Regulation of Insurance Intermediaries

Insurance Selling and Administration
CP187

The FSA has today published a consultation paper CP187 setting out its revised proposals for regulating insurance selling and administration in response to comments made during the consultation on CP160. CP187 also contains drafts rules. Comments are required by 30th September 2003. The final rules will be published in January 2004 CP187 can be downloaded from the FSA website (300+ pages). A twelve page guide is also available, and can be found below.

The key elements of CP187 are:

**Customer Classification** – the FSA has accepted the Association’s arguments that a clear distinction should be drawn between personal and commercial customers. The proposed differentiation between private (ie personal and commercial <£1m turnover) and non private customers has been dropped. Personal customers (known as retail customers in FSA parlance) are natural persons acting for purposes outside of their trade business or profession.

**Status Disclosure** – the amount of information to be provided to customers at initial contract has been reduced and the standard form has been dropped.

**Product Disclosure** – the timing of the various disclosure requirements have been amended to more closely reflect the sales process.

**Commission Disclosure** – disclosure will be on request. Unfair inducements will be prohibited. The CP contains comments about volume overrides and profit-sharing agreements (p41/42) and we would particularly welcome your thoughts on this section.

Reference is also made to grossing up (p27) and again your views would be welcome.
Cancellation Rights – a 14 day cooling off period is proposed for all personal contracts.

Claims Handling – some small changes have been made to the proposals set out in CP160.

Long Term Care Insurance – will be treated as an investment product, a separate CP will be issued in September.

‘Higher Risk Products’ – the proposed categorisation of PMI, critical illness and income protection as ‘higher risk’ products has been dropped.

Complaints – internal procedures and record keeping requirements will be imposed. Intermediaries will be brought within the Ombudsman Service. A further consultation paper will be issued later in the year.

Money Laundering – general insurance intermediaries will not be brought within the scope of the FSA’s money laundering rules.
1 Introduction

1.1 We (the Financial Services Authority or FSA) have published a Consultation Paper (CP187 Insurance selling and administration and other miscellaneous amendments), setting out draft rules for regulating the selling and administration of certain insurance contracts. This guide gives a brief summary of our decisions and explains where you can find out more about the consultation. This guide is only a summary: if you want to know the detail you need to look at our draft rules in CP187.
1.2 CP187 is available on our website (www.fsa.gov.uk/pubs/cp/187) and from our publications orderline: 0845 608 2372. The first copy is free (additional copies are £30 each).

1.3 Let us know your views on the new proposals and on the draft rules by 30 September 2003. If you have any comments, please send them to us:

- by electronic submission, using the form on our website at: www.fsa.gov.uk/pubs/cp/cp187_response.html;
- by email to cp187@fsa.gov.uk; or
- by post to: Eleanor Platt
  High Street Firms Division
  Financial Services Authority
  25 The North Colonnade
  Canary Wharf
  London E14 5HS

Where possible, we would appreciate responses by email. In this case there is no need to send in a hard copy as well.

Tel: 020 7066 0888 (CP187 Helpline number)
Fax: 020 7066 9716
Email: cp187@fsa.gov.uk

It is our policy to make all responses to formal consultations available for public inspection unless the respondent requests otherwise. The names of all non-confidential respondents will be published.

This guide contains several key terms and expressions that are explained below:

**Distance non-investment mediation contract** – a contract to provide mediation services in relation to non-investment insurance contracts

**Non-investment insurance contracts** - a collective term for both general insurance contracts and pure protection contracts, but not long-term care insurance.

**Durable medium** - a form that allows the storage of information in a way that is accessible for future reference, and allows the information to be reproduced without changes. This includes paper, floppy disks, CD-ROMs, DVDs and hard drives where emails are stored.

**Concluding a contract** - a contract is concluded when one party (the customer or the insurer/intermediary) accepts an offer made by the other, e.g. when a customer accepts an insurer’s quotation.

**Policy summary** - a written document that our draft rules require firms to give to retail customers, setting out the main benefits and limitations of the policy, and other information.

**Distance sales** – sales that are not conducted face-to-face e.g. telephone, internet, post.
2 Insurance regulation – the scope and timetable

2.1 In December 2001, the government announced that we would be responsible for regulating the selling and administration of non-investment insurance contracts. This will begin on 14 January 2005.

2.2 In preparing for this responsibility, we published CP160 *Insurance selling and administration: the FSA’s high-level approach to regulation*. When drawing up the draft rules for consultation in CP187, we considered the responses we received on CP160, and the results of our research into the costs and benefits of our proposals.

2.3 Our draft rules take into account the following directives:

- Insurance Mediation Directive (IMD);
- Distance Marketing Directive (DMD);
- Third Non-Life Directive;
- Consolidated Life Directive; and

2.4 Once we have received and considered feedback on CP187, we will publish a final rulebook in January 2004. We will call this rulebook the “*Insurance: Conduct of Business sourcebook*” (abbreviated to ICOB). ICOB will be part of our *Handbook of Rules and Guidance*. Other parts of the *Handbook* will also apply to firms doing business in non-investment insurance contracts. For convenience, ICOB will contain a guide setting out which parts are relevant to firms doing non-investment insurance business.

2.5 CP187 is one of a series of Consultation Papers that are relevant to firms doing non-investment insurance business. Table 1, below, shows our timetable for consulting on and publishing rules and the other CPs that are relevant.

Table 1: Timetable of publications

<table>
<thead>
<tr>
<th>Topic</th>
<th>Publication</th>
<th>What next?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory requirements for non-investment insurance firms</td>
<td>CP174 <em>Prudential and other requirements for mortgage firms and insurance intermediaries</em> (March 2003). This contains draft rules on capital requirements, PII cover, handling client money etc.</td>
<td>We will publish the results of this consultation in the third quarter of 2003, along with near-final rules adapting our Handbook for insurance intermediaries.</td>
</tr>
<tr>
<td>Application fees for authorisation for non-investment insurance intermediaries and fees for varying permissions</td>
<td>CP180 <em>Fees for mortgage firms and insurance intermediaries</em> (April 2003).</td>
<td>We will finalise our approach to authorisation application fees and variation of permission fees and publish the results of this consultation in the third quarter of 2003.</td>
</tr>
<tr>
<td>Requirements for the selling and administration of non-investment insurance</td>
<td>CP187 <em>Insurance selling and administration and other miscellaneous amendments</em>. This contains draft conduct of business rules and feedback on CP160 (to which this guide refers).</td>
<td>We will publish final rules on insurance selling and administration in January 2004.</td>
</tr>
</tbody>
</table>
### 3 Customers and products

#### Customer types

3.1 Our draft rules differ depending on whether the firm is dealing with:

- a retail customer - defined as a policyholder or potential policyholder acting outside their trade, profession or business; and
- a commercial customer - defined as a policyholder or potential policyholder who is not a retail customer.

3.2 The exception to this is our rules on complaints (see Section 11 of this guide), where we plan to continue to use the existing definition of ‘eligible complainant’ in our *Handbook*. This includes:

- private individuals;
- commercial customers with a group annual turnover of less than £1 million;
- a charity with an annual income of less than £1 million; and
- a trustee of a trust with a net asset value of less than £1 million.

#### Long-term care insurance

3.3 We have decided that long-term care insurance (LTCI) should be regulated like an investment product. It is a complex product and there is scope for significant detriment to a potentially vulnerable group of customers. We will publish a separate CP on our proposals for LTCI in September 2003, so it is not covered in this guide or CP187.

### Table: Regulatory and Administrative Matters

<table>
<thead>
<tr>
<th>Topic</th>
<th>Publication</th>
<th>What next?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory reporting for intermediaries operating within the non-investment insurance, mortgage and retail investment markets</td>
<td>We will publish a consultation paper on regulatory reporting requirements in Summer 2003. This is the information that firms will have to report to us concerning their non-investment insurance activities.</td>
<td>We will finalise regulatory reporting requirements and publish the results of this consultation in the first quarter of 2004.</td>
</tr>
<tr>
<td>Authorisation of non-investment insurance intermediaries and variations of permission for authorised firms</td>
<td>We will make application packs available to firms in the last quarter of this year.</td>
<td>We will start taking applications for authorisation and variations of permission in the first quarter of 2004.</td>
</tr>
<tr>
<td>Annual fees for non-investment insurance intermediaries</td>
<td>Further consultation on annual fees will be included in the feedback to CP180 and in our standard fees CP in January 2004.</td>
<td>We anticipate that annual fee rates will be set for the first time in May 2005.</td>
</tr>
</tbody>
</table>
4 Status disclosure

4.1 Status disclosure is information that firms must give to customers about themselves. The draft rules require certain information to be provided to a customer at various times, as required by the various directives.

4.2 Table 2 below summarises what information, under our rules, both insurers and intermediaries need to disclose to retail customers. The information for telephone sales differs from other sales as the DMD has different requirements for telephone sales.

4.3 The IMD and the DMD both require this information to be given on a durable medium. However, there are three exceptions, which we have incorporated into the draft rules:

- where the contract is concluded by telephone we require only the information in the first two rows of Table 2 below to be given on initial contact;
- where immediate cover is necessary, in which case all the information in Table 2 below can be given orally before the contract is concluded; and
- where the customer requests it orally, in which case all the information in Table 2 below can be given orally before the contract is concluded.

4.4 In each of these cases, the draft rules require that all the information in Table 2 below must be given to the customer on a durable medium immediately after the contract is concluded.

<table>
<thead>
<tr>
<th>Table 2: Information to be provided to retail customers by intermediaries and insurers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial contact disclosure for telephone sales only – see note 1</strong></td>
</tr>
<tr>
<td>The name of the firm and, if the contact is initiated by the firm, the purpose of the contact.</td>
</tr>
<tr>
<td>The name of the person in contact with the customer and his link with the firm.</td>
</tr>
<tr>
<td><strong>Before the customer incurs liability to pay any fees</strong></td>
</tr>
<tr>
<td>Any fees for advice or for arranging the contract (this requirement falls away if the only charges are product-related charges, which is the normal case at present).</td>
</tr>
<tr>
<td><strong>Before conclusion of the contract</strong></td>
</tr>
<tr>
<td>Name and address of the firm and, where relevant, the name and address of the appointed representative.</td>
</tr>
<tr>
<td>The firm’s statutory status (that it is authorised and regulated by the FSA).</td>
</tr>
<tr>
<td>How to check the FSA register to confirm the name, address and statutory status of the firm.</td>
</tr>
<tr>
<td>In relation to the contract provided, the range of insurance undertakings on whose products the firm has provided advice or information.</td>
</tr>
<tr>
<td>For intermediaries only:</td>
</tr>
<tr>
<td>(a) Whether the intermediary has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in an insurance undertaking.</td>
</tr>
<tr>
<td>(b) Whether an insurance undertaking or parent of an insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the intermediary.</td>
</tr>
<tr>
<td>How to complain to the firm and that complaints can subsequently be referred to the FOS.</td>
</tr>
<tr>
<td>Compensation arrangements if applicable, including the extent and level of cover. This is in relation to the service provided and not the insurance contract (which is covered by our product disclosure proposals).</td>
</tr>
<tr>
<td>[Note: The extension of the Compensation Scheme to cover the services provided by intermediaries is subject to consultation in CP174.]</td>
</tr>
</tbody>
</table>

Note 1: The DMD allows only this information to be disclosed for telephone sales.
4.5 When dealing with a commercial customer, the draft rules state that intermediaries must give the customer all the information in Table 2, except the information for telephone sales. An insurer dealing with a commercial customer needs only to provide the information on fees.

4.6 Firms who are acting only as introducers will need to give a cut-down version of the information in Table 2.

**Disclosure of information to retail customers on distance non-investment mediation contracts**

4.7 If there is a distance non-investment mediation contract, the intermediary must give a retail customer not only the information set out in Table 2 but also information on the service being provided, for example the main characteristics of the service, the total price and whether or not there is a right of cancellation.

5 **Advising and selling standards**

5.1 We have decided to categorise sales into advised and non-advised. An advised sale occurs where the customer is given an opinion or recommendation to buy or sell a specific non-investment insurance contract. Non-advised sales occur when the sales process only involves providing information and no advice.

5.2 The two sales categories have different requirements within the draft rules, as set out below. These requirements apply to intermediaries and to insurers unless otherwise stated.

**Advised sales**

- the recommended product must be suitable to meet the customer’s demands and needs; and
- the customer must be given a statement setting out the reasons for the recommendation, as well as a statement of his demands and needs.

**Non-advised sales**

- the customer must be given a statement of his demands and needs, unless the policy is sold by an insurer directly to a commercial customer.

5.3 The demands and needs statement and reasons for a recommendation must be given to the customer on a durable medium, before the contract is concluded. However, it can be given orally where:

- the contract is concluded by telephone;
- the customer requires immediate cover; or
- the customer requests the information be given orally.

In all these cases, it must be provided on a durable medium immediately after the conclusion of the contract.
5.4 We have included guidance to accompany the draft rules, which explains that firms may be able to meet the requirement for a demands and needs statement in a minimalist way. For pet insurance, for example, the statement might say that ‘your demands and needs are those of a pet owner wishing to ensure that the veterinary needs of your pet are met now and in the future’. A firm could also meet the demands and needs requirement by getting the customer to tick boxes on an application form, relating to their demands and needs.

6 Training and competence

6.1 We have decided that:

- all staff advising retail customers should meet our full training and competence requirements, as set out in our Training and Competence sourcebook. This includes rules on recruitment, training, attaining and maintaining competence, supervising and record-keeping (but there will be no mandatory examination requirement); and

- all other staff will be subject to our training and competence ‘Commitments’. This means that firms will need to ensure that individuals are (and remain) competent for the work they do; that they are appropriately supervised; that their competence is regularly reviewed; and that the level of competence is appropriate to the nature of the business.


7 Financial promotions and product disclosure

Financial promotions

7.1 Non-investment ‘financial promotions’ are, broadly speaking, advertisements for non-investment insurance contracts. We already regulate some financial promotions for non-investment insurance contracts; the others will be subject to the requirements of other bodies, such as the Advertising Standards Authority, the Independent Television Commission and the Radio Authority. There will be no change to the scope of promotions we regulate. Those promotions caught by our rules will need to be clear, fair and not misleading and will be subject to requirements on comparative advertising. We are consulting on some new guidance to give some examples of what we mean by the ‘clear, fair and not misleading’ rule.

Product disclosure

7.2 Our draft rules require certain information and documents to be provided at various stages of the sales process, depending on the type of customer and the medium in which the sale is made. Generally under our rules, responsibility for the content of documents rests with insurers, and responsibility for providing documents to the customer rests with intermediaries, or insurers when selling directly.
7.3 The documents and information required by our rules for retail customers are set out in Table 3.

Table 3: What do our rules require for retail customers?

<table>
<thead>
<tr>
<th>Information</th>
<th>Detailed contents</th>
</tr>
</thead>
</table>
| Policy summary       | Policy details, including:  
|                      | • the main features and benefits;  
|                      | • significant and unusual exclusions;  
|                      | • cross-references to the policy document; and  
|                      | • other information.                                                                                                                                |
| Price information    | The total price, with the premium separated from any fees and charges, and from the price of other goods and services. When the policy is sold with other goods and services, it must be made clear to the customer whether the insurance is obligatory. |
| How to claim         | How to notify a claim under the policy and what information must be provided when a claim is notified.                                             |
| Policy document      | All the terms and conditions.                                                                                                                        |
| Renewal              | Whether renewal of the policy will be invited (or not invited). Details of any changes to policy terms and inform the customer of their right to request a new policy document. |
| Mid-term changes     | Changes to terms or price.                                                                                                                           |

7.4 What information firms will have to give to retail customers in a sale and when it needs to be given, varies depending on the sales channel:

- **Face-to-face sales** – firms must give the policy summary and price information to the customer on a durable medium before the contract concludes. But firms can send the policy document and details of how to claim after the contract concludes.

- **Distance sales where it is practical to give the information on a durable medium (e.g. postal and internet sales)** – firms must give the policy summary, price information, details of how to claim and the policy document to the customer before the contract concludes.

- **Distance sales where it is not practical to give information on a durable medium (this includes telephone sales)** – firms must give the policy summary and price information to the customer orally or by some other means. They must then provide the policy summary, price information, details of how to claim and the policy document to the customer on a durable medium immediately after the contract concludes.

7.5 Other information must be given to retail customers as follows:

- **Mid-term adjustments** – information on the change must be given to the customer on a durable medium in good time before the change takes effect, unless the customer instigates the change. In this case it may be provided on a durable medium after the change takes effect if it is not possible to give it before. But the firm should still explain the implications of the change before it takes effect, orally or another way.

- **Renewals** – the information in Table 3 must be provided to the customer on a durable medium 21 days before the policy expires.
7.6 Table 4 contains the information it is proposed that firms are required to provide to commercial customers at various stages of the sales process.

Table 4: What do our rules require for commercial customers?

<table>
<thead>
<tr>
<th>What stage?</th>
<th>What Information?</th>
<th>When?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-sale</td>
<td>Enough information to enable the commercial customer make an informed decision about the proposed contract.</td>
<td>Before conclusion. The information given may vary, depending on the commercial customer’s knowledge and experience.</td>
</tr>
<tr>
<td></td>
<td>Details of premium, fees and charges.</td>
<td>Before conclusion.</td>
</tr>
<tr>
<td>Post sale</td>
<td>Policy document.</td>
<td>Promptly after conclusion.</td>
</tr>
<tr>
<td>Renewal</td>
<td>Notice of intention to invite renewal (or not).</td>
<td>In good time before expiry. We are also consulting on whether this should be done 21 days before expiry.</td>
</tr>
</tbody>
</table>

8 Commission disclosure, unfair inducements and excessive charges

Commission disclosure

8.1 Our draft rules only apply to insurance intermediaries when dealing with commercial customers. They will, on request, have to disclose their commission plus any commission received by any affiliated companies.

Unfair inducements

8.2 Our draft rules will prevent insurers and intermediaries from offering, giving, soliciting or accepting an inducement if it is likely to conflict to a material extent with any duty that the firm or recipient firm owes to its retail or commercial customers. The draft rules do not prevent volume overrides and profit-sharing agreements, providing they are not unfair. But we are asking for views about whether there are any features of inducements that we should prevent because they are unfair, so as to give firms more certainty about this rule.

Excessive charges

8.3 Our draft rules prevent insurers and intermediaries from making excessive charges to their retail customers. The guidance on this rule states that when firms consider whether a charge is excessive, they should:

- compare charges elsewhere for similar services;
- consider the degree to which the charge is an abuse of the trust the customer has placed in the firm; and
- consider the nature and extent of the disclosure of the charges to the customer.

8.4 Our draft rule would apply to charges made on top of the premium by an insurer or intermediary (including any charges for mid-term adjustments), but would not apply to the premium itself or the commission that forms part of the premium.
9 Cancellation rights for retail customers

9.1 Our draft rules apply to insurers and their retail customers. They require retail customers to be given a cancellation period of 14 days for general insurance contracts and distance non-investment mediation contracts, and 30 days for pure protection contracts. The cancellation period starts from:

- the day after the day of conclusion of the contract for general insurance contracts and non-investment intermediation contracts, or the day after the customer was informed that the contract was concluded for pure protection contracts; or

- if later, the day after the customer received the full policy documentation on a durable medium.

9.2 The draft rules permit the insurer to charge a retail customer for the service it has actually provided for general insurance contracts and distance non-investment mediation contracts, but no charge can be made for pure protection contracts.

10 Claims handling

Insurers’ responsibilities

10.1 For claims made by retail customers, the draft rules and guidance will require insurers to:

- handle claims fairly and promptly;
- give a customer reasonable guidance to help him make a claim under his policy;
- respond promptly to a notification of a claim by a retail customer with information on how the claim will be handled;
- keep a customer reasonably informed about the progress of his claim;
- explain why a claim is being refused or the amount offered differs from the amount claimed, giving the customer the option of receiving this information in writing; and
- settle a claim promptly once settlement terms have been agreed.

10.2 For claims made by commercial customers, the draft rules and guidance will require insurers to:

- handle claims fairly and promptly;
- keep a commercial customer reasonably informed about the progress of his claim; and
- settle the claim promptly once settlement terms have been agreed.

10.3 The draft rules will also incorporate some parts of the Association of British Insurers (ABI) Statement of General Insurance Practice and Statement of Long-Term
These rules will prevent insurers from refusing liability for retail customer claims on the grounds of:

- non-disclosure of a material fact that the customer could not reasonably be expected to disclose;
- misrepresentation, unless it was a deliberate or negligent misrepresentation of a material fact; or
- breach of a warranty or condition, where the circumstances of the loss are unconnected to the breach, unless fraud is involved.

Where an intermediary has delegated authority from an insurer to handle claims, the insurer will remain responsible for complying with these rules.

**Intermediaries’ responsibilities**

The draft rules require intermediaries to act with due care and skill when acting for a customer in relation to a claim. Intermediaries will also be required to disclose conflicts of interest (e.g. if they are also acting for the insurer or another party) and, where there is a conflict of interest, to obtain the customer’s prior consent before acting for him in relation to a claim.

**Complaints**

**Complaints handling**

Insurers already must comply with our complaints handling rules when dealing with an eligible complainant (see paragraph 3.2). We propose to extend these rules to intermediaries.

Intermediaries will be required to set up internal procedures for complaints handling within set timescales and to set up and maintain complaints records. You can find more information in the *Dispute Resolution: Complaints sourcebook* (DISP) in the Handbook section of our website at http://www.fsa.gov.uk/vhb/html/disp/DISPtoc.html

The draft rules will require intermediaries to reply to and register complaints received from other persons who are not eligible complainants. We are required by the IMD to impose this rule on intermediaries, but we have decided not to impose this rule on insurers.

**Financial Ombudsman Service (FOS)**

We have decided that all intermediaries who engage in regulated activities in relation to non-investment insurance contracts must be subject to the Compulsory Jurisdiction of the Financial Ombudsman Service (FOS). This will give eligible complainants access to an independent dispute resolution facility. We and the FOS are currently planning to consult around the turn of the year on the charges that should apply.
12 Money laundering

12.1 Our approach to money laundering varies depending upon the type of firm and the insurance products involved. Our proposals will not change the existing obligations on insurers. They will continue to be subject to our Money Laundering rules when they provide long-term insurance contracts (including pure protection policies), but not general insurance contracts.

12.2 We are proposing that our rules will not apply to intermediaries selling general insurance contracts or pure protection contracts.

13 The combined initial disclosure document

13.1 Part II of CP187 contains our approach to initial disclosure for firms that sell different retail financial products together. If a firm sells regulated mortgages (loans secured by a first legal charge on residential property) and retail investment products (such as collective investment schemes or investment-based life assurance) together, we propose that firms will have to provide a customer with a combined initial disclosure document for both types of products.

13.2 If a firm sells a non-investment insurance contract along with a mortgage or an investment contract, the firm can choose whether to add information on the non-investment insurance contract to the initial disclosure document.

13.3 We have published some samples of combined initial disclosure documents on our website at www.fsa.gov.uk/pubs/cp/cp187_cidds.

14 Further information

If you need further copies of this guide please phone our Publications orderline on 0845 608 2372, quoting reference 187, or download from it from our website www.fsa.gov.uk/pubs/cp/187

The Financial Services and Markets Act 2000 is the statute that gives us our powers. You can get a copy by calling The Stationery Office on 0870 600 5522.

The following publications give relevant background information, and are all available on our website at www.fsa.gov.uk or in paper copy from our orderline on 0845 608 2372:

CP159 – Appointed Representatives – extending the current regime
CP160 – Insurance selling and administration – the FSA’s high-level approach to regulation
CP174 – Prudential and other requirements for mortgage firms and insurance intermediaries.
CP180 – Fees for mortgage firms and insurance intermediaries

For more information on our initial disclosure proposals for firms selling mortgages and retail investment products, see:

CP186 – Mortgage regulation: Draft conduct of business rules and feedback on CP146 (May 2003)
CP166 – Reforming Polarisation: Removing the barriers to choice – Including feedback on CP121 (January 2003)