it covers cancellation from the time the policy is taken out – in which case the period during which cover is provided is 2.5 months and it is NOT exempt.)*
- (2) An insurance contract the performance of which has been fully completed by both parties at the retail customer’s express request **BEFORE** the retail customer exercises his right to cancel; *(a contract is not necessarily fully completed just because an event has occurred which allows a claim to be made. However, if the claim being made leads to termination of the contract then the contract IS fully completed.)*
- (3) A Pure Protection contract of less than 6 month’s duration which is **NOT** a distance contract;
- (4) A Pure Protection contract effected by the trustees of an occupational pension scheme, and employer or a partnership to secure benefits for the employees or partners in the partnership; and
- (5) A General Insurance contract that is not a distance contract sold by an intermediary who is an unauthorised person;
- (6) a **CONNECTED CONTRACT** is not a distance contract.

ICOB 6.1.8G – Cancellation for the purposes of this chapter refers to the initial period of cover in which the contract may be voided. It does **NOT** refer to mid term cancellation – although a firm may choose to offer this right to its customers.

ICOB 6.2.2R - the period of cancellation is:

- (1) 30 days for a Pure Protection contract; and
- (2) 14 days for a general insurance contract

ICOB 6.2.3R – If a contract gives a retail customer a longer period to cancel than that dictated by ICOB 6.2.2R the insurer **MUST** disclose in the information about the customer’s right to cancel the differences between the customer’s rights under ICOB 6.2 and the terms of the contract.

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ICOB 6.2.4R – if the contract is a mixed contract including both PP and GI – a 30 day cancellation period **MUST** apply.

ICOB 6.2.5R – the cancellation period must start on the later of:

- (1) for PP contracts the day the retail customer is informed that the contract has been concluded; or
- (2) for GI contracts the day of the conclusion of the contract; or
- (3) the day on which the retail customer receives the contractual terms, conditions and information required by ICOB 5 in durable medium.

ICOB 6.2.8R - If the insurer has provided the ICOB 5 information in durable medium and the customer then serves notice of cancellation **AFTER** the cancellation period has ended – the insurer need not accept the notice of cancellation.

ICOB 6.2.9R – If a firm does not give the customer information about cancellation rights in durable medium (ICOB 5.3.12R), the contract is cancellable.

Notification of cancellation by a retail customer

ICOB 6.3.1R – A retail customer has a right to cancel without giving a reason – provided it notifies the insurer (or its AR, or any authorised agent of the insurer) before the expiry of the cancellation period and in accordance with the instructions provided.

ICOB 6.3.2R – Where the notice of cancellation is in durable medium it must be treated as being served on the date it is despatched by the retail customer.

Effects of cancellation

ICOB 6.4.1R – by exercising his right to cancel a retail customer withdraws from the contract.

ICOB 6.4.2G –

1) where notice of cancellation is given in relation to a contract it also operates to cancel and “attached distance contract”.

A contract will be “attached” if:

- (a) it has been entered into in accordance with a term of the main contract;
- (b) the main contract is financed or is to be financed by the contract;
- (c) the retail customer has entered into the contract for a purpose related to the main contract; or
- (d) Performance of the contract requires performance of the main contract.

2) a retail customer will also have an independent right to cancel and attached distance contract and may do so without cancelling the main contract.

Payments

ICOB 6.4.3R – When a retail customer exercises his right to cancel:

- (1) the insurer must pay without delay (and within 30 days of the date of receipt of the notice to cancel) to the retail customer any sums which the customer has paid in connection with the contract, **EXCEPT** for the amount referred to in (2);

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- (2) If the contract is a general insurance contract (but NOT a PP contract) the insurer may, subject to (3) require the customer to pay for the services it has actually provided under the contract. The amount payable though, MUST NOT:
- a. exceed an amount in proportion to the extent of the service provided compared to the full coverage of the contract; and
 - b. be such that it could be considered a penalty.
- (3) Sub-paragraph (2) only applies:
- a. where performance of the contract has begun BEFORE expiry of the cancellation period and at the customer's request; and
 - b. Where the insurer can demonstrate that the customer was given details of the amount he may be required to pay in exercising his right to cancel (ICOB 6.2.1R)
- (4) The insurer is entitled to receive, without delay and no longer than 30 days after the date on which the retail customer despatched the notice of cancellation, any sums and property that became the retail customer's under the contract. *(but this does NOT include any money the insurer provided to the customer in connection with a claim.)*

ICOB 7 – CLAIMS HANDLING

Most of the requirements in this chapter fall upon the insurer or (in the case of Lloyd's) Managing agent. However, where an insurer or managing agent outsources any of its claims related activities, e.g. to an intermediary, although the insurer remains responsible, the intermediary is responsible (under ICOB 7.4) for its administration and performance activities.

Overall the purposes of this chapter are to ensure that claims are handled fairly, settled promptly, customers are provided with information on the claims handling process and intermediaries disclose and manage any conflicts of interest.

Group Policies and Third Party Claimants

Anyone who has a right to claim directly on the insurer is a “policyholder”. For the purposes of this chapter these “policyholder” must be treated as retail or commercial customers (as appropriate) in accordance with this chapter.

ICOB 7.3.1R – requires an insurer to handle claims promptly and fairly.

Giving customers guidance on claiming

ICOB 7.3.5R – when an insurer is informed that a customer wishes to claim it must provide reasonable guidance to help the customer to make the claim.

Rejecting or refusing claims

ICOB 7.3.6R – An insurer **MUST NOT**:

- (1) Unreasonably reject a customer's claim;
- (2) Refuse to meet a claim on the following grounds **EXCEPT** where there is evidence of fraud:
 - a. non-disclosure of a material fact that the retail customer could not reasonably have been expected to disclose;
 - b. misrepresentation of a fact, unless the misrepresentation is negligent;
 - c. breach of a warranty or condition under a GI policy, unless the claim is connected with the breach; or
 - d. breach of a warranty under a Pure Protection policy unless the circumstances of the claim are connected with the breach **AND** unless:
 - i. under a “life of another” policy the warranty relates to a statement of fact concerning the life to be assured **AND** that statement would have been grounds for rejection of the claim had it been made by the life to be assured under an “own life” policy; **OR**
 - ii. the warranty is material to the risk **AND** was drawn to the retail customer's attention **BEFORE** the contract was concluded.

Duties of Intermediaries

ICOB 7.4.3R – an intermediary must act with due skill, care and diligence when acting for a customer in relation to a claim.

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ICOB 7.4.5R – An intermediary has a duty to avoid conflicts of interest:

- (1) He must not put itself in a position, in connection with any claim, where its duty to the person for whom it acts conflicts with its duty to any customer, UNLESS:
 - a. it has given proper disclosure to the customer to enable the customer to give an informed consent to the arrangement; and
 - b. it has obtained the prior informed consent of the customer
- (2) If disclosure and informed consent are not sufficient to reconcile the conflict of interest – the intermediary **MUST** decline to act for the person or customer referred to above. *(An example of when this might happen is where the intermediary knows that its customer will accept a low amount in settlement of a claim in order to have the claim settled quickly, even though the intermediary also knows the insurer would be willing to settle at a higher amount.)*

ICOB 7.4.8R – If the intermediary acts for the insurer and not the customer in relation to a claim under a contract it arranged for the customer – the intermediary **MUST** inform the customer that it is acting on behalf of the insurer rather than the customer. *(e.g. where the intermediary has delegated authority to handle claims on the insurer's behalf)*

ICOB 7.4.10R - if the intermediary has no delegated authority for claims – it must pass on any notification it receives from the customer to the insurer promptly OR, immediately inform the customer that it cannot deal with the notification.

Retail Customers – performance standards for settling claims

ICOB 7.5.1R – an insurer must respond promptly to a retail customer's claim notification.

ICOB 7.5.4R – the above response must:

- (1) Provide the information set out in ICOB 7.5.5R;
- (2) be in a durable medium (UNLESS the notification is oral and the insurer does not require the retail customer to complete a claim form); and
- (3) Provide the retail customer with a claim form, if the insurer requires one to be completed.

ICOB 7.5.5R – The information to be included in the response is:

- (1) That, if it is the case, the claim relates to a risk clearly outside the scope of the cover (in which case no further information need be provided);
- (2) What action the insurer will take and when;
- (3) If the insurer is appointing any other parties to contact the retail customer on the insurer's behalf it must (unless the appointment is to investigate the validity of a claim) in respect of each party appointed inform the customer of:
 - a. the party's name;
 - b. its function; and
 - c. the work it will carry out in relation to the claim.

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ICOB 7.5.8R – the insurer **MUST** keep the retail customer reasonably informed about the progress of the claim.

ICOB 7.5.10R – the insurer **MUST** notify the retail customer as soon as practicable whether it:

- (1) Rejects all of the claim;
- (2) Rejects the claim but, without prejudice to the rejection, makes an offer in compromise (in which case ICOB 7.5.11R requires it to notify the retail customer of the terms of its offer as soon as practicable); or
- (3) Accepts all or part of the claim. (In which case ICOB 7.5.12R requires the insurer to notify the retail customer as soon as practicable as to the parts it accepts, and how these will be settled in full; or, the terms of any offer in compromise)

ICOB 7.5.13R

- (1) Unless it accepts the claim in full the insurer must explain why it rejects all or part of the retail customer's claim.
- (2) The insurer must offer the customer the choice of receiving this information in durable medium.

ICOB 7.5.15R – For each part of a claim it accepts the insurer must notify the retail customer whether it will settle by making a payment to the customer or by paying another person to provide goods or service, etc.

ICOB 7.5.17R- An insurer **MUST** settle a claim by a retail customer promptly. *(After agreeing settlement terms the insurer should aim to make a payment within 5 business days.)*

ICOB 7.6 – Deals with specific requirements on the handling of claims for motor vehicle liability business.

RECORD KEEPING

ICOB 7.7.1R – Insurers must make records in relation to claims which must be retained for a minimum 3 years following settlement or rejection. These records must include:

- (1) details of the claim;
- (2) the date on which the claim was settled or rejected and details of the settlement or rejection.

**ICOB 8 – DISTANCE NON-INVESTMENT MEDIATION CONTRACTS WITH
RETAIL CUSTOMERS**

This chapter sets out rules relating to distance non-investment mediation contracts and implements articles 3, 5, 6, 7 and 9 of the DMD.

The FSA expects the requirements of this chapter to be relevant to only a small minority of cases.

ICOB 8.3.1R – an intermediary must provide a retail customer with information laid out in ICOB8.3.3R and the full terms of the distance non-investment mediation contract in durable medium and in good time (i.e. allowing the customer time to consider properly) before the distance non-investment mediation contract is concluded (unless exempt under ICOB 8.3.6R or already disclosed under the rules in ICOB 4).

ICOB 8.3.3R – gives a table explaining the status disclosure requirements for distance non-investment mediation contracts.

ICOB 8.3.5R – requires the disclosure to be in English unless otherwise agreed by both parties at the customer's request.

ICOB 8.3.6R – explains certain exemptions, relating to:

- (1) telephone sales; and
- (2) certain other means of distance communication

Both of which exempt the intermediary from the need to provide all of the information in durable medium before conclusion – but requires certain limited disclosures before conclusion and full disclosure in durable medium immediately after conclusion.

The remainder of PS 04/1 details changes to other sourcebooks within the FSA handbook, and changes/additions to the handbook glossary to implement ICOB.