



**DEAR COMPLIANCE OFFICER**

**LETTER TO:**

**ALL FIRMS SELLING NON-  
INVESTMENT INSURANCE  
PROTECTION PRODUCTS**

Date: 29 November 2010

Dear [Compliance Officer/Compliance Contact]

**Oral disclosure in sales of non-investment insurance: protection products**

On 30 June 2010 we published our post implementation review<sup>1</sup> (PIR) of the Insurance Conduct of Business Sourcebook (ICOBS) that came into effect on 6 January 2008. The review found significant failures by firms concerning oral disclosure in sales of protection products, in particular Critical Illness Cover (CIC). These findings were disappointing, particularly as oral disclosure rules were introduced in ICOBS, following the shortcomings identified in our thematic review in 2006: The sale of critical illness cover: results of thematic work<sup>2</sup>.

We are therefore writing to all firms that sell protection products<sup>3</sup> to reiterate our ICOBS requirements for all firms to:

- make appropriate oral disclosures when selling a protection product to a consumer by phone or face-to-face;
- provide product information in a way which is clear, fair and not misleading; and
- be clear about the status and scope of service the firm is providing and that any advice given must be suitable.

**Action requested**

All firms selling protection products are required to establish, implement and maintain adequate policies and procedures sufficient to ensure compliance with the rules in ICOBS.<sup>4</sup>

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<sup>1</sup> [http://www.fsa.gov.uk/pubs/other/icobs\\_review.pdf](http://www.fsa.gov.uk/pubs/other/icobs_review.pdf)

<sup>2</sup> [http://www.fsa.gov.uk/pubs/other/critical\\_illness.pdf](http://www.fsa.gov.uk/pubs/other/critical_illness.pdf)

<sup>3</sup> Pure protection contracts and payment protection contracts (PPI)

<sup>4</sup> SYSC 6.1.1R. Similarly SYSC 3.2.6R applies to insurers

Following our findings (see Appendix A) we request that:

- Your firm reviews its sales policies and procedures for compliance with the rules in ICOBS. Appendix B sets out key Handbook rules and requirements relevant to oral disclosure that we assessed firms against in the PIR. Please note this is not an exhaustive list of all Handbook rules that apply to sales of non-investment protection products that we expect firms to comply with.
- You provide written confirmation, within six months from the date of this letter, that your firm has completed the review and that your firm's sales policies and procedures (for sales of non-investment protection products) are sufficient to ensure compliance with all the relevant rules in ICOBS.
- If you cannot provide the confirmation above within six months, your firm provides a written plan and timetable as soon as possible, but no later than six months from the date of this letter, to ensure such compliance.

Please note this letter, the PIR and the above requests focus on the detailed ICOBS rules. We also remind firms of their overarching obligation to comply with the Principles<sup>5</sup>. If your firm sells PPI, these requests are distinct from the 'open letter' in PS10/12 (August 2010): The assessment and redress of Payment Protection Insurance complaints<sup>6</sup>.

We will continue to monitor closely whether the information provided by firms complies with our requirements. Should it come to our attention that a firm is not complying, we will consider the extent of the breach and the appropriate regulatory action.

Your response should be sent to [GIOraIDisclosure@fsa.gov.uk](mailto:GIOraIDisclosure@fsa.gov.uk). If you wish to discuss prior to responding please telephone or email your usual FSA contact.

Yours sincerely



**Sheila Nicoll**  
**Director, Conduct Policy Division**

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<sup>5</sup> PRIN 1.1.9G

<sup>6</sup> [http://www.fsa.gov.uk/pubs/policy/ps10\\_12.pdf](http://www.fsa.gov.uk/pubs/policy/ps10_12.pdf)

## **Appendix A: Key areas where firms are failing to meet ICOBS requirements**

Below is a summary of some of the work we have carried out to date and the key areas where firms are failing to comply with the Insurance Conduct of Business Sourcebook (ICOBS). The work we have undertaken specifically looked at sales of Critical Illness Cover (CIC) but nonetheless, the same requirements apply to all non-investment insurance protection products.

### *CIC telephone sales assessments*

In 2009 we carried out a call listening exercise with a sample of 11 firms to assess the extent to which firms selling CIC – as a rider to term assurance and as a standalone product – were meeting ICOBS requirements. Overall compliance with ICOBS was unacceptable, and all of the 11 firms in the sample failed on some or most of our key requirements in the majority of their calls. Appendix B (attached) contains details of some of the specific requirements we assessed.

### *CIC consumer research*

In 2008 and 2009 we commissioned a series of two large scale consumer research projects examining the consumer experience of purchasing CIC. The research sought the views of over 1,000 consumers that had recently purchased CIC. The results were published in 2009 and 2010 and can be accessed on our website<sup>7</sup>.

The results echoed many of the findings of the CIC mystery shopping study commissioned by the FSA and published in May 2006, just over a year after the introduction of the ICOP regime. The consistency of the findings supports our view that there are continuing problems in how information is provided to consumers at the point of sale, and these need to be addressed by firms.

For a significant number of sales:

- It was not sufficiently clear to consumers whether they had been provided only with information, in a non-advised sales process, or given a personal recommendation as part of an advised sales process.
- The explanation of product features was poor. Firms did not provide sufficient information about all the policy's main characteristics to enable the customer to take an informed decision.
- Significant exclusions and limitations were often not highlighted.
- Firms frequently failed to draw consumers' attention to the importance of consumer disclosure of material facts particularly relating to pre-existing medical conditions.

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<sup>7</sup> Post implementation review of ICOBS: Oral Disclosure Rule in sales of Critical Illness Cover – baseline survey  
<http://www.fsa.gov.uk/pubs/consumer-research/crpr77.pdf>

Effectiveness of oral disclosure rule in the sale of critical illness cover: second stage findings  
<http://www.fsa.gov.uk/pubs/consumer-research/crpr82.pdf>

### *Summary*

Telephone and face-to-face CIC sales involve a large oral component, as do sales of other protection products. The research findings, and our assessment of telephone sales, indicates there is a significant proportion of sales where the key disclosures and information are omitted, or not delivered to consumers in a way to enable them to form a realistic understanding of:

- the scope and limitations of their cover; and
- the nature of the service being provided

The result is that consumers continue to have a poor understanding of the policy's main characteristics (including significant exclusions and limitations) and therefore make decisions to purchase without sufficient information.

## **Appendix B: ICOBS oral disclosure requirements on status and product information**

The importance of disclosing significant exclusions/limitations is evidenced by our April 2009 Consumer Research. This found that when consumers were asked about which specific illnesses are covered by their CIC policy, there was widespread misunderstanding as to what illnesses were actually covered. For example, many customers wrongly believed that all conditions they would describe as heart attacks, cancers or strokes would be covered. This is not the case. Definitions for these conditions are qualified by severity thresholds<sup>8</sup> in the Association of British Insurers Statement of Best Practice for Critical Illness Cover<sup>9</sup> model policy wordings.

In CP07/11 Insurance selling and administration<sup>10</sup>, we said: ‘The evidence from the consumer research is clear that purchasers of protection products rely more heavily on oral than written disclosures.’

### **Key ICOBS rules and related guidance relevant to oral disclosure which we assessed firms against in the PIR**

**ICOBS 4.2.4R (1)** states: ‘In a sale that does not involve a personal recommendation, a firm must take reasonable steps to ensure a customer understands he is responsible for deciding whether a policy meets his demands and needs.’ **ICOBS 4.2.4R (3)** goes on to say: ‘If a firm anticipates providing, or provides, information on any main characteristic of a policy orally during a non-advised sale, taking reasonable steps includes explaining the customer’s responsibility orally.’

**ICOBS 6.4.2R (1)** states: ‘If a firm provides information orally during a sales dialogue with a customer on a main characteristic of a policy, it must do so for all the policy’s main characteristics.’

**ICOBS 6.4.2R (2)** says: ‘A firm must take reasonable steps to ensure that the information provided orally is sufficient to enable the customer to take an informed decision on the basis of that information, without overloading the customer or obscuring other parts of the information.’

**ICOBS 6.4.3G** gives guidance to firms on what a policy’s main characteristics include and that ‘A significant exclusion or limitation is one that would tend to affect the decision of customers generally to buy’, and provides examples.

### **Price information**

**ICOBS 6.4.6R** says: ‘A firm must provide price information in a way calculated to enable the customer to relate it to a regular budget.’

**ICOBS 6.4.7G** states that: ‘Price information is likely also to include at least the total premium (or the basis for calculating it so that the customer can verify it) and, where relevant: (1) for policies of over one year with reviewable premiums, the period for which the quoted premium is valid, and the timing of reviews.’

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<sup>8</sup> Cancer – excluding less advanced cases; Heart attack – of specified severity; Stroke – resulting in permanent symptoms

<sup>9</sup> [http://www.abi.org.uk/Information/Codes\\_and\\_Guidance\\_Notes/532.pdf](http://www.abi.org.uk/Information/Codes_and_Guidance_Notes/532.pdf)

<sup>10</sup> [http://www.fsa.gov.uk/pubs/cp/cp07\\_11.pdf](http://www.fsa.gov.uk/pubs/cp/cp07_11.pdf)

**ICOBS 6.4.8G** says: 'Price information should be given in writing or another durable medium in good time before conclusion of the contract. This is in addition to any requirement or decision to provide the information orally. In the case of a distance contract concluded over the telephone, it may be provided in writing or another durable medium no later than immediately after conclusion.'

The combined effect of **ICOBS 6.4.2R(1)**, **ICOBS 6.4.3G**, **ICOBS 6.4.6R**, **ICOBS 6.4.7G(1)** and **6.4.8G** is that in oral sales where a firm provides information on a main characteristic of a policy, it should orally disclose if the premium is reviewable, and the timing of such reviews.

### **Other ICOBS disclosures**

Although the focus of the call listening exercise was to monitor firms' disclosure against the oral disclosure requirements referred to above, we also used it as an opportunity to monitor the disclosure of other important information. Where the contract is concluded by telephone and face to face sales, the information is important to enable consumers to make an informed decision before purchasing.

### **Advised/non-advised sales**

**ICOBS 4.1.7R**: 'Prior to conclusion of an initial contract of insurance with a consumer a firm must state whether it is giving a personal recommendation or information.'

**ICOBS 4.2.5R**: '(1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or renewal an insurer must disclose to the customer at least: c) whether it is providing a personal recommendation or information.'

When assessing these, our evaluators considered whether the customer was informed by the salesperson if they would receive advice or just information.

### **Consequences of non-disclosure of material facts**

**ICOBS 5.1.4G** provides guidance on what a firm can do to ensure a customer knows what he must disclose. It states that one of the ways is to explain to the customer the duty to disclose all circumstances material to a policy, what needs to be disclosed, and the consequences of any failure to make such a disclosure.

The customer's understanding of the importance of full disclosure underpins the underwriting process for insurance and the doctrine of utmost good faith. However, our consumer research suggests that many consumers in this market did not realise its importance.

### **Cancellation**

**ICOBS 7.1.1R** states: 'A consumer has a right to cancel, without penalty and without giving any reason, within: (1) 30 days for a contract of insurance which is, or has elements of, a pure protection contract or payment protection contract.'

After 30 days, a policy can be cancelled at any time under most contracts, but the customer may not be entitled to a refund of the premiums they have paid.

A firm must provide a customer with information on the right to cancel a policy before conclusion of the contract. Cancellation rights must also be set out in the policy summary (ICOBS 6 Annex 2).