# Insurance Conduct of Business Sourcebook (ICOBS) Rules

## Classification of Customers

1. Consumers

A **Consumer** is defined as a policyholder or prospective policyholder who is a natural person who is acting outside his trade, business or profession.

The definition of a consumer includes:

1. Personal representatives such as executors not acting in a professional capacity.
2. Private individuals acting in personal or other family circumstances.

Note: Under the Consumer Duty ‘Consumer’ refers to the wider group of those who use financial services however, for ICOBS the above definitions apply.

### Commercial

A **Commercial Customer** is defined as a policyholder or prospective policyholder who is not a consumer.

The definition of commercial customer includes:

1. A trustee of a trust such as housing trust or NHS Trust.
2. A pension trustee.
3. A partner in a partnership when taking out insurance for purposes related solely to his profession.
4. A person taking out a policy covering property bought under a buy-to-let mortgage.
5. A member of the governing body of a club or other unincorporated association (e.g a trade body or student union).
6. The purchase of insurance covering both private and business needs e.g. a pub landlord with a residence above the pub.

### Mixed Contracts

This is a contract which covers both private and business use. A mixed contract could be seen as a consumer contract as long as the main purpose of the contract is for private use. If it is not clear in a particular case whether a customer is a consumer or a commercial customer, [Name of firm] must treat them as a consumer.

### Group Policy

This is a general insurance contract, which a person enters into on his own behalf and for other persons who become policyholders by virtue of common employment, occupation or activity (e.g. a personal accident policy for an affinity group such as a sports club).

### Large Risks

Contracts of large risks is described as:-

1. Railway rolling stock, aircraft, ships, goods in transit, aircraft liability and liability of ships.
2. Credit and suretyship where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity
3. Land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability and miscellaneous financial loss, in so far as the policy holder exceeds the limits of at least two of the following three criteria:-
4. Balance sheet total: €6.2 million
5. Net turnover €12.8 million
6. Average number of employees during the financial year 250

## Communication with customers - Clear fair and not misleading

When [Name of firm] communicates information, including a financial promotion to a customer or other policyholder, we must take reasonable steps to communicate it in a way which is clear fair and not misleading. It must also:

1. meet the needs of customers,
2. be likely to be understood by customers, and,
3. equip customers to make decision that are effective, timely and properly informed.  
   To provide information on a timely basis, we must communicate in good time for customers to make effective decisions, including:
   1. Before the purchase of a product and
   2. At suitable points throughout the lifecycle of the product.

If at a later date it is decided that it is not meeting this requirement it must be withdrawn and anyone that is known to be relying on its approval notified. Please also refer to our Consumer Duty policy.

## Financial Promotions / Advertising

To meet Insurance Distribution Directive requirements, marketing communications must always be clearly identifiable as such.

All advertising must meet the Clear Fair and Not Misleading rule and be signed off by either [name of director] (see sign off procedures below). Please also see the section on communications with above.

A **Financial Promotion** is an invitation or inducement to engage in insurance mediation (Investment activity) that is communicated in the course of business.

[Name of firm] must retain copies of all advertising / financial promotions together with evidence that the advertising / financial promotion has been signed off by a director.

The following checklist must be completed and retained together with a copy of the financial promotion/advertising.

|  |  |
| --- | --- |
| Name of financial promotion: |  |
| Publication Name: |  |
| Publication Type: |  |
| Name of person at the firm responsible for approval: |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Observation | Yes / No | Approved by | Date | Review Date |
| If this is Marketing, is it clearly marked as such? |  |  |  |  |
| Does the financial Promotion include the firm’s registered name? |  |  |  |  |
| Does the financial Promotion include contact details for the firm? |  |  |  |  |
| Does the financial promotion meet the clear fair and not misleading rule?  As an indication of what is clear fair and not misleading a firm should consider:-  The customer’s knowledge of the contract of insurance to which the information relates.  Using materials and design (including paper size, colour, font type and font size, tone and volume) to present the information legibly and accessibly, and in a balanced way;  Using emphasis sparingly; and  Not using differential font sizes or positioning so that the impact on a customer of some information (e.g. significant conditions, exclusions or charges) is likely to be materially less than other provisions, parts or pages of the document. |  |  |  |  |
| Does the financial promotion make any pricing claims that indicate or imply that the firm can reduce a premium, provide the cheapest premium or reduce customers’ costs? |  |  |  |  |
| If the financial promotion makes a pricing claim:-   * Is it consistent with the result that the majority of respondents can expect to achieve?   or   * Is the percentage of respondents who can expect to achieve the saving prominently stated? |  |  |  |  |
| If the financial promotion makes any claims regarding levels of cover:-  Does the financial promotion state prominently the basis for any claimed benefits and any significant limitations? |  |  |  |  |
| Does the financial promotion name an Insurer? |  |  |  |  |
| If the financial promotion names an Insurer has the Insurer approved the financial promotion? |  |  |  |  |
| If any third party logos have been used has written permission been obtained. (note we must not use the FCA Logo) |  |  |  |  |
| Does the financial promotion comply with other relevant legislative requirements, including the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008, Advertising Standards Authority and applicable advertising codes (CAP), GDPR, Data Protection Act 2018 and PECR? |  |  |  |  |
| Does the Financial Promotion include the statutory status disclosure ***Authorised and Regulated by the Financial Conduct Authority?*** |  |  |  |  |
| Has the firm included a link to the FCA Website [www.fca.org.uk](http://www.fca.org.uk)? (not a requirement) |  |  |  |  |
| Has the financial promotion been added to the archive of financial promotions? |  |  |  |  |
| Has the firm noted to whom they have sent the financial promotion.  (this may not be possible with name awareness advertising in local directories or magazines) |  |  |  |  |
| Is consent required to send this financial promotion and if so has proper consent been obtained and can it be evidenced. (please explain in the comments section below) |  |  |  |  |
| Has an expiry date been included on the financial promotion? |  |  |  |  |
| Has a review date been set for the financial promotion? (not required for a one off document) |  |  |  |  |
| **Comments** | | | | |

#### Sign off procedures

Once the draft promotional literature has been produced this must be passed to [name od director] who must sign it off within 7 working days or return the document with any queries or amendments required and request it be resubmitted for sign off.

All marketing literature should include an expiry date which will automatically notify a date after which the literature can no longer be relied on.

All promotional literature / financial promotions should be reviewed annually to ensure they remain relevant and continue to meet the clear fair and not misleading rule.

If the promotional literature/financial promotion no longer meets the clear fair and not misleading rule then it must be withdrawn and it must be recorded that this action has been taken on the financial promotion’s log.

If necessary, where [Name of firm] know who might have received/relied on the literature, we must make every effort to contact them and advise them that the promotional literature has been withdrawn.

## Record Keeping

The SYSC handbook contains high level record keeping requirements requiring [Name of firm] to take reasonable care to make and retain adequate records of matters and dealings (including accounting records) which are the subject of requirements and standards under the regulatory system (SYSC 3.2.20R)

Records should be retained for as long as is relevant for the purposes for which they are made.

ICOBS does not have detailed record keeping requirements. [Name of firm] needs to decide what records they need to keep in line with the high level record keeping requirements and their own business needs.

We should consider the need to deal with requests for information from the FCA as well as the need to deal with queries from customers which may require evidence of matters such as:

1. The reasons for a personal recommendation,
2. What documentation has been provided to a customer, and,
3. How claims have been settled and why.

We also need to consider retaining records for longer periods in case customers complain or take legal action.

When considering how long to retain records for, data protection legislation should be taken into consideration.

Records must be readily accessible for inspection by the FCA. Although the FCA does not define “readily accessible” [Name of firm] believes that records would be readily accessible if they were available for inspection within two business days of the request being received. The records must be capable of being reproduced in the English language on paper. However, if the records relate to business carried on from an establishment in a country or territory outside the UK an official language of that country or territory may be used instead of the English language.

ICOBS no longer places a time limit on the length of time a firm must retain records. Our dependency on computers means records can be kept indefinitely. Stricter rules apply to the retention of personal data under data protection regulation and these must be adhered to.

## The Customer’s Best Interests Rule

[Name of firm] must act honestly, fairly and professionally in accordance with the best interests of its customer.

Under the Customer’s Best Interests Rule, our obligations include consideration of the interests of any policy stakeholder of which the firm should be aware (which, in relation to a multi-occupancy building insurance contract will include any leaseholder)

If offering incentives to third parties, [Name of Firm] must consider whether doing so conflicts with our obligations under the Customers Best Interest rule including whether this is consistent with the interest of policyholders and any policy stakeholder which, in relation to a multi-occupancy building insurance contract will include any leaseholder.

Interaction with the Customer’s Best Interests Rule and Principle 7(ICOBS 4.1.1A)

[Name of Firm] should include consideration of the information needs of the customer including:

1. What a customer needs in order to understand the relevance of any information provided by the firm; and
2. At which point in the sales process will the information be most useful to the customer to enable them to make an informed decision.

## Reliance on Others & Exclusion of Liability

[Name of firm] must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a customer or other policyholder unless it is reasonable for us to do so and the duty or liability arises other than under the regulatory system.

The general law, including the Unfair Terms Regulations, also limits the scope for a firm to exclude or restrict any duty or liability to a consumer.

We may rely on third parties in order to comply with the rules in ICOBS. However, it is noted that we cannot delegate our responsibility e.g., if we outsource claims handling we retain the regulatory responsibility for achieving the outcome required of handling claims promptly and fairly.

It is acceptable for [Name of firm] to rely on information provided by an unconnected authorised person or a professional firm, unless we are aware or ought reasonably to be aware of any fact that would give reasonable ground to question the accuracy or the information.

## E-Commerce

E-Commerce is the provision of a regulated activity/service, normally for remuneration, using electronic equipment to process and store the data at the request of the customer. This section applies where we are conducting e-commerce with a customer or potential customer in the UK.

If [Name of firm] conducts E-commerce we must make the following information easily, directly and permanently accessible to the recipients of the information we are providing:

1. Firm name,
2. Geographic address at which we are established,
3. Details, including e-mail address which allows us to be contacted and communicated with in a direct and effective manner,
4. An appropriate statutory status disclosure statement together with a statement that explains we are on the FCA Register and includes our Financial Services Registration Number,
5. If we are undertaking an activity that is subject to VAT the VAT Number,
6. If we are referring to price we must do so clearly and unambiguously indicating whether it is inclusive of tax/delivery costs.
7. Our company’s registration number and registered office address e.g. xyz enterprises ltd is a company registered in England and Wales, company registration number.

Point 7 relates to the Companies Act 2006 but has been included here to ensure complete disclosure.

#### Placing and receipt of orders (excluding by e-mail)

[The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.]

[Name of firm] **must** (except when otherwise agreed by parties who are not consumers)

1. give the following information, clearly, comprehensibly and unambiguously, and prior to the customer requesting cover:
2. The different technical steps to follow to conclude the contract;
3. Whether or not the concluded contract will be filed (stored) by the [Name of firm] and whether it will be accessible;
4. The technical means for identifying and correcting input errors prior to the placing of the order; and
5. The languages offered for the conclusion of the contract;
6. indicate any relevant codes of conduct to which we subscribe and provide information on how those codes can be consulted electronically;
7. when an order is placed through technological means, acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and
8. make available appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors prior to the placing of an order.

Contractual terms and conditions must be made available in a way that allows the recipient to store and reproduce them in an unchanged format.

## Rules for E-Commerce Commercial Communications

Commercial communications must comply with the following conditions:

1. It must be clearly identifiable as a commercial communication,
2. [Name of firm] on whose behalf the communication is sent must be clearly identifiable
3. Promotional offers must be clearly identifiable as such and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously,
4. Promotional games or competitions must be clearly identifiable as such and the conditions for participation must be easily accessible and presented clearly and unambiguously.

## Unsolicited Commercial Communications

An unsolicited commercial communication sent by e-mail by [Name of firm] must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

## Information about the firm

#### Scope of Service – (Fair Analysis of the Market)

Where [Name of firm] proposes or advises on a contract of insurance then in good time before conclusion of a general insurance contract, and if necessary on its amendment or renewal, we must provide the customer with information on whether we:

* 1. give a personal recommendation, on the basis of a fair and personal analysis of the market;

In this instance *personal* means it is presented as suitable for the person to whom

it is made and NOT that it is made personally by an employee or director at our firm.

or

* 1. are under a contractual obligation to conduct insurance distribution exclusively with one or more insurers, in which case we must provide the names of those insurance undertakings; or;
  2. are not under a contractual obligation to conduct insurance distribution as stated in b) above and do not give a personal recommendation as stated in a) above. In this instance we must provide the customer with the names of the insurers we may and do conduct business with.

If we are dealing with a consumer and have not given a personal recommendation based on a fair and personal analysis of the market then we must state whether we are giving:-

1. a personal recommendation but not on the basis of a fair and personal analysis,
2. other advice on the basis of a fair and personal analysis of the market,
3. other advice not on the basis of a fair analysis of the market or,
4. just information.

In this instance, other advice relates to the merits (advantages and disadvantages) of the consumer buying the insurance policy.

[Name of firm] cannot hold itself out as giving information or advice to customers on the basis of a fair analysis of the market unless it has considered a sufficiently large number of general insurance contracts available in the relevant sector or sectors of the market having in mind which contract of insurance would be adequate to meet the customer’s demands and needs.

One way in which a fair analysis of the market may be achieved is through the use of “panels” of insurers which are sufficient to enable us to give advice or information on a fair analysis basis. The panels must be reviewed on a regular basis.

[Name of firm] should ensure that its analysis of the market and the available general insurance contracts is kept adequately up to date. For example, we should update our selection of contracts if we become aware that a contract has become available offering an improved product feature or a better premium. The update frequency depends on the extent to which new contracts become available.

The panel selection criteria will be important in determining whether the panel is sufficient to meet the fair analysis criteria. Selection should be based on product features, premiums and services offered to customers not solely on the benefit offered to us.

#### Information to be provided to customers on request

Where information or advice is given to a customer on a basis other than a fair analysis of the market, we must disclose whether we are contractually obliged to conduct insurance mediation activity in this way and we must provide the customer with the names of the Insurers we may and do conduct business with in relation to the contract provided. Therefore, we must maintain, and keep up-to-date, for each type of contract we deal with, a list of insurers we select from or deal with.

If at renewal we only obtain terms from the existing insurer, we must advise the client that we have only approached the existing (a single) insurer for terms.

#### Remuneration Disclosure

In good time before conclusion of a contract of insurance and if necessary on its amendment or renewal we must provide our customer with information on the type and source (nature) of the remuneration received in relation to the contract of insurance. This will include whether:

1. we work on a fee that is paid directly by the customer, or,
2. we work for commission of any kind that is included in the premium and paid by the insurer, or,
3. we work for any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract, or,
4. we work on the basis of a combination of any of the above.

Remuneration includes remuneration that is not guaranteed or which is contingent on meeting certain targets.

#### Premium Disclosure

Prior to the premium being due the customer must be advised of the cash amount or where the exact amount cannot be confirmed the formula for calculation

If the customer wishes to pay by instalments the cash amount must still be confirmed to the client together with the total cost of the finance, the interest, the APR and the monthly instalment amount together with a statement that the use of retail premium finance arrangements will be more expensive compared to paying upfront.

#### Fee Disclosure

[Name of firm] must provide a customer with details of the amount of any fees.

Where an actual fee cannot be given, we must give the basis for calculating any fees, enabling the customer to verify them.

The information must be given to the customer before the customer incurs liability to pay the fee or before conclusion of the contract, whichever is earlier.

The above requirements extend to all fees that may be charged during the life of the policy e.g., mid-term adjustments and cancellations

#### Commission Disclosure (Commercial Customers)

[Name of firm] must promptly disclose the commission that it and any associate receives in connection with a policy.

The disclosure must be in cash terms (estimated if necessary) and in writing or other durable medium. If this is not possible we must give the basis for the calculation.

The disclosure must include all forms of remuneration from any arrangement we may have including but not restricted to:-

* profit shares including any bonus received,
* payments relating to the volume of sales,
* payments from premium finance companies in connection with arranging finance.

In respect of profit shares the FCA deem it acceptable to confirm the average annual earnings based on the figures for the preceding three years. Therefore, it may be prudent to calculate these figures at the end of each financial year for inclusion in disclosures for the forthcoming year.

All requests for commission disclosure should be passed to [name of director] and the following template must be used:

#### Commission Disclosure Template

Our Earnings

As your chosen insurance intermediary, [Name of firm] earn income in two separate ways.

1. We can earn by charging you a fee for our service. Whenever we charge a fee, that amount will be agreed with you in advance and will be disclosed to you separately to the insurance premium. If we have charged you a fee, this information will have been provided to you already alongside details of the premium.
2. We can earn by receiving a commission payment from the insurance company with which the insurance is placed. This amount will usually be calculated as a percentage of the insurance premium and the percentage will have been contractually agreed with the insurance company. We earn different percentages for different classes of business and from different insurance companies.

The table below sets out details of the commission and any other income we might earn in respect of handling your insurance.

|  |  |
| --- | --- |
| Direct earnings | £ |
| 1) **Commission** – we earn the following: |  |
| 2) **Premium finance** – for arranging the funding of your insurance premium, we will earn: |  |
|  |  |
| Possible additional earnings |  |
| 1) **Profit share agreement** - we have an agreement with [insurer name] that if our account with them meets certain pre-agreed volume and profit targets during this year, we will receive an additional payment from them. The value of the arrangement to us cannot be accurately be calculated today. However, should our account achieve the income and profit targets set by the insurer, the maximum extra commission we could earn is x%. This could mean us earning up to a maximum extra commission in respect of your policy of £x.  **If you would like further details on the precise method of calculation of this agreement, please contact [insert name].** |  |
| 2) **Volume commission over ride** - we have an agreement with [insurer name] that if our account with them meets certain pre-agreed volume targets during this year, we will receive an additional payment from them. The value of the arrangement to us cannot be accurately calculated today. However, should our account achieve the income targets set by the insurer, the maximum extra commission we could earn is x%. This could mean us earning up to a maximum extra commission in respect of your policy of £x.  **If you would like further details on the precise method of calculation of this agreement, please contact [insert name].** |  |

## Statement of Demands and Needs

Where [Name of firm] arranges for a customer to enter into a general insurance contract (including at renewal) before conclusion of that contract, we must specify, on the basis of information obtained from the customer their demands and needs.

When proposing a contract of insurance we must ensure it is consistent with the customer’s demands and needs. Where we are providing a personal recommendation we must, explain why the contract of insurance would best meet the customer’s demands and needs.

The statement of demands and needs can be adapted to reflect the complexity of the contract of insurance being proposed and the type of customer.

The statement of Demands and Needs must specify: -

* that it is based on the information obtained from the customer,
* the demands and needs of the customer,
* the underlying reasons for any advice given / recommendation made.

If [Name of firm] is not making a recommendation or offering advice the customer must still be given a Demands and Needs statement however, it could form a statement based on the information provided by the customer for example:-

* if you answer yes to questions a, b & c your demands and needs are those of a pet owner who wishes and needs to ensure that the veterinary needs of your pet are met now and in the future, or,
* 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.

[Name of firm] may provide the statement of demands and needs orally if:

* + - 1. the customer requests it, or,
      2. the customer requires immediate cover,

but, in both cases we must provide the Demands and Needs statement immediately after the conclusion of the contract, in a durable medium.

#### Telephone Sales

In the case of telephone sales the Demands and Needs statement does not need to be read out if the consumer has explicitly consented to receiving abbreviated distance marketing information prior to conclusion of the contract.

However, the statement of demands and needs:-

1. must be provided immediately after the conclusion of the contract in a durable medium,
2. may also be provided orally before the contract is concluded.

#### Presentation of the Statement

The only stipulations in respect of a statement of Demands and Needs are that it must be communicated:-

1. on paper or other durable medium available and accessible to the customer,
2. in a clear and accurate manner, comprehensible to the customer
3. in the language of the country in which the policyholder resides or in which the business is established or any other language agreed by the parties.

#### Record keeping

Although there are no rules on the length of time a statement of demands and needs should be retained, both the copy of the personal recommendation and the record of the reasons upon which the recommendation was based should be retained for possible future reference.

## Accurate Information

#### Commercial Customers (Fair presentation of risk, The Insurance Act 2015)

The duty of fair presentation applies to all commercial polices.

Contracts of insurance are still based on utmost good faith and there is still a core requirement to disclose every material circumstance known however, the Act specifies whose knowledge needs to be captured when preparing a risk presentation. It is important to ensure that at [Name of firm] we gather information from the correct persons to ensure we benefit from the protection the Act provides.

The duty of fair presentation is a realistic approach and is aimed at encouraging active rather than passive engagement by insurers as well as clarifying and specifying known or presumed to be known facts.

A fair presentation of a risk is defined as one which makes a disclosure of every material circumstance which the insured knows or ought to know or; a disclosure which makes the insurers aware that they need to make **further enquiries** to reveal every material circumstance.

Any disclosure needs to be made in a clear and accessible way. It is not acceptable to submit brief submissions but neither is it acceptable to provide too much information with no clarification on what is material. It should be noted that a fair presentation of the risk does not need to be contained in only one document or oral presentation.

A fair presentation of risk requires that every material representation about a fact must be substantially correct and every material representation about an expectation or belief is made in good faith.

It should be noted that if [Name of firm] make the insurer aware that further enquiries are necessary and they do not follow up on this then the Act does not require the insured to disclose circumstances if:-

* It diminishes the risk.
* The insurer knows it:- An insurer will know something only if it is known to one or more of the individuals who participate, on behalf of the insurer, in the decision whether to take the risk and if so on what terms.
* The insurer ought to know it: - An insurer ought to know if, an employee or agent of the insurer knows it and ought to have passed on the relevant information to an individual or, the information is held by the insurer and is readily available to an individual who participates in the decision whether to underwrite the risk.
* The insurer is presumed to know it:- an insurer is presumed to know things which are common knowledge and things which an insurer offering this class of insurance would reasonably be expected to know in the ordinary course of business.
* It is something to which the insurer waives information.

It is noted that the insurer should be able to find out some information from within their own organisation. In reality insurers already hold information about the risk itself or the type of risk in general.

#### What our client is expected to know (knowledge of the insured)

What our client is expected to know will vary depending on the size and complexity of the business.

A client who is an individual will obviously be expected to know what they themselves know! But also what is known to one or more of the individuals who are responsible for the insured’s insurance which may include the knowledge of [Name of firm].

A client who is not an individual is expected to know what is known to one or more of the individuals who are:-

1. part of the insured’s senior management team, or,
2. responsible for the insured’s insurance.

Businesses are now a lot more complex than they were in 1906 with knowledge spread right the way across organisations. It is unreasonable to expect every material fact known by an intern or engineer to be available to those purchasing insurance but, insurers do need this information to price and evaluate the risk.

It is expected that a client/the insured ought to know what could be revealed by a reasonable search of information available. Information includes information held within the insured’s organisation or by any other person such as the insured’s agent or a person for whom cover is provided by the contract of insurance. What constitutes a *‘reasonable search’* will be determined by the size and complexity of the business. The safest approach is for a client to assume that the insurer holds no prior knowledge.

A client is not expected to know confidential information known to an individual if the individual is the insured’s agent and the information was acquired by the insured’s agent through a business relationship not connected with the contract of insurance.

Depending on the size and complexity of the risk [Name of firm] may find it necessary to meet with more than one person at the insured’s. It will be essential to involve people who know the risk, people who can present the information and senior people who can sign the information off as accurate. If the business has multiple sites each site should be visited. It is important the insured understands the new disclosure process and is aware of the information submitted to insurers. It is recommended that copies of risk presentations and meeting notes are sent to the client for clarification and that the commercial customer is handed a copy of the Important Information Sheet explaining the duty of fair presentation.

#### Knowledge: General

Reference to an individual’s knowledge includes not only actual knowledge but also matters which they suspected and could have substantiated but instead they deliberately refrained from confirming them or enquiring about them.

#### Consumers (Consumer Insurance (Disclosure and Representations) Act 2012)

Consumers no longer have a duty to disclose material facts it is up to [Name of firm] in conjunction with insurers to ask the right questions.

The importance of asking the right questions has always run alongside the duty of disclosure. However, inline with ICOBS 5.1.4 to ensure all material facts are disclosed, firms are now required by law to ask appropriate questions.

Consumers have a duty to take reasonable care to answer questions fully and accurately. The standard of care required is that of a reasonable consumer. However, if [Name of firm] or the insurer are aware of particular characteristics or circumstances relating to a consumer these are to be taken into account.

Where we are acting for a consumer, this will be taken into account in deciding if the consumer has taken reasonable care. Factors that indicate we are acting as the agent for the consumer include:-

* Undertaking to give impartial advice to the consumer.
* Conducting a fair analysis of the market.
* We are paid a fee as opposed to commission.

[Name of firm] needs to make sure we advise consumers of their duty to take reasonable care to answer questions fully and accurately. We must not underplay this duty. We must explain the consequences of misrepresentation to consumers. Explain that failure by the consumer to comply with an insurer’s request to confirm or amend particulars given is capable of being a misrepresentation for the purposes of this Act and may result in a claim not being paid in full or the policy being voided.

Websites that have default answers/make assumptions are no longer acceptable. Assumptions must be accompanied by a tick box which will ensure that consumers have to actively confirm the assumption to be true.

We need to be aware of blanks left in proposal forms. Insurers are likely to argue that any blanks will be taken as a representation that there is nothing relevant to disclose therefore it is important that we check proposal forms diligently before they are submitted and raise any questions with the consumer.

Demands and needs statements must clearly state the details on which the risk has been underwritten. Generic demands and needs statements will not meet this requirement.