

**CONDUCT OF BUSINESS SOURCEBOOK (CONSEQUENTIAL
AMENDMENTS ON INTRODUCTION OF ICOB) INSTRUMENT 2004**

Powers exercised

- A The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139(1) and (4) (Miscellaneous ancillary matters);
 - (c) section 145 (Financial promotion rules);
 - (d) section 147 (Control of information rules);
 - (e) section 156 (General supplementary powers);
 - (f) section 157(1) (Guidance); and
 - (g) section 238(5) (Restrictions on promotion);
 - (2) regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706).
- B The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C This instrument comes into force on 14 January 2005.

Amendments to the Conduct of Business sourcebook

- D COB is amended in accordance with the Annex to this instrument.

Citation

- E This instrument may be cited as the Conduct of Business Sourcebook (Consequential Amendments on Introduction of ICOB) Instrument 2004.

By Order of the Board
15 January 2004

Annex

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.2 General application: who?

1.2.1 R *COB* applies to every *firm* in respect of the activities set out in *COB* 1.3.1R, except that:

...

1.2.1A G If a *firm* engages in *insurance mediation activities* for *non-investment insurance contracts*, *ICOB* applies and *COB* does not apply.

...

1.3 General application: what?

1.3.1 R *COB* applies to *firms* with respect to the carrying on of:

(1) all *regulated activities* except:

(a) *regulated mortgage activities*; or

(b) to the extent that a provision of *COB* provides for a narrower application; or ~~and~~

(c) *insurance mediation activities* in connection with *non-investment insurance contracts*; and

(2) *unregulated activities* to the extent specified in any provision of *COB*.

1.3.2 G (1) ...

(2) Most of *COB* applies in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business*. In relation to *deposits*, ~~*pure protection contracts*~~ and ~~*general insurance contracts*~~, *COB* has only limited application.

...

(8) *ICOB* applies to a *firm* in relation to *insurance mediation activities* in connection with *non-investment insurance contracts*.

...

1.4 General application: where?

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~~Long-term insurance business~~ Life policies

- 1.4.7 R In addition to the situations in *COB 1.4.2R* and *COB 1.4.3R*, *COB 6* (Product disclosure and the customer's right to cancel or withdraw), other than *COB 6.3* (Post-sale confirmation: life policies) and *COB 6.9* (With-profits guides), applies in relation to ~~*long-term insurance business life policies*~~¹ if the *habitual residence* of the *client* is in the *United Kingdom*.

~~General insurance business~~

- 1.4.8 R ~~[Deleted] In addition to the situations in *COB 1.4.2R* and *COB 1.4.3R*, *COB 6.8* (Insurance contracts: life and general) applies in relation to *general insurance business* if the *State of the risk* is the *United Kingdom*.~~

...

- 3.2 Application: what?

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~~Financial promotions for deposits and contracts of insurance which are not life policies, pure protection contracts which are long-term care insurance contracts and certain reinsurance contracts~~

- 3.2.3 R To the extent that a *financial promotion* relates to ~~one or more of the following~~:
- (1) a *deposit*; or
 - (2) ~~a *general insurance contract*, pure protection contract which is a long-term care insurance contract~~ or reinsurance contract covering a person against all or part of his loss in relation only to an obligation taken on by him under a *long-term insurance contract* which is not a *non-investment insurance contract*;
- only *COB 3.1* to *COB 3.5* and *COB 3.8.4R* to *COB 3.8.6G* and *COB 3.14* apply, unless the *financial promotion* relates to a *cash deposit ISA* in which case *COB 3.9.6R(1)* and *COB 3.9.8R* also apply.

Financial promotions for non-investment insurance contracts

- 3.2.3B R This chapter does not apply to a *firm* to the extent that a *financial promotion* is in respect of a *non-investment insurance contract* (but see *ICOB 3* (Financial Promotion)).

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- 3.8 Form and content of financial promotions

...

¹ The current definition of life policy does not include long-term care insurance. However we are consulting on an amendment to the definition which would include long-term care insurance in CP200.

Non-real time financial promotions: guidance for deposits, ~~general insurance~~ and pure protection policies which are long-term care insurance contracts

3.8.6 G When designing *non-real time financial promotions* relating to *deposits*, ~~*general insurance contracts*~~ or *pure protection contracts* which are long-term care insurance contracts with a view to complying with the general requirements of COB 3.8.4R, *firms* may find it helpful to take account of:

- (1) (for *deposits*) the British Bankers' Association/Building Societies Association Code of Conduct for the Advertising of Interest Bearing Accounts;
- (2) ~~[Deleted] (for *general insurance contracts*) the General Insurance Standards Council Code;~~
- (3) (for *pure protection contracts* which are long-term care insurance contracts) the ABI Life Insurance (Non-Investment Business) Selling Code of Practice.

...

3.9 Direct offer financial promotions

...

3.9.3 G Table: Location of the provisions applicable to direct offer financial promotions
This table belongs to COB 3.9.2G.

(1)	Exemptions for <i>deposits</i> , <i>general insurance contracts</i> , <i>pure protection contracts</i> <u>which are long-term care insurance contracts</u> and certain reinsurance contracts	COB 3.9.4G
...	...	...

Exemptions

3.9.4 G *Firms* are reminded that under COB 3.2.3R:

- (1) COB 3.9 does not apply to a *direct offer financial promotion* relating to:
 - (a) a *deposit* (except a *cash deposit ISA*); or
 - (b) a ~~*general insurance contract*~~, *pure protection contract* which is a long-term care insurance contract or certain reinsurance contracts; and

...

COB 3 Annex 1

An overview of some of the main exemptions contained in the Financial Promotion Order G

...

1 Table

This annex belongs to *COB 3.2.7G(2)* and summarises some of the main exemptions in the *Financial Promotion Order*. It is not an exhaustive list and does not seek to replace the Order itself....

References to articles are to articles of the *Financial Promotion Order* and to paragraphs are to paragraphs of schedule 1 to the *Financial Promotion Order*. For non-investment insurance contracts, firms should refer to *ICOB*.

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4.1 Client classification

Application

4.1.1 R (1) ...

- (2) For the purposes of *COB* only, the following provisions in *COB 4.1* also apply to a *firm* intending to carry on, or carrying on, any other *regulated activity* to which *COB* applies:

...

...

Purpose

4.1.3 G (1) ...

- (2) Some of the *rules* in *COB* relating to activities other than *designated investment business* are disapplied if the activity is carried on with or for a *market counterparty* rather than a *customer*, for example *rules* in *COB 6.8* (Insurance contracts: life and general policies). For *guidance* on how a *firm* carrying on these other activities may approach *client* classification, see *PRIN 1.2.4 G* (Classification: other activities).

...

6.7 Cancellation and withdrawal

Application

6.7.1 R *COB 6.7* applies to:

- (1) a *product provider* except when providing a non-investment insurance contract;
- (2) an *insurer* which provides *pure protection contracts* which are long-term care insurance contracts;

...

6.7.2 G The *firms* in *COB 6.7.1R* (except those in *COB 6.7.1R(3)*) are *product providers, insurers, deposit-taking firms* or *stakeholder pension scheme operators*, that is, the *firms* responsible for issuing *life policies, selling units, issuing long-term insurance contracts* other than non-investment insurance contracts, *accepting deposits for ISAs*, or acting as operators of *stakeholder pension schemes*.

...

6.7.5 G Table Cancellable investment agreements.

This table belongs to *COB 6.7.4G*.

Cancellable investment agreements			
	Post-sale right to cancel?	Pre-sale right to withdraw?	Maximum period of reflection
A. Agreements where the right arises regardless of whether advice is given			
...			
pension contract	...		
<i>pure protection contract</i> <u>which is a long-term care insurance contract</u>	Yes	No	14 days ²
...			

...

6.7.15 R Table: Cancellable investment agreements – life

This table belongs to *COB 6.7.7R(1)*.

Cancellable investment agreements	
Investment agreements for a long-term insurance contract for which an individual customer has:	
Column 1	Column 2
a right to cancel under <i>COB 6.7.7R(1)</i> (subject to column 2)	...
...	...
<i>C. Pure protection contract which is a long-term care insurance contract.</i>	...
...	...
	9. Pure protection contract effected by the trustees of an occupational pension scheme, an employer or a partnership to secure benefits for employees or the partners in the partnership.

6.7.16 R Table: Notes to cancellable investment agreements – life

This table belongs to *COB 6.7.15R*.

Notes to <i>COB 6.7.15R</i> :	
...	...

Notes to COB 6.7.15R:

2. Multiple agreements: Where a *customer* enters into a set of *investment agreements* at the same time (for example, the different components held within a *maxi-ISA* and with the same *firm* (or another *person* in the same *marketing group* as that *firm*)), and that set is being purchased to fulfil one investment objective of the *customer*, the *firm* may treat the multiple agreements as being one agreement for the purposes of *COB 6.7*. But if it does so, the *firm* must ensure that the *customer* retains the right to cancel each *investment agreement* separately. See also *COB 6.7.37R* in relation to a *maxi-ISA*. This note applies also to a group of life policies ~~contracts of insurance, for example, term assurance contracts~~ which have been established as part of a specific marketing arrangement. Such an arrangement may not have an investment objective. The cancellation rights for any non-investment insurance contracts are set out in *ICOB 6*.

...

...

...

6.8 Insurance contracts: life ~~and general~~ policies

Application

- 6.8.1 R *COB 6.8* applies to a *firm* which *effects* or *carries out* ~~pure protection contracts, life policies or general insurance contracts.~~

Purpose

- 6.8.2 G (1) *Principle 7* (Communications with clients) requires a *firm* to pay due regard to the information needs of its *clients*. This section reinforces *Principle 7* by requiring certain information to be provided ~~to a client before a pure protection contract or general insurance contract is entered into. Certain information must also be provided~~ on a continuing basis to a *client* with a ~~pure protection contract or life policy.~~ (*COB 6.1* to *COB 6.5* deal with pre-sale information for *life policies*).
- (2) This section implements certain requirements of the ~~Fourth Motor Insurance and the Third Life and Non-Life Directives.~~
- (3) For ~~general non-investment insurance contracts,~~ firms should refer to ICOB ~~may find it helpful to take account of the requirements issued by the General Insurance Standards Council ("GISC"). The provisions in this section relating to~~

~~general insurance contracts~~ are broadly in line with those requirements.

~~Pure protection contracts~~ : Information to be provided before the contract is made

- 6.8.3 R ~~[Deleted]~~ A *firm* must ensure that, before entering into a *pure protection contract* with a *client*, it provides the *client* with the information specified in COB 6.5.49R, unless, at the time of application, the *client*, other than an *EEA ECA recipient*, is *habitually resident*:
- (1) in an *EEA State* other than the *United Kingdom*; or
 - (2) outside the *EEA* and he is not present in the *United Kingdom*.
- 6.8.4 R ~~[Deleted]~~ The information required by COB 6.8.3R must be:
- (1) provided to the *customer* either by the *firm* itself or by an intermediary authorised by the *firm* to act on its behalf; and
 - (2) in English, unless the *customer* requests it to be, and the *firm* agrees to it being, in another language.

~~Pure protection contracts and life policies~~: Information to be provided during the term of the contract

...

- 6.8.7 R If during the term of a *pure protection contract* or *life policy* entered into on or after 1 July 1994 there is any proposed change in the information referred to in COB 6.5.49R items (1) to (12), the *long-term insurer* must inform the *policyholder* of the effect of the change before the change is made.
- 6.8.8 R If a *pure protection contract* or *life policy* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the *long-term insurer* must, in every calendar year except the first, either:

...

...

~~General insurance contracts~~: Information required to be provided before the contract is made

- 6.8.11 G ~~[Deleted]~~ COB 6.8.12R and COB 6.8.13R cover information to be provided before the sale of a *general insurance contract*. They contain no requirements for information during the term of the contract.

- 6.8.12 R ~~[Deleted]~~ Before entering into a *general insurance contract* with an individual when the *United Kingdom* is the *State of the risk*, or the individual is an *EEA ECA recipient*, a *firm* must, subject to *COB 6.8.13* provide the individual with:-
- (1) details of its complaints procedure including, where appropriate, the existence of a complaints body, making it clear that its existence is without prejudice to the *policyholder's* right to take legal proceedings; and
 - (2) a statement whether the *firm* or *policyholder* is entitled to choose the law applicable to the contract and, if so, the law which the *firm* proposes to choose.
- 6.8.13 R ~~[Deleted]~~ *COB 6.8.12R* does not apply if the contract has been submitted to the *firm* on behalf of a *customer* by an intermediary and:
- (1) the intermediary is a member of the General Insurance Standards Council; or
 - (2) the *firm* has taken reasonable steps to determine that the intermediary has provided the information required by *COB 6.8.12R*.
- 6.8.14 G ~~[Deleted]~~ Situations for information delivery will differ depending on the channels used. For example, leaflets will be sufficient at point of sale. For telephone sales the information may be given orally but then must be followed up in writing within five *business days* (see *COB 6.8.15R(2)*).

...

- 6.8.17 R Where a *pure protection contract*, *life policy* or *general insurance contract* is effected jointly, the information required by ~~*COB 6.8.3R*~~, ~~*COB 6.8.7R*~~, or ~~*COB 6.8.8R*~~, or ~~*COB 6.8.12R*~~ may be sent to the first named *customer*.

Record keeping

- 6.8.18 R A *firm* must make an adequate record of information provided to a *customer* under *COB 6.8* and retain that record for a minimum period after the information is provided of:
- (1) six years in the case of a *pure protection contract* or *life policy*; or
 - (2) three years in the case of a *general insurance contract*.

~~Motor Vehicle Liability Insurers: claims representatives~~

- 6.8.19 G (1) ~~[Deleted]~~ Under *threshold condition 2A* (Appointment of claims representatives), if it appears to the *FSA* that any *person* is seeking to carry on, or carrying on, *motor vehicle liability*

~~insurance business, that person must have a claims representative in each EEA State other than the United Kingdom.~~

- (2) ~~If any person carrying on motor vehicle liability insurance business becomes aware, or has information which reasonably suggests, that that person has failed to satisfy, may have failed to satisfy or may not in the foreseeable future be able to satisfy, threshold condition 2A (or any threshold condition), that person must notify the FSA immediately (see SUP 15.3.1R).~~

6.8.20 R ~~[Deleted]The Society must ensure that no member carries on motor vehicle liability insurance business at Lloyd's unless a claims representative has been appointed to act for that member in each EEA State other than the United Kingdom, with responsibility for handling and settling claims arising from an accident in the cases referred to in article 1 of the Fourth Motor Insurance Directive.~~

- 6.8.21 R (1) ~~[Deleted]When a motor vehicle liability insurer appoints a claims representative, it must give the MHC and each other information centre the claims representative's name, business address, telephone number and effective date of appointment within ten business days of that appointment being made.~~
- (2) ~~If the information at (1) changes in any material way, the motor vehicle liability insurer must give the MHC and each other information centre details of that change within ten business days of that change.~~

- 6.8.22 R ~~[Deleted]A motor vehicle liability insurer must ensure that each claims representative is:~~
- (1) ~~resident or established in the EEA State for which it is appointed;~~
- (2) ~~capable of examining cases in the official language or languages of the EEA State of residence of the injured party;~~
- (3) ~~responsible for, and has sufficient delegated authority from the motor vehicle liability insurer for which it is appointed, to be able to:~~
- (a) ~~handle and settle;~~
- (b) ~~collect all information, and take all measures, reasonably necessary to negotiate a settlement of; and~~
- (c) ~~represent, or arrange appropriate representation for, the motor vehicle liability insurer (whether in negotiations, in court or otherwise) in relation to;~~
- ~~claims, arising from an accident occurring in an EEA State other than the EEA State of residence of the injured party;~~

involving the use of a vehicle insured and normally based in an *EEA State*.

- 6.8.23 G ~~[Deleted]~~ COB 6.8.22R(3) does not prevent a *claims representative* from seeking additional authority or instructions from a *motor vehicle liability insurer*, if its existing authority or instructions are insufficient to allow it to handle and settle a claim. However, it does prevent a *claims representative* from purporting to decline to deal with, or transfer responsibility for, claims properly referred to that *claims representative* by an *injured party*, or an *injured party's* representative.
- 6.8.24 G ~~[Deleted]~~ Nothing in the *rules and guidance* at COB 6.8.19G to COB 6.8.29G prevents, or is intended to prevent:
- (1) a *motor vehicle liability insurer* from appointing more than one *claims representative* in one, or more than one, *EEA State*; or
 - (2) a *claims representative* from acting for more than one *insurer* or *member*; or
 - (3) a representative, appointed by a *motor vehicle liability insurer* under SUP 13.5.2R or regulation 3(d) of the *EEA Passport Rights Regulations*, from acting as that *motor vehicle liability insurer's claims representative* as well.
- 6.8.25 G ~~[Deleted]~~ The appointment of a *claims representative* does not in itself constitute the opening of a branch or the creation of an establishment (see article 4(8) of the *Fourth Motor Insurance Directive*).

Motor Vehicle Liability Insurers: claims handling

- 6.8.26 R (1) ~~[Deleted]~~ Within three months of receipt of a claim for damages from an *injured party*, or his representative, the *motor vehicle liability insurer* must (directly, or through a *claims representative*):
- (a) make a reasoned offer of settlement, if liability is admitted and damages have been fully quantified; or
 - (b) provide a reasoned reply to the points made in the *injured party's* claim, if liability is denied, or not admitted, or the claim for damages has not been fully quantified.
- (2) If liability is initially denied, or not admitted: within three months of any subsequent admission of liability, the *motor vehicle liability insurer* must (directly, or through a *claims representative*) make a reasoned offer of settlement, if, by that time, the relevant claim for damages has been fully quantified.
- (3) If an *injured party's* claim for damages is not fully quantified when it is first made: within three months of the subsequent

receipt of a fully quantified claim for damages, the *motor vehicle liability insurer* must (directly, or through a *claims representative*) make a reasoned offer of damages, if liability is admitted at that time.

- (4) A claim for damages will be fully quantified under (1)(a), (2) or (3) when the *injured party* provides written evidence which substantiates or supports the amounts claimed.

6.8.27 R (1) ~~[Deleted] If the *motor vehicle liability insurer*, or its *claims representative*, does not comply with COB 6.8.26R(1)(a), (2) or (3), the *motor vehicle liability insurer* must pay simple interest on any damages eventually paid, unless interest is awarded by any tribunal which determines the *injured party's* claim.~~

- (2) If (1) applies, the amount of interest that the *motor vehicle liability insurer* must pay must be calculated as follows:

(a) the interest calculation period:

- (i) begins three months after:

(A) receipt of the claim for damages, if the *motor vehicle liability insurer* or its *claims representative* breaches COB 6.8.26R(1)(a); or

(B) any subsequent admission of liability, if the *motor vehicle liability insurer* or its *claims representative* complies with COB 6.8.26R(1)(a) but breaches COB 6.8.26R(2); or

(C) the subsequent receipt of a fully quantified claim for damages, if the *motor vehicle liability insurer* or its *claims representative* complies with COB 6.8.26R(1)(a) and (2) but breaches COB 6.8.26R(3); and

- (ii) ends on the date when the *motor vehicle liability insurer* pays compensation to the *injured party*, or the *injured party's* authorised representative;

(b) the interest rate to be applied throughout the period in (a) is the Bank of England's base rate (from time to time), plus four per cent.

6.8.28 R ~~[Deleted] A *motor vehicle liability insurer* will be taken to have received a claim, or a fully quantified claim, for damages when that claim, or fully quantified claim, for damages is delivered to the *motor vehicle liability insurer*, or a *claims representative*, by any person by any method of delivery which is lawful in the *motor vehicle liability insurer's*, or its *claims representative's*, respective State of residence or establishment.~~

- 6.8.29 G (1) ~~[Deleted] COB 6.8.26R to COB 6.8.28R apply only to claims for damages for loss or injury suffered in, or as a result of, an accident which occurs in an EEA State other than an injured party's usual state of residence, which is caused by the use of a motor vehicle insured and normally based in an EEA State.~~
- (2) ~~COB 6.8.19G to COB 6.8.28R are not intended to, and do not, restrict any rights which the injured party, or its motor vehicle liability insurer, or any other insurer acting on its behalf, may have and which would enable any of them to begin legal proceedings against the person causing the accident or that person's, or the motor vehicle's, insurers.~~

...

12.1 Application

- 12.1.1 R This chapter applies to a *firm* when it carries on any of the following activities:

- (1) ...

...

- (4) *communicating or approving a financial promotion* in relation to:

- (a) ...

...

- (c) *effecting or carrying out contracts of insurance life policies* written at Lloyd's; or

...

...

- 12.1.15 R Table: This table applies *COB* to *firms* when carrying on the activity to which *COB* 12.1.7R(2) relates except where *ICOB* applies in relation to non-investment insurance contracts.

Chapter	Description	Application
1	...	
...		
6.8	Insurance contracts – life <u>policies</u> and general	Applied

- 12.1.16 G The tables at *COB* 12.1.17G to *COB* 12.1.21G are provided to help *firms* when carrying on those activities to which this chapter applies locate those ~~*COB*~~ rules that are particularly relevant to their activities. *Firms* should be aware that these tables may not include all *rules*

which apply to an individual *firm* as these will vary depending on the *firm's* particular circumstances and that there may be other *COB-rules* that apply.

...

- 12.1.20 G Table: Location of *rules* of particular relevance to a *firm* managing the underwriting capacity of a Lloyd's *syndicate* as a *managing agent* at Lloyd's.

This table forms part of *COB* 12.1.16G

Chapter	Description
<i>COB</i> 6.7	Cancellation and withdrawal
<i>COB</i> 6.8	Insurance contracts – life <u>policies</u> and <u>general</u>
<i>ICOB</i>	Insurance: Conduct of Business Sourcebook

...

Schedule 1 Record keeping requirements

...

3 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
COB 6.8.18R(1)	Firm effecting or carrying out pure protection contracts <u>which are life policies</u>	Adequate details of information provided	After information provided	6 years
COB 6.8.18R(2)	Firm effecting or carrying out <u>general insurance contracts</u>	Adequate details of information provided	After information provided	3 years
...				

...

Schedule 4

Powers Exercised

1 Table: G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *COB*:

...

Regulation 6(1) of The Open-Ended Investment Companies Regulations 2001
~~Regulation 2 of the Financial Services and Markets Act 2000 (Fourth Motor Insurance Directive) Regulations 2002 (SI 2002/2706).~~

...

Schedule 5

Rights of action for damages

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4 Table:

			Right of action under section 150			
Chapter/ Appendix	Section/ Annex	Paragraph	For private person?	Removed ?	For other person?	
...						
Any <i>rule</i> in <i>COB</i> which is directed at ensuring that transactions in <i>designated investments</i> are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that <i>designated investment</i>			Yes	No	Yes	Any other person
COB 6.8.27R			Yes	No	Yes	Any other person
All other <i>rules</i> in <i>COB</i>			Yes	No	No	