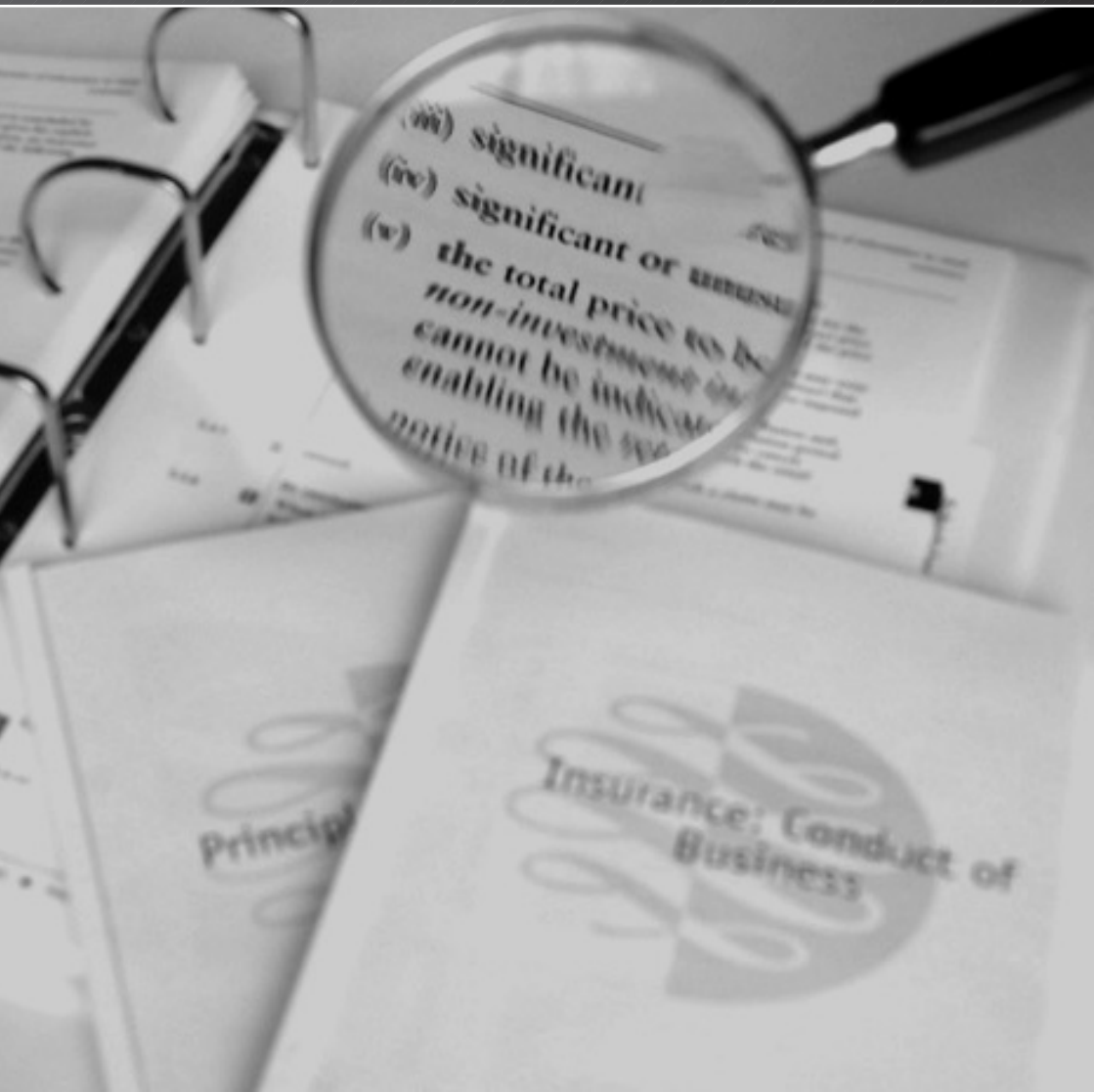


Key Rules for General Insurance Brokers



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Ordering printed publications

Printed hard copies of Key Rules for General Insurance Brokers can be ordered online:

<http://www.fsa.gov.uk/Pages/Library/Ordering/index.html>

These Key Rules are designed for smaller general insurance brokers whose operations and customers are all based in the UK.

What do we mean by a general insurance broker?

By 'general insurance broker' we mean a firm (other than an authorised professional firm) whose only regulated activities involve dealing as agent in, arranging deals in, advising on, or assisting in the administration of non-investment insurance contracts (broadly, general insurance, term assurance contracts, critical illness cover and income protection) and agreeing to carry on these activities. You can check this by looking up your firm's entry on the FSA Register (www.fsa.gov.uk/register).

The Key Rules are drawn from our Handbook of rules and guidance, but to make them easier to use we have supplemented them with some explanatory material.

Key Rules are one of a number of measures the FSA is pursuing to make the Handbook more accessible. To this end we have identified the rules that are most relevant to general insurance brokers in their day-to-day customer-facing work. We have also included the main systems and controls rules to give users an overview of the kinds of systems and controls their firm should have in place.

When using Key Rules it is important to be aware that there are other rules and guidance within the Handbook that may be relevant to your situation.

What have we left out of the Key Rules?

The following are the main areas that the Key Rules for General Insurance Brokers do not cover:

- Guidance: Key Rules focuses on rules, although we have included a very limited amount of guidance where we think it is needed to understand a rule's main concepts.

- Rules that are mainly of interest to insurers: for example, details of what needs to be included in a policy summary, and requirements for cancellation rights.
- Rules concerning financial resources and other prudential requirements.
- Detailed rules that focus on a firm's systems: for example, while we include provisions on segregating client money, and requirements to handle complaints in accordance with a firm's complaints handling policy, we omit provisions on client money calculations, and details of what must be included in a firm's complaints procedure since these are not relevant on a day-to-day basis.
- FSA's policies and procedures on authorisation, supervision, enforcement, decision making or handling complaints against itself.
- Material governing the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS).
- Fee and levy rules: firms are invoiced for the fees and levies that they must pay.
- Training and competence rules: firms must ensure staff attain and maintain the relevant competence requirements.
- Since this Key Rules guide is aimed at general insurance brokers, we have only included financial promotion rules on non-investment insurance contracts. Key Rules do not cover distance non-investment mediation contracts with retail customers because of the rarity of this type of contract.
- By limiting the type of activities covered by Key Rules we have been able to remove technical application provisions.

This does not mean that rules not covered are any less important – we will still expect firms to take reasonable care to have systems in place to comply with all of our rules, including those that are outside the focus of Key Rules. If you want to see the full set of rules, please refer to the tailored handbook for general insurance brokers at <http://fsahandbook.info>.

As part of making Key Rules accessible, we have tried to stick with commonly used terminology. So we have used the terms ‘firm’, ‘insurer’, and ‘insurance contract’ rather than the respective Handbook defined terms ‘insurance intermediary’, ‘insurance undertaking’ and ‘non-investment insurance contract’ or ‘pure protection contract’. We have also reworded rules to simplify them and remove references that are not relevant to Key Rules. If you want to see what rule in the full Handbook a Key Rule is based on, just turn to the index on page 38.

These Key Rules are based on the Handbook at 1 December 2006. We propose to publish a new version of these Key Rules annually, to keep them up to date. Key Rules are also available on the Handbook and Small firms section of the FSA website.

Key Rules are not formal guidance and do not have the status of guidance in the Handbook. You cannot use Key Rules to counter a charge of breaking our rules. In the event of any conflict between Key Rules and the Handbook, the Handbook takes precedence.

Principles for businesses

1	Integrity	A firm must conduct its business with integrity.
2	Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
3	Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4	Financial prudence	A firm must maintain adequate financial resources.
5	Market conduct	A firm must observe proper standards of market conduct.
6	Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.
7	Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8	Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9	Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10	Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
11	Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Financial promotion

This chapter applies to the communication or approval of a financial promotion of an insurer's services or of an insurance contract such as an advertisement or product leaflet. These rules do not apply in relation to a financial promotion of a firm's insurance mediation services. However, such a communication must still be clear, fair and not misleading in accordance with Principle 7.

Communicating or approving financial promotions

Before a firm communicates or approves a financial promotion, it must be able to show it is clear, fair and not misleading and have this checked by someone with appropriate expertise.

There are supplementary provisions, not repeated here, setting out reasonable steps that a firm should take to ensure that a financial promotion is clear, fair and not misleading. There are also specific rules which are not repeated here for financial promotions which compare or contrast different firms, products or services.

Communicating a financial promotion where another firm has confirmed compliance

A firm can communicate a financial promotion which has been produced by another person without checking its compliance provided that:

- (1) it takes reasonable care to establish that another firm has already confirmed the compliance of the financial promotion;
- (2) it takes reasonable care to establish that it communicates the financial promotion only to recipients of the type for whom it was intended at the time the other firm carried out the confirmation exercise; and

Conduct of business rules: Financial promotion

- (3) so far as it is, or ought to be, aware:
- (a) the financial promotion has not ceased to be clear, fair and not misleading since that time; and
 - (b) the other firm has not withdrawn the financial promotion.

Financial promotion exemptions

The financial promotion rules do not apply to the following types of financial promotion:

- Real time financial promotions, like those in ordinary conversation.
- A financial promotion, which:
 - (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.
- a financial promotion which can lawfully be communicated by an unauthorised communicator without approval (such as a financial promotion containing the name of the insurer, where it is incorporated and has its principal place of business, details of its regulatory status and the name of any applicable dispute resolution or compensation scheme).
- certain financial promotions communicated from outside the United Kingdom.
- a “one-off” financial promotion.
- an “image advertisement” which contains only one or more of the following:
 - (1) the name of the firm;
 - (2) the name of the insurance contract;
 - (3) a logo;

- (4) a contact point;
- (5) a brief, factual description of the firm's activities;
- (6) a brief, factual description of the firm's fees;
- (7) a brief, factual description of the firm's products.

Initial disclosure

These rules seek to ensure that customers are adequately informed about the nature of the service they will receive.

Initial disclosure requirements

Prior to the conclusion of any initial insurance contract, and, if there is a change, upon its renewal, a firm must provide the customer with the information in the initial disclosure table in a durable medium.

However, the information in the initial disclosure table may be provided orally where the customer requests it, where immediate cover is necessary or in the case of telephone selling. In those cases, the information must be provided to the customer in a durable medium immediately after the conclusion of the insurance contract.

In the case of telephone selling:

- (1) The identity of the firm and the commercial purpose of the call (if initiated by the firm) must be made clear at the beginning of any conversation with the customer.
- (2) Subject to the explicit consent of the customer, only the following information needs to be given over the telephone:
 - (a) the identity of the person in contact with the customer and his link with the firm; and
 - (b) that other information is available on request, and the nature of the information.

Initial disclosure table

- (1) The name and address of the firm.
- (2) The firm's regulatory status. For most intermediaries this is 'Authorised and regulated by the FSA' and for most appointed representatives it is '[Name of appointed representative] is an appointed representative of [name of principal] which is authorised and regulated by the FSA'.
- (3) That items 1 and 2 can be checked on the FSA's Register by visiting the FSA's website <http://www.fsa.gov.uk/register> or by contacting the FSA on 0845 606 1234.
- (4) Details of any holding, direct or indirect, that a firm has that represents more than 10 per cent of the voting rights or of the capital in an insurer.
- (5) Details of any holding, direct or indirect, that an insurer or parent of an insurer has that represents more than 10 per cent of the voting rights or of the capital in the firm.
- (6) In relation to the insurance contract provided, whether the firm has provided, or will provide, advice or information:
 - (a) on the basis of a fair analysis of the market; or
 - (b) from a limited number of insurers, in which case, the firm must maintain a list of those insurers, by product; or
 - (c) from a single insurer.

If (b) or (c) applies, the firm must also disclose whether it is contractually obliged to conduct insurance mediation activity in this way.
- (7) If the contract provided has not been selected on the basis of a fair analysis of the market, that the customer can request a copy of the list of the insurers the firm selects from or deals with in relation to the contract provided. The firm must maintain such a list and comply with such a customer request.

- (8) How to complain to the firm and that complaints may subsequently be referred to the Financial Ombudsman Service or any other applicable named complaints scheme.
- (9) The compensation arrangements should the firm be unable to meet its liabilities.

Initial disclosure using a standardised format

The required initial disclosure can be met by use of a standardised initial disclosure document (IDD). Alternatively, where the firm has reasonable grounds to be satisfied that the services which it is likely to provide will also relate to regulated mortgage contracts, lifetime mortgages or packaged products (or, from 6 April 2007, home purchase plans or home reversion plans) it may use the combined initial disclosure document (CIDD).

Both the IDD and the CIDD can be found through the 'Forms' link under the Useful Links section at <http://fsahandbook.info/FSA/>.

If a firm chooses to use the IDD it must not include the keyfacts logo and the heading and text in section 1 of the IDD unless it uses the document in full and makes no changes to the text other than changes allowed by the notes to the document.

Initial disclosure when introducing

Where contact with the customer is limited to introducing him to another firm, the firm making the introduction must give the customer the following information about itself in good time before making the introduction:

- (1) its name and address and regulatory status (for most intermediaries this is 'Authorised and regulated by the FSA' and for most appointed representatives it is '[Name of appointed representative] is an appointed representative of [name of principal] which is authorised and regulated by the FSA');
- (2) details of fees, if any, that the customer will be charged for the service being provided; and

- (3) whether the firm introducing the customer is a member of the same group as the firm to whom the introduction is to be made.

This rule applies in the limited circumstances where the arrangements made are confined to putting the customer in contact with another person. If the firm goes further, for example by advising the customer on a particular contract of insurance which can be obtained from that person, the full initial disclosure requirements apply.

Arranging and suitable advice

Information on fees

A firm must provide a customer with details of the amount of any fees (or where an actual fee cannot be given, the basis for calculating any fees, enabling the customer to verify them) for an insurance mediation activity. It must do this before the earlier of the customer incurring liability to pay the fee and conclusion of the contract. This information must be provided in a durable medium immediately after the conclusion of the contract.

Commission disclosure for commercial customers

A firm must, at the request of a commercial customer, promptly disclose the commission that it and any associate receives in connection with an insurance contract in cash terms (or, to the extent this is not possible, the basis for its calculation) and in a durable medium.

Fair analysis

A firm cannot hold itself out as giving information or advice to customers on insurance contracts on the basis of a fair analysis of the market unless:

- (1) it has considered a sufficiently large number of insurance contracts available in the relevant sector or sectors of the market; and

- (2) the consideration is based on criteria which reflect adequate knowledge of insurance contracts in the relevant sector or sectors.

Suitability

A firm must take reasonable steps to ensure that, if it makes any personal recommendation to a customer to buy or sell an insurance contract, the personal recommendation is suitable for the customer's demands and needs at the time it is made. The personal recommendation must be based on the scope of the service disclosed in the initial disclosure.

A firm may make a personal recommendation that does not meet all of the customer's demands and needs, provided that:

- (1) there is no insurance contract within its scope which meets all the customer's demands and needs; and
- (2) it identifies to the customer, at the point at which the personal recommendation is made, the demands and needs that are not met by the contract.

Information about the customer's demands and needs

In assessing the customer's demands and needs when proposing to make a personal recommendation, a firm must:

- (1) seek such information about the customer's circumstances and objectives as might reasonably be expected to be relevant in enabling the firm to identify the customer's requirements. This must include any facts that would affect the type of insurance recommended, such as any relevant existing insurance;
- (2) have regard to any relevant details about the customer that are readily available and accessible to the firm, for example, in respect of other insurance contracts on which it has provided advice or information; and

Conduct of business rules: Arranging and suitable advice

- (3) explain to the customer his duty to disclose all circumstances material to the insurance and the consequences of any failure to make such a disclosure, both before the insurance contract commences and throughout its duration; and take account of the information that the customer discloses.

Assessing the suitability of a contract against the customer's demands and needs

In assessing whether an insurance contract is suitable to meet a customer's demands and needs, a firm must take into account at least:

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

Impact of existing insurance

If the firm is aware that the customer's existing insurance cover is likely significantly to affect the suitability of any personal recommendation that the firm might make, it must either:

- (1) not make a personal recommendation until details of the insurance cover are made available to it; or
- (2) make clear to the customer that the recommendation may not be suitable because the firm has not taken into account full details of the customer's existing insurance cover.

Pension term assurance policies

Unless the firm has sufficient information to conclude whether or not the customer's existing pension arrangements are likely to affect significantly the suitability of any personal recommendation of a pension term assurance policy that it might make, it must either:

- (1) not make a personal recommendation until details of the pension arrangements are made available to it; or
- (2) make clear to the customer that the recommendation may not be suitable because it has not taken into account full details of the customer's existing pension arrangements.

Demands and needs statement

Prior to the conclusion of an insurance contract (including at renewal), a firm must provide the customer with a statement in a durable medium that sets out:

- (1) the demands and needs of that customer;
- (2) whether or not the firm has personally recommended that contract; and
- (3) the underlying reasons for any personal recommendation given to the customer on that contract.

The statement of demands and needs may be provided orally where the customer requests it, where immediate cover is necessary, or in the case of telephone selling. In those cases, the statement must be provided to the customer in a durable medium immediately after the conclusion of the contract.

The details in the statement must reflect the complexity of the insurance contract being proposed.

Record keeping where a personal recommendation is made

Where a customer acts on the firm's personal recommendation by concluding an insurance contract with it, the firm must retain a copy of the demands and needs statement for three years from the date of the personal recommendation.

Example demands and needs statements for non-advised sales

Some examples of approaches that may be appropriate where the firm has not made a personal recommendation include:

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

Where a firm has not made a personal recommendation and provides 'key features' as an alternative to a policy summary, that constitutes provision of a demands and needs statement.

Product information

The purpose of these rules is to ensure customers have the necessary information to make an informed choice about whether to buy a specific insurance contract and whether a contract continues to meet their needs. Different requirements apply for retail and commercial customers, and for distance and 'face-to-face' contracts.

Product information produced by the insurer

A firm operating from the UK is responsible for providing product information on the insurance contract but not for producing it – that is the responsibility of the insurer.

There are two exceptions to this: (1) where a firm sells insurance contracts of a non-UK insurer, the firm is responsible for producing the information as well as providing it. (2) where a firm supplies non-motor goods or provides services related to travel to a customer, the insurer is responsible for both providing and producing product information on an insurance contract that is a ‘connected contract’ (broadly, it must be complementary to those goods or services and cover the risk of breakdown, loss of, or damage to the goods, and other risks linked to travel booked with the firm, have an annual premium of 500 or less and a total duration of five years or less).

The rules on producing the information are not included here.

‘In good time’

Some of the rules on product disclosure require information to be provided ‘in good time’. In determining what is ‘in good time’ a firm should consider the importance of the information to the customer in helping him to decide whether a contract meets his needs and the point in the sales process or renewal process at which the information may be most useful.

Product information for a retail customer

In good time before the conclusion of an insurance contract with a retail customer, a firm must (subject to the exemption below):

- (1) provide the customer (in a durable medium) with the information in Part 1 of the list below and also, for a distance contract, with the information in Part 2; and

- (2) if the contract is not a distance contract, draw the attention of the customer orally to the importance of reading the policy summary, and in particular the section of the policy summary on significant or unusual exclusions or limitations.

Immediately after conclusion of the contract, a firm must provide a retail customer in a durable medium with the information in both parts of the list below to the extent it has not already done so.

Part 1

- A policy summary (or key features)
- A statement of price
- The relevant directive-required information, depending on whether the contract is for general insurance or is a pure protection contract

Part 2

- The policy document
- Information about the claims handling process
- Information, where applicable, about cancellation rights
- Information, where applicable, about the extent and level of compensation cover and how further information can be obtained about compensation arrangements, if not already included in the policy summary (or key features)

Exemption: Telephone sales and certain other means of distance communication

If the insurance contract is concluded by telephone or, at the retail customer's request, using a means of distance communication which does not enable provision of the product information in a durable medium before the conclusion of the contract, only the information in the list below needs to be given before conclusion.

However, in the case of telephone sales this is subject to the explicit consent of the customer and the firm must also inform the retail customer that other information is available upon request and of what nature this information is.

- Name of the insurer
- Type of insurance and cover
- Significant features and benefits
- Significant or unusual exclusions or limitations
- The total price to be paid by the retail customer for the insurance contract (or, if an exact price cannot be indicated, the basis for calculation of the price enabling the retail customer to verify it)
- Notice of the possibility that other taxes or costs may exist in respect of the insurance contract that are not payable via the firm or imposed by it
- The existence or absence of the right of cancellation and, where applicable, the duration of the cancellation period and the conditions for exercising the right to cancel, including information on the amount which the retail customer may be required to pay
- A telephone number or address to which a claim may be notified

Product information on renewal of contract with a retail customer

If an insurance contract with a retail customer, with a duration of one year or less, is due for renewal, the following rules apply in place of the rules on product information for a retail customer.

No less than 21 days before the expiry of the policy, a firm must:

- (1) if the insurer is willing to invite renewal of the policy, take reasonable steps to provide the customer with renewal terms in a durable medium;
- (2) take reasonable steps to notify the customer if the insurer is not willing to invite renewal; or
- (3) notify the customer that the firm no longer deals with the insurer.

The information to be provided to the customer is:

- (1) a statement of any changes to the terms of the policy;
- (2) an explanation of those changes, where necessary;
- (3) any changes to the directive-required information;

- (4) the statement of price;
- (5) information about cancellation; and
- (6) a prominent statement of the customer's right to request a new policy document.

These renewal rules do not apply where:

- (1) the firm has reason to believe that the customer does not wish to renew the policy through it;
- (2) the firm has notified the customer that it does not wish to act for him on renewal;
- (3) the customer has already been notified that the insurer will not invite renewal; or
- (4) the customer requests an extension to the insurance contract for a period less than that of the original insurance contract.

If an insurance contract is of one month's duration or less and its terms provide for automatic renewal and for cancellation at the retail customer's option, it is not necessary to provide product information at renewal or to comply with these renewal rules. However, it is still necessary to provide information about cancellation and to provide the information listed above if there have been changes to the policy terms.

Product information on mid-term changes to an insurance contract sold to a retail customer

For the duration of an insurance contract a firm must notify a retail customer of changes to:

- (1) the premium, unless the change conforms to a previously disclosed formula;
- (2) any term or condition of the contract, together with an explanation of any implications of the change where necessary; and

(3) the directive-required information (in relation to a pure protection contract).

The information in (1) and (2) must be provided in a durable medium in good time before the change takes effect unless the change is at the customer's request and it is impracticable to do so. In that case the firm must:

- (1) explain the implications of the change to the customer before the change takes effect; and
- (2) provide the information in a durable medium promptly after the change takes effect.

Product information for commercial customers

Before the conclusion of an insurance contract, a firm must provide a commercial customer with:

- (1) sufficient information to enable the commercial customer to make an informed decision about the contract being proposed;
- (2) the relevant directive-required information, depending on whether the contract is for general insurance or is a pure protection contract, unless the contract is being concluded by telephone; and
- (3) the premium and any fees relating to the insurance contract.

If the directive-required information or information on premium and fees was not provided in writing before conclusion of the insurance contract, it must be provided in writing immediately afterwards.

After the conclusion of the insurance contract, a firm must provide a commercial customer with a policy document promptly.

Product information on renewal of contracts for commercial customers

If an insurance contract with a commercial customer is due for renewal, the following rules apply in place of the rules on product information for commercial customers.

Unless a firm has reason to believe that a customer does not wish to renew a policy, or the firm has notified the customer that it will not act for him on renewal, the firm must, in good time before the expiry of the policy:

- (1) provide renewal terms to the customer; or
- (2) notify the customer that the insurer is not willing to invite renewal of the policy or that the firm no longer deals with the insurer.

A customer may consent not to receive this information after the firm has explained the consequences of giving that consent.

These renewal rules do not apply to renewal of an insurance contract of one month's duration or less whose terms provide for automatic renewal and for cancellation at the customer's option. Instead, the customer must be notified of changes to the terms and conditions of the contract, including the premium, before the changes take effect.

Product information on mid-term changes to an insurance contract sold to a commercial customer

For the duration of an insurance contract that is a pure protection contract a firm must notify a commercial customer of any changes to the directive-required information and should take reasonable steps to do so in good time before the change takes effect.

Group policies

When a firm sells a group policy the terms of which provide for persons, other than the customer who concludes the insurance contract, to become policyholders, the firm must, promptly after the conclusion of the contract:

- (1) provide a policy document and a policy summary to the customer (but a policy summary need not be supplied if there is no policyholder who is capable of being a retail customer);
- (2) inform the customer that he should:

- (a) where a policy summary is provided, provide the policy summary to each policyholder who is capable of being a retail customer and (where the policy replaces a previous group policy) inform each policyholder who is capable of being a retail customer of any changes to the information in the policy summary; and
- (b) inform each policyholder that a copy of the policy document is available on request.

Claims handling

Duty of care, skill and diligence

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

Duty to avoid conflicts of interest

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

- (1) it made proper disclosure to its customer of all information needed to put him in a position where he can give informed consent to the arrangement; and
- (2) it has obtained the prior informed consent of the customer.

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

Other notifications and actions in relation to claims

If a firm acts for an insurer and not a customer in relation to a claim on a contract which it arranged for that customer, the firm must inform the customer of that fact.

Conduct of business rules: Distance selling

If a firm is notified of a claim in relation to a policy which it has arranged, and the insurer has not given it the authority to deal with that claim, it must:

- (1) forward the notification to the insurer promptly; or
- (2) inform the customer immediately that it cannot deal with the notification.

Distance selling

General provisions on distance contracts

A firm must, at a retail customer's request and at any time during the contractual relationship, provide the terms and conditions of a distance contract on paper.

A firm must comply with a retail customer's request to change the means of distance communication used, unless this is incompatible with the distance contract concluded or the nature of the insurance mediation service provided.

A firm must ensure that information provided before the conclusion of a distance contract on a retail customer's contractual obligations is in conformity with the contractual obligations which would result from the law presumed to be applicable to the distance contract if it were concluded.

Unsolicited distance services

This rule applies in relation to distance marketing a retail customer under an organised distance sales or service provision scheme run by the firm, which, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. It does not apply for a tacit renewal of a distance contract.

A firm must not:

- (1) supply a service to a retail customer without a prior request on his part, when this supply includes a request for immediate or deferred payment; or
- (2) enforce any obligation against a retail customer in the event of unsolicited supplies, the absence of a reply not constituting consent.

General

Rules applying to the firm in contact with the customer

Where there is a chain of firms between the insurer and the customer, the Conduct of Business rules apply only to the firm in contact with the customer. The exceptions are the rules below on referring to approval by FSA, regulated status disclosure, insurance against financial penalties, and emergencies.

Definition of customer, retail customer and commercial customer

For the purpose the Conduct of Business rules (except the rule below on regulated status disclosure), a firm's customer is a policyholder (or prospective policyholder). But (except in this chapter and the chapter on claims handling) a policyholder or prospective policyholder who does not make the arrangements preparatory to him concluding the contract of insurance is not a firm's customer.

A retail customer is an individual who is acting for purposes which are outside his trade, business or profession. A commercial customer is a customer who is not a retail customer.

Customer to be treated as retail customer when status uncertain

If it is not clear in a particular case whether a customer is a retail customer or a commercial customer, a firm must comply with these Conduct of Business rules as if the customer were a retail customer.

Customer to be treated as retail customer when contract covers him in both a private and business capacity

If a firm is dealing with a customer who is an individual in relation to an insurance contract which would cover him in both a private and business capacity, it must comply with these Conduct of Business rules as if the customer were a retail customer.

Inducements and referral of business

A firm must take reasonable steps to ensure that neither it nor anyone acting on its behalf:

- (1) offers, gives, solicits or accepts an inducement; or
- (2) refers any mediation business to another person on its own initiative or on the instructions of an associate;

if it is likely materially to conflict with the firm's or the recipient firm's duties to its customers in connection with mediation activities.

Restriction of liability to a customer

A firm must not exclude or restrict the duties it owes or the liabilities it has to a customer under the regulatory system. It must not exclude or restrict other duties and liabilities unless it is reasonable for it to do so.

Information to be sent to first-named customer

Where an insurance contract is effected jointly, any information required by these Conduct of Business rules may be sent only to the first-named customer.

Excessive charges to retail customers

A firm must ensure that its charges to a retail customer are not excessive.

Referring to approval by FSA

Unless required to do so under the regulatory system, a firm must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client that any aspect of its affairs has FSA approval.

This does not prevent a firm explaining, in a way that is fair clear and not misleading, that a particular status has been given to a firm, product or individual, or that express written approval has been given to a specific aspect of the firm's affairs.

Regulated status disclosure

A firm must take reasonable care to ensure that every letter (or electronic equivalent) which it or its employees send to a private customer with a view to or in connection with the firm carrying on a regulated activity includes a regulated status disclosure.

For a UK domestic firm this will be: 'authorised and regulated by the Financial Services Authority'. For an appointed representative, it will be a statement that '[name of appointed representative] is an appointed representative of [name of firm] which is authorised and regulated by the Financial Services Authority.'

Insurance against financial penalties

No firm may enter into, arrange, claim on or make a payment under a contract of insurance that is intended to have, or has or would have, the effect of indemnifying any person against all or part of a financial penalty which has been or may be imposed by the FSA under the Financial Services and Markets Act 2000.

Emergencies

If any emergency arises, a firm will not breach a rule to the extent that compliance with that rule is impracticable due to the emergency. The emergency must be outside the firm's control and be one that could not have been avoided by the firm taking all reasonable steps.

The rule on emergencies applies for as long as:

- (1) the consequences of the emergency exist; and
- (2) the firm can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the rule, and to mitigate any losses and potential losses to its clients.

The firm must notify the FSA as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with its consequences.

Client money rules

These rules apply to firms that handle their customers' money. They are designed to protect customers if the firm fails or is unable to transfer a customer's premium to the insurer, or claims monies or returned premiums to the customer.

Client money must be segregated in a statutory or non-statutory trust account. The firm receiving client money has a fiduciary duty to its clients in respect of that money.

Further information on the client money rules can be found in the Guide to Client Money for General Insurance Intermediaries.

When money is client money

Client money is money of any currency that a firm receives and holds for its client (or clients of appointed representatives, field representatives or other agents) when carrying on insurance mediation. It can include premiums, claims money, premium refunds and professional fees due from clients.

Money is not client money if:

- (1) it is not connected with insurance mediation business;
- (2) it is in respect of a reinsurance contract or of a large risk contract where the risk is situated outside the EEA. However, a firm may elect to comply with these client money rules in respect of all such business; or
- (3) the firm has entered into a written agreement that expressly provides for it to hold that type of money as the relevant insurer's agent and it is satisfied on reasonable grounds that the terms of the policies issued by the insurer are likely to be compatible with the agreement. However, the money is client money if the insurer has also agreed in writing that the firm may treat the money as such in accordance with these rules and that it consents to its interests under the client money trust being subordinated to the interests of the firm's other clients.

When money ceases to be client money

Money ceases to be client money if it is paid:

- (1) to the client (or his authorised representative);
- (2) to a third party on the client's instruction or with his specific consent (but not if it is transferred to a third party in the course of effecting a transaction);
- (3) into a bank account of the client (which is not also in the name of the firm);
- (4) to the firm itself, when it is due and payable to it for its own account or as agent of an insurer; or
- (5) to the firm itself, when it is the firm's own money that was paid into the client bank account to ensure client money is protected.

Holding client money

A firm that holds or receives client money holds the money on trust (or in Scotland as agent of the customer). The firm has a fiduciary duty to its customers in relation to the money. There are rules on the types of trust that can be used and setting up the trust that are not repeated here.

Segregation

A firm must segregate client money by either paying it as soon as is practicable into a client bank account or paying it out in such a way that it ceases to be client money. There are rules on setting up a client bank account which are not repeated here.

A firm must not hold money other than client money in a client bank account unless it is:

- (1) a minimum sum required to open the account, or to keep it open;
- (2) money temporarily in the account in accordance with the rules on withdrawal of commission and mixed remittances;

- (3) interest credited to the account which exceeds the amount due to clients as interest and has not yet been withdrawn by the firm; or
- (4) the firm's own money that it pays into the account where it is prudent to do so to ensure client money is protected (such money becomes client money for the purposes of these rules).

A firm, when holding client money under a statutory trust must ensure that no payment is made from a client bank account for a client unless that client has provided the firm with cleared funds to enable the payment to be made.

If client money is received by the firm by automated transfer, it must take reasonable steps to ensure that the money is received directly into a client bank account and, if it is not, the money is transferred into a client bank account no later than the next business day after receipt.

Withdrawal of commission

A firm may draw down commission from the client bank account if it has received the premium and this is consistent with the terms of business which it maintains with the client and the insurer.

Mixed remittances

If a firm receives money that is part client money and part other money, it must pay the full sum into a client bank account and pay the money that is not client money out of that account as soon as reasonably practicable (and in any event by not later than 25 business days after the day it is cleared).

Transfer of client money to a third party

If client money may be transferred to another person, a firm must notify a retail customer of this fact.

A firm may allow another person, such as another broker, to hold or control client money only if it is for the purpose of a client transaction through or with that person.

Complaints handling

Requirement to have complaint handling procedures

A firm must have in place and operate appropriate, effective and written internal complaint handling procedures for:

- (1) handling any expression of dissatisfaction (from an eligible complainant or otherwise) about the firm's provision of, or failure to provide, insurance mediation services; and
- (2) if the firm markets (or has marketed) another firm's insurance mediation services or if the firm's insurance mediation services are marketed by another firm, referring to that firm expressions of dissatisfaction about its services.

There are additional rules regarding the content of a firm's complaint handling procedures that are not repeated here.

Using the complaint handling procedures

A firm must take reasonable steps to ensure that all relevant employees and appointed representatives are aware of the firm's internal complaint handling procedures and must endeavour to ensure that they act in accordance with them.

A firm must take reasonable steps to ensure that it handles complaints fairly, consistently and promptly and that it identifies and remedies any recurring or systemic problems, as well as any specific problem identified by a complaint.

Eligible complainants

Eligible complainants will usually include individuals, businesses with group annual turnover of under £1 million, charities with annual income of under £1 million and trustees of a trust with a net asset value of under £1 million. Complaints may be brought on behalf of an eligible complainant.

A firm that carries on the insurance mediation activity to which its complaint relates is not an eligible complainant.

There are additional rules on who is an eligible complainant which are not repeated here.

Publicising the complaint handling procedures

A firm must refer eligible complainants in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale.

A firm must publish details of its internal complaint handling procedures, supply a copy on request to an eligible complainant, and supply a copy automatically to an eligible complainant from whom it receives a complaint (unless it is resolved by close of business on the next business day).

A firm must display in each of its branches or sales offices to which eligible complainants have access a notice indicating that it is covered by the Financial Ombudsman Service.

Providing compensation

Where a firm decides that redress is appropriate, it must provide fair compensation for any acts or omissions for which it was responsible and comply with any offer of redress which the complainant accepts.

Electronic commerce

These rules implement the information requirements of the E-Commerce Directive on firms when they carry on an electronic commerce activity with a customer. These requirements are in addition to the usual conduct of business requirements. Electronic commerce activity could include, for example, arranging insurance contracts with customers via email.

General e-commerce information to be provided

A firm must render easily, directly and permanently accessible to a customer the following information, in relation to any electronic commerce activity which it provides.

- Name of the firm
- Geographic address at which the firm is established
- Details of the firm, including its electronic mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner
- Statement that the firm is entered in the FSA Register and its FSA Register number
- Statutory status of the firm. For most firms this is 'Authorised and regulated by the FSA' and for most appointed representatives it is "[Name of appointed representative] is an appointed representative of [name of principal] which is authorised and regulated by the FSA' accompanied by a link to the FSA Register in the form www.fsa.gov.uk/register
- If the service is subject to value added tax, the relevant identification number

If a firm refers to the price (including any charges) of its services or products, it must do so clearly and unambiguously and, where relevant, indicate whether the price is inclusive of tax and delivery costs.

Commercial e-commerce communications

A firm must ensure that commercial communications which are part of or constitute an electronic commerce activity comply with the conditions listed below.

- The commercial communication must be clearly identifiable as such
- The person on whose behalf the commercial communication is made must be clearly identifiable
- Promotional offers, competitions or games must be clearly identifiable as such and any qualifying conditions must be easily accessible and be presented clearly and unambiguously

A firm must ensure that any unsolicited commercial communication sent by it by electronic mail is identifiable clearly and unambiguously as such as soon as it is received.

E-commerce information to be provided regarding conclusion of the contract

Except when otherwise agreed by a commercial customer, a firm must give the following information to the customer clearly, comprehensibly and unambiguously and prior to the order being placed by him.

- The different technical steps to follow in order to conclude the contract
- Whether or not the concluded contract will be filed by the firm and whether it will be accessible
- The technical means for identifying and correcting input errors prior to the placing of the order
- The languages offered for the conclusion of the contract

A firm must indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically.

The preceding requirements of this rule do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

A firm must ensure that contract terms and general conditions provided to the customer are made available in a way that allows him to store and reproduce them.

E-commerce requirements relating to the receipt of orders

Except when otherwise agreed by a commercial customer:

- (1) when a customer places an order by electronic means, a firm must ensure that receipt of the order is acknowledged without delay;
- (2) the order and the acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access them; and
- (3) a firm must ensure that it makes available to a customer, appropriate, effective and accessible technical means allowing him to identify and correct technical errors before placing an order.

Paragraphs (1) and (3) do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Systems and controls

A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

Compliance and financial crime

A firm must take reasonable care to establish and maintain effective systems and controls for compliance with the regulatory system and for countering the risk that the firm might be used to further financial crime.

Apportionment of responsibilities

A firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers. It must do so in such a way that it is clear who has which of those responsibilities, and the firm's business and affairs can be adequately monitored and controlled by its directors, relevant senior managers and governing body.

A firm must appropriately allocate to one or more individuals the functions of apportioning the responsibilities required by this rule, and of overseeing the establishment and maintenance of the firm's systems and controls.

A firm, other than a sole trader, must allocate the responsibility for its insurance mediation activity to a director or senior manager who is an approved person.

Records

A firm must take reasonable care to make and retain adequate records of matters and dealings which are the subject of requirements and standards under the regulatory system. The records must be capable of being reproduced in English on paper.

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