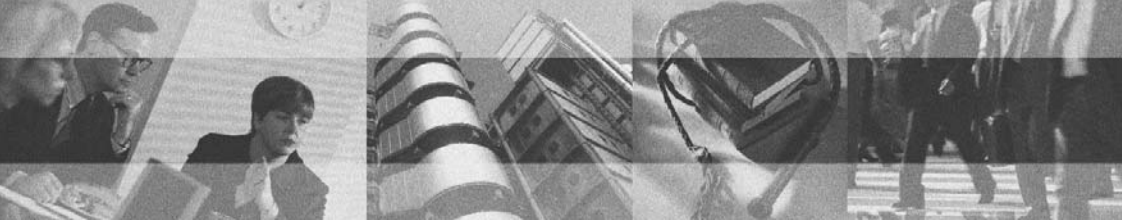


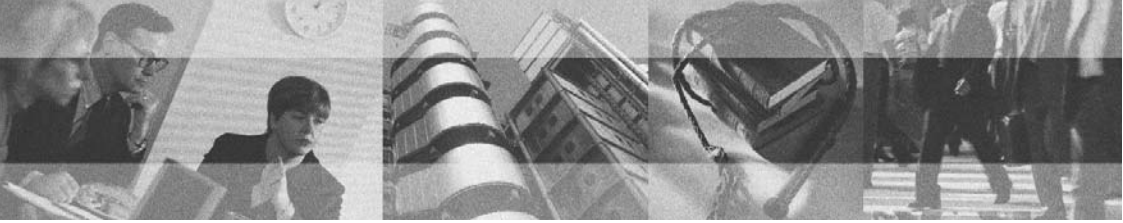
THE HAZARDS OF REGULATING ACTIVITIES, NOT PRODUCTS

by Heather Thomas, Heather Thomas Consulting

The Financial Services Authority ("FSA") regulates activities, not products. This statement, accepted as a basic tenet of financial services regulation in the UK, is not entirely true and has resulted in two unfortunate consequences for the insurance industry and its regulator. It is not entirely true, because the FSA does have a role in the content of insurance policies as a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999. The two unfortunate consequences are: first, that it has led the insurance sector to neglect the reform of the products; and, secondly, that the FSA has been driven to address the more serious factors undermining consumer protection by concentrating on process rather than substance. This article will look at the extent to which the FSA is relying on the powers conferred on it by the Office of Fair Trading as a qualifying body and will take the particular example of payment protection insurance to demonstrate the limitations of relying on process to address problems of substance. The selling process under Chapters 4, 5 and 6 of the Insurance: Conduct of Business Sourcebook ("ICOBS") will be described to illustrate these points.

Insurance mediation in the UK has had a chequered history of regulation. In the period immediately preceding the implementation of the Insurance Mediation Directive (2002/92/EC) ("IMD") on 14 January 2005, the industry was unregulated. Given that more or less any asset or activity is capable of being insured and that insurance can be very profitable, at least for the distributor, many businesses engaged in selling it. Car dealers, retailers of large and small electrical equipment, affinity groups, professional and trade associations, banks, removers, auctioneers, property agents – all could and did sell insurance as intermediaries. The transition, overnight, from no regulation to full scale participation in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/2256) ("RAO") and the FSA's inaptly named Handbook, was never going to be and, in the result, was not, a smooth one. The Perimeter Guidance ("PERG") Chapter 5 still addresses some of the difficult issues which arose, among them: the purchase of insurance on a group wide basis by a corporate head office; tacit renewals; the line between merely introducing business and arranging deals under Article 25 RAO – these and other tricky questions of demarcation teased many an adviser and some of them still do.

On 27 January 2010 the European Commission wrote to the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) requesting advice on how the Insurance Mediation Directive (IMD) might be revised. The original IMD's implementation was far from uniform across the EU. Many countries were late in implementing the regime. There is significant divergence in the approach taken by different countries. There have been complaints about gold-plating and different national requirements applied under the general good provisions. In short, the IMD has not created a single market for insurance and reinsurance intermediaries. It is likely, although the letter does not say this, to have created more barriers owing to the introduction of regulations where previously there was fewer or none. The Commission has requested CEIOPS to provide technical advice by the Summer of 2010 on a number of areas. None of them touches on product regulation.



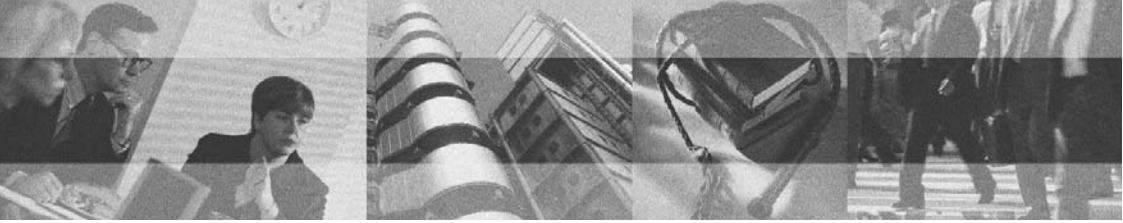
Activities are not conducted in a vacuum and the RAO has always related the activity to be regulated to broad categories of product such as various types of investment and specified contracts of insurance. The selling of contracts of general insurance, which was newly regulated with the implementation of the IMD, are defined by reference to a list in Schedule 1 Part 1 of the RAO. Contracts of long term insurance, which were already regulated prior to the implementation of the IMD are listed in Schedule 1 Part 2 of the RAO. ICOBS addresses the mediation of contracts of general insurance other than reinsurance (which is excluded from ICOBS) and "pure protection contracts" which are life insurance policies containing no element of investment and no surrender value beyond the return of the premium if the policy is a single premium policy. Intermediaries selling pure protection contracts have the option of complying with the Conduct of Business Sourcebook instead of ICOBS.

In considering the basis on which the selling of general insurance contracts should be regulated, the FSA has not been consistent in its approach to "gold plating" the IMD. Under pressure from the insurance mediation industry to establish a level playing field between intermediaries and insurers who sold directly to the customer, the first version of the Insurance: Conduct of Business section of the Handbook applied to insurers as well as to insurance intermediaries. The second edition, ICOBS, effective on 5 January 2008 with an implementation date of 5 July 2008, does not apply to insurers save for specified products and the rules relating to claims handling. The FSA has also had a change of mind on the regulation of travel insurance, which was not initially regulated when sold as part of a package. Packaged travel insurance sold to individuals or small businesses, was brought within the RAO on 30 June 2008. Generally, ICOBS became less prescriptive than its predecessor, but in some respects, most notably "protection policies", of which more below, regulation tightened considerably when ICOBS was introduced.

The mere specification of which products are within regulation does not affect the design, scope or expression of those products. The FSA has no authority under the Financial Services and Markets Act 2000 ("FSMA") to engage with the insurance industry in how policies are drafted, consistent with the UK approach to the regulation of activities not products. The FSA does have power to intervene, but this power derives from its appointment as a Qualifying Body (enforcement authority) by the Office of Fair Trading ("OFT") under the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083), as amended by SI 2001/1186 and SI 2001/3649 (the "Unfair Terms Regulations"). Its role is to consider the fairness of contract terms in financial services contracts for carrying out any regulated activity, not just insurance mediation.

The Unfair Terms Regulations apply only to consumers. Any terms which reflect mandatory statutory or regulatory provisions, or the provisions or principles of international conventions to which the EEA States or the EU as a whole are party, are not with the scope of the Unfair Terms Regulations. In addition, terms written in plain, intelligible language cannot be reviewed for fairness within the meaning of the Unfair Terms Regulations if the terms relate to:

- the definition of the main subject matter of the contract; or
- the adequacy of the price or remuneration, as against the goods or service supplied in exchange.



European legislation has parallel provisions prohibiting the prior approval of or systematic notification of general and special policy conditions and scales of premiums (see for example Article 8(3) paragraph 2 of the First Non-Life Directive, which will be replaced under the Solvency II Directive by equivalent provisions in Article 81)

When the FSA reviews from a fairness perspective terms which come within these two excluded categories in the Unfair Terms Regulations to consider whether they are written in plain, intelligible language, the test is applied from the perspective of a consumer, not from the perspective of a lawyer or industry specialist. The Unfair Contract Terms Regulatory Guide ("UNFCOG") section of the Handbook sets out the FSA's role and approach and links to statements of good practice. The role includes the enforcement actions of seeking undertakings and injunctions. The FSA describes its role and gives specific examples of good and bad practice in a dedicated part of its website, which is well worth review when considering compliance with the Unfair Terms Regulations: http://www.fsa.gov.uk/Pages/Doing/Regulated/uct/index.shtml. Examples of undertakings which have been provided to date are:

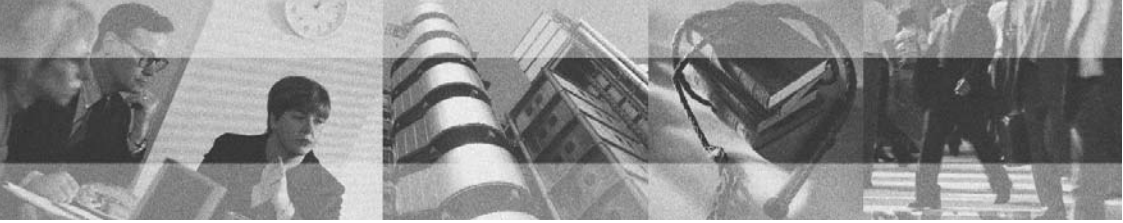
- exclusions from fire and theft coverage which are unclear in extent;
- the basis on which an insurer could unilaterally change the premium under a lifetime care plan contract (the power to make unilateral changes is a particular target);
- the basis upon which insurance comparison websites exclude their liability;
- the use of the term "consequential loss".

In this way, in a role which derives from its appointment by the OFT and not under the FSMA, the FSA directly intervenes in the drafting of policy terms. The main limitation on this intervention imposed by the Unfair Terms Regulations is the exclusion of the main subject matter and the price/service relationship. Also, it is a negative role i.e. a reaction to an offensive term, rather than a constructive one. It is also somewhat random and depends to a large extent on the receipt of complaints.

Co-operation with the OFT goes beyond the FSA's role as a Qualifying Body. Their joint action with respect to payment protection insurance (PPI) is long established, well-publicised and not over yet. The publication of ICOBS marked a significant step in the FSA's role in the campaign. ICOBS toughened the regime relating to protection policies, i.e. either a pure protection contract or a payment protection contract sold to a consumer (ICOBS 4.2.1R). A pure protection contract is a long term insurance contract where:

- the benefits are payable only on death or for incapacity due to injury, sickness or infirmity;
- the contract has no surrender value or the consideration is a single premium and the surrender value is the same as the premium; and
- there is no provision for changing the contract to undermine the two conditions above.

A payment protection contract (referred to as PPI in this article) is one which is a non-investment insurance contract which has elements of a general insurance contract and contains provisions described as enabling a policyholder to protect his ability to continue to make payments due to third parties.



The PPI campaign highlights the practical difficulty of achieving consumer protection where there is no direct power to regulate the product itself, but only the process by which it is sold (in the case of the FSA) or the competitive environment (in the case of the OFT). The campaign against PPI began in September 2005 when the National Association of Consumer Advice Bureaux made a super complaint about PPI to the Office of Fair Trading (OFT) under the Enterprise Act 2002 ("EA"). On 8 December 2005 the OFT announced that it would carry out a market study. The study was launched on 3 April 2006. The OFT published in February 2007 its reasons for making a market investigation reference to the CC under section 131 of the EA. Meanwhile, the FSA had been pursuing its own investigations, mainly through mystery shopping. Significant weaknesses were exposed in the selling process. By October 2006 the FSA was firmly of the view that "the market is flawed". Notwithstanding its assertion in the September 2007 Thematic Update of its PPI work and elsewhere that "a suitably tailored product can provide valuable protection for consumers", the FSA had and has five issues with PPI:

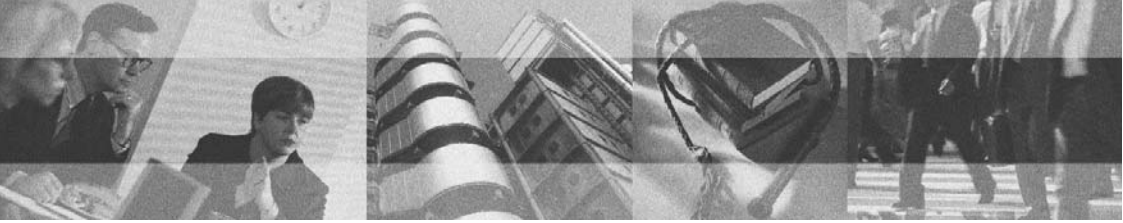
1. purchases are infrequent, so that customers do not learn about the product, making it hard to correct what the FSA called "prevalent information asymmetries";
2. customers do not focus on the purchase, because PPI is usually a secondary purchase (with credit) and sometimes a tertiary purchase (with goods and credit) and the firm usually takes the initiative to make a sale: PPI is sold not bought;
3. the product is not homogenous and is "inherently complex";
4. firms do not properly explain to customers the duty to disclose material information prior to the purchase, particularly a need to disclose pre-existing medical conditions; and
5. given PPI's profitability and customers' lack of focus, firms may sell PPI to customers without regard to eligibility or suitability.

The FSA has brought 22 enforcement actions in respect of the sale of PPI against banks and other retail operations. Fines have been substantial, but the number and scale of the enforcement actions do not seem to have operated as an effective deterrent, much to the evident frustration of the FSA.

The CC has conducted various interesting and exhaustive studies into the PPI market, noting, particularly, its profitability to the banking distributors. By July 2009 the CC was in the process of a public consultation on a draft PPI Order, made under the EA, which proposed that there should be three prohibitions:

- a prohibition on the of PPI to a consumer prior to a credit sale being made;
- a prohibition on point of sale PPI; and
- a prohibition on the sale of single premium PPI, which is generally acknowledged to be the type of policy most frequently mis-sold.

The CC intended to finalise the PPI Order in the Autumn of 2009 with a view to it becoming law on a phased basis between April and October 2010. The timetable and indeed the scope of the draft Order have been disrupted by an industry challenge. Barclays Bank made a successful appeal to the Competition Appeal Tribunal in October 2009 (decision at http://www.catribunal.org.uk/files/Judg_1109_Barclays_16.10.09.pdf) on the basis of loss of



convenience to the consumer of a point of sale purchase. The CC's response to the judgment is to be found at http://www.competitioncommission.org.uk/inquiries/ref2010/ppi_remittal/pdf/ppi_remittal.pdf and their latest timetable is at http://www.competitioncommission.org.uk/inquiries/ref2010/ppi_remittal/pdf/remittal_timetable.pdf. The timetable shows consultation on a draft Order taking place in the Autumn of 2010, which implies quite intense activity in the intervening period. Some distributors of PPI have, in the meantime, volunteered a ban on the sale of single premium PPI.

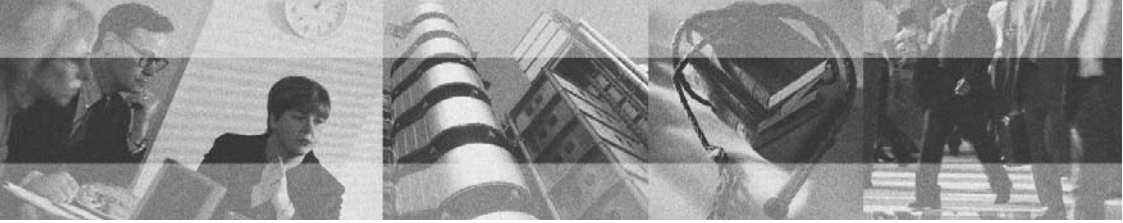
Despite the actions taken by the OFT/CC and the FSA, the Financial Ombudsman Service (FOS) received so many complaints about PPI that in 2008 it raised PPI complaints as a "wider implications issue" with the FSA. This is a formal process (www.wider-implications.info) by which the FOS, the FSA, the OFT or any person or body with a legitimate interest, may raise an issue which may be new and which may affect:

- a large number of consumers or firms;
- the financial integrity of a large business;
- FSA rules or guidance issued by the FSA or the OFT; or
- a common business practice.

Once such an issue has been raised, the FSA will confer with the FOS and the OFT as appropriate to consider what action to take. The fact that the FOS has raised the issue of the sale of PPI as a "wider implications issue" does not of itself give the FSA more powers than it has already, but it may mean that the FSA will adopt a different approach to the use of those powers given the evidence of individual complaints to the FOS. In September 2009 the FSA issued a consultation paper (CP09/23 at http://www.fsa.gov.uk/pubs/cp/cp09_23.pdf) about the way in which complaints about the sale of PPI should be managed. The Policy Statement on the handling of PPI complaints has been delayed to early 2010 owing to the number of responses which it received.

The OFT and the FSA publish a joint report or action plan describing their initiatives. The most recent is the plan dated December 2009 (to be found at http://www.oft.gov.uk/shared_oft/general_policy/674008/OFT-FSA-update.pdf). It states that the CC is reconsidering its proposed measures in the light of the successful Barclays' appeal referred to above. Its aspiration is that "the combination of the FSA's work to improve sales conduct, and the OFT and the CC's work on competition, [will lead] to lasting improvements in consumer outcomes in PPI markets."

In short, this is a chronic, significant and notorious consumer issue, which is not yet resolved, some five years after the original super complaint. In order to stem the consumer damage and reduce the burden on the FSA, the OFT and the FOS, the main remediation should be that PPI policies are properly sold in the first place. As indicated above, the FSA made significant changes in ICOBS in January 2008 to seek to secure this outcome. This article is not a comprehensive summary of ICOBS, but it will go into some detail on the rules and guidance applicable to sales of general insurance contracts to illustrate how the parts specific to PPI and to pure protection contracts seek to impose greater protection on consumers. In some cases the rules apply to any customer and in others the rules apply to consumers only. The rules are found at ICOBS:

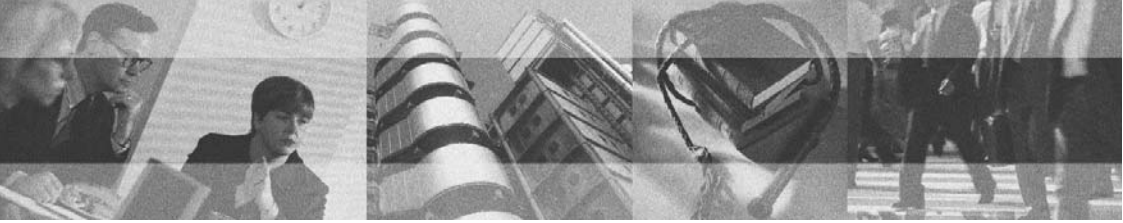


- Chapter 4 – Information about the firm, its services and remuneration;
- Chapter 5 – Identifying client needs and advising; and
- Chapter 6 – Product information.

ICOBS Chapter 4 represents Principle 7, Communications with clients (A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading) (ICOBS 4.2.2G). A firm has to indicate to all customers: its name and address; its inclusion on the FSA register and how to verify this; whether it has a holding of more than 10% in an insurer or whether an insurer has such a holding in the firm; and how to make a complaint, including to FOS (ICOBS 4.1.2R). The firm must also indicate the type of service it provides. There are three possible categories of service provision: the firm may give advice on the basis of a fair analysis of the market; it may be under a contractual obligation to conduct insurance mediation business with one or more insurers; or it may be in neither of the first two categories (ICOBS 4.1.6R). ICOBS Chapter 4 also addresses fee disclosure, which is not dealt with in this article.

ICOBS 4.2 contains the first batch of additional requirements for the sale of PPI and pure protection contracts. If a firm provides elements of status disclosure orally, then it should do so for all aspects of the information as well as observing the distance marketing disclosure rules set out at ICOBS 3.1.14R (ICOBS 4.2.3G). When selling PPI and pure protection contracts, both insurers and intermediaries must take reasonable steps to ensure that a customer who does not benefit from a personal recommendation (i.e. a non-advised sale) realises that he is responsible for establishing whether the policy meets his demands and needs (ICOBS 4.2.4 R (1)). If the process is oral, then the information has to be provided to the customer in writing or another durable medium no later than immediately after the conclusion of the contract (ICOBS 4.2.4R(2)). If any information is provided orally on any main characteristic of a policy during a non-advised sale, then the reasonable steps referred to under paragraph (1) include providing an oral explanation of the customer's responsibility (ICOBS 4.2.4R(3)). The main characteristics of a policy include its significant benefits, its significant exclusions and limitations, its duration and price information (ICOBS 4.2.4R(4)). Already, therefore, the pressure is on the insurer or the intermediary to convey detailed information to the customer and to exert a judgment as to which terms of these "inherently complex" products should be conveyed to customers.

ICOBS Chapter 5 reflects Principle 6, Customers' interests (A firm must pay due regard to the interests of its customers and treat them fairly). It addresses eligibility to claim benefits, particularly because customers frequently and unexpectedly find themselves ineligible to qualify for benefits, especially under PPI terms and conditions. If a firm finds at any time while arranging a policy that parts of the cover apply and others do not, then it must inform the customer so that the customer can make an informed decision (ICOBS 5.1.1G(2)). For protection contracts a firm must take reasonable steps to ensure that a customer is eligible for the benefits provided by the policy and should tell the customer if there are any benefits for which he would not be eligible (ICOBS 5.1.2 R). Reasonable steps include checking whether the customer meets qualifying requirements for different parts of the protection contracts (ICOBS 5.1.3G). Firms are expected to have in mind the restriction on rejecting



claims for non-disclosure set out in ICOBS 8.1.1R(3). Customers must be informed of the duty to make disclosure of all material facts and the consequences of failing to do so (ICOBS 5.1.4R(1)). Customers must be asked clear questions about the any matter which might be material to the insurer (ICOBS 5.1.4R(2)).

It is important at this point to make clear the difference between advised and non-advised sales. An advised sale is made where the seller goes beyond the provision of mere information and makes a personal recommendation. The line between the two can be hard to determine, especially if the sale is made in person as opposed to over the internet. Most firms selling complex products, including PPI policies, sensibly take the view that it is not possible to make the sale on a non-advised basis: it is just too difficult to be confident that sales personnel will not cross a line. It is important because, if an advised sale is made, then there is a greater onus on the firm to ensure that the advice given is suitable for any customer relying on its judgment as evidenced by the demands and needs statement. The process is governed by ICOBS 5.2 and 5.3.

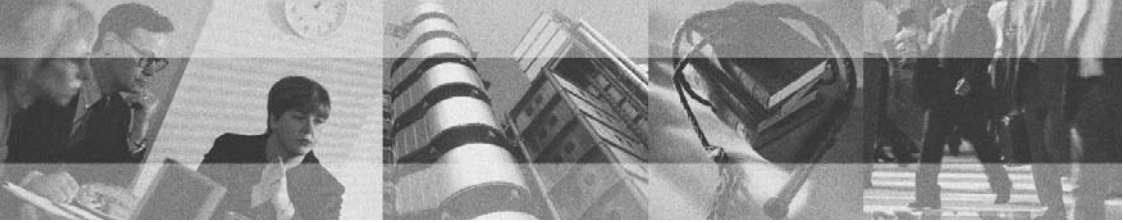
ICOBS 5.2 deals with the statement of demands and needs. Its requirements apply to an insurance intermediary selling any insurance product other than a connected travel insurance policy and to an insurer when the insurer makes an advised sale of either a PPI product or a pure protection contract i.e. a sale during which the insurer makes a personal recommendation to a consumer with respect to these products (ICOBS 5.2.1R). The statement must address, prior to the conclusion of the contract, the basis of information provided by the customer, the customer's demands and need and the underlying reason for any advice given to the customer in relation to the policy (ICOBS 5.2.2R(1)). The detail will depend on the complexity of the policy (ICOBS 5.2.2R(2)). ICOBS 5.2.3R contains provisions relating to the manner of communication of the statement of demands and needs. Guidance at 5.2.4G provides that the format of the statement is flexible where no advice is given.

Where firms are making advised sales i.e. they are making a personal recommendation and not merely imparting information, they must take reasonable care to establish the suitability of the product for any customer who is entitled to rely on the firm's judgment (ICOBS 5.3.1 R). In the case of selling PPI or pure protection contracts, this rule is amplified by guidance at ICOBS 5.3.2 G. Under this guidance firms must:

1. establish the customer's demands and needs from information which is readily available and accessible to the firm and by obtaining information from the customer, including details of other insurance cover enjoyed by the customer;
2. take reasonable care to ensure that the demands and needs are met, having regard to the limit of cover, cost, exclusions, excesses, limitations and conditions; and
3. inform the customer if any of his demands or needs are not in fact met.

For all contracts, any firm which gives advice on the basis of a fair analysis of the market (under ICOBS 4.1.6R), has to analyse a sufficiently large number of available policies to judge the adequacy of the recommended policy and justify the advice given (ICOBS 5.3.3R).

The product information regime in ICOBS chapter 6 is likewise more prescriptive for PPI



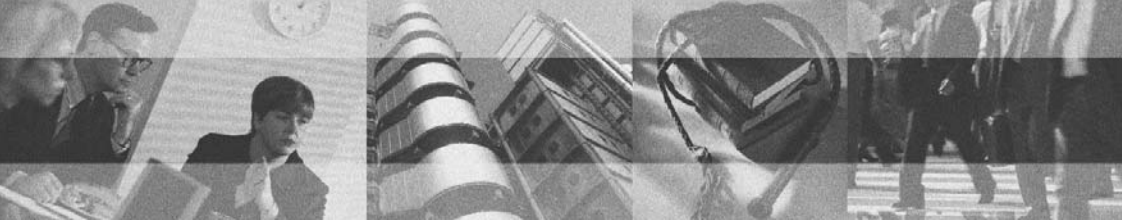
and pure protection contracts. ICOBS 6.1 and 6.2 apply to all contracts; ICOBS 6.3 and 6.4 apply to PPI and pure protection contracts.

The provisions at ICOBS 6.1.1R to 6.1.4R allocate responsibility for the production of information and documents as between the insurance intermediary and the insurer. ICOBS 6.1.5R requires a firm to take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in comprehensible form so that the customer can make an informed decision. Guidance at 6.1.7G amplifies the level of information which is expected to be given depending on such variables as the nature of the customer, the policy terms, its overall complexity, whether it is bought in connection with other goods and services, the distance communication information requirements and whether the same information has previously been provided to the customer. A policy summary is optional for contracts which are neither PPI nor pure protection contracts (6.1.10G). Evidence of cover has to be provided promptly (6.1.11G). Where a policy is bought by a consumer in connection with other goods or services the premium must be disclosed separately and the consumer must be advised if the policy is compulsory (6.1.13R).

ICOBS 6.2 addresses the requirements of various non-life insurance directives to make specific disclosures, particularly the applicable law, the complaints procedure, the location of the insurer and the disclosure, in detail, of cancellation rights.

ICOBS 6.3 and 6.4 set out the additional requirements for PPI and pure protection contracts. The table of information at ICOBS 6.3.1 R required to be given in respect of a pure protection contract is mandated by the Consolidated Life Directive (2002/83/EC), but the provisions governing both PPI and pure protection contracts at ICOBS 6.4 have been devised by the FSA. It is this section which seeks to overcome the "prevalent information asymmetries" identified by the FSA in the selling of PPI. These provisions stand out for their relative length in ICOBS and the number of rules as opposed to guidance. The provisions cover the information to be given to a customer pre and post contract.

Pre contract, any reference during an oral sales process to a main characteristic of the product must be supplemented by information about all the main characteristics (significant benefits, exclusions, limitations, duration and price information) (ICOBS 6.4.2R(1) and 6.4.3G(1)). Further guidance on what amounts to a significant exclusion or limitation is given at 6.4.3G(2): it is one which would affect the customer's decision to buy. Any term which relates to a significant feature or benefit or which might adversely affect a benefit would be significant. The customer must be able to take an informed decision, but should not be overloaded with information and likewise information should not be obscured (ICOBS 6.4.2R(2)). A policy summary (no longer required for other products) must be provided prior to the conclusion of the contract (ICOBS 6.4.4R). The firm must draw to the attention of the customer the importance of reading the documentation before the expiration of the cancellation period (now 30 days rather than 14) (ICOBS 6.4.5R(1)). A firm must do this orally if information has been provided orally on any main characteristic of a policy (ICOBS 6.4.5R(2)). Price information must be provided in a way which enables the customer to relate it to a regular budget (ICOBS 6.4.6R) and will likely include the total premium, or the basis for calculating 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 any review;
2. any fees, charges or taxes payable through the firm; and
3. a statement of any taxes not payable through the firm (ICOBS 6.4.7G).

Price information should be given in good time prior to the contract in a durable medium as well as orally (ICOBS 6.4.8R). Price information must enable a "typical customer" to understand the "typical cumulative cost" of taking out the policy. This does not need to be part of the oral disclosure, but this element of the price information must not be undermined by any information given orally (ICOBS 6.4.10G(2).

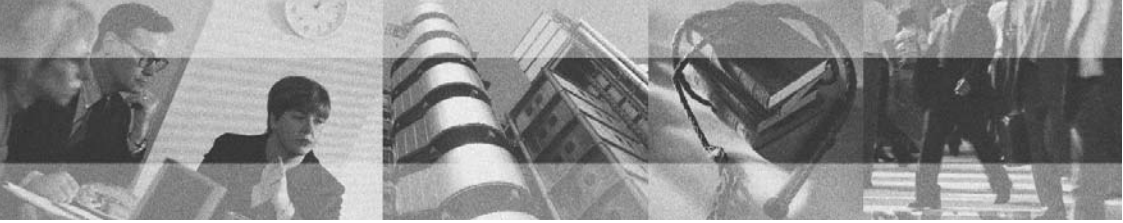
ICOBS 6.4.9R applies to non-revolving credit agreements: the additional repayments associated with the insurance policy must be made clear within the price information and must reflect any difference in the duration of the policy compared with the credit agreement. The firm must make clear the fact that the premium will be added to the amount of the credit and will be subject to an interest charge.

Mid-term changes are dealt with at ICOBS 6.4.11R and 6.4.12G. The rule is that a customer must be advised in a durable medium in good time before the change takes place about changes to the premium (unless there has been a previously disclosed formula) and about any other change, including the implication of the change where necessary. The guidance requires the firm to explain any changes in benefits or to the significant or unusual exclusions and should consider whether the amended policy is consistent with the original or whether there is any issue under the Unfair Terms Regulations.

The scale and severity of these provisions reflect the FSA's unease with PPI following its significant work on the product by its enforcement function, its thematic reviews and market research and the work done in tandem with the FOS and the OFT/CC. One interesting question is why this particular product is proving so intractable to regulatory remediation. Part of the answer may lie in its inherent profitability (identified by the CC). Firms may be reluctant to undermine a golden goose by imposing costly additional procedures which are likely to reduce the probability of purchase by the customer. That said, much of the problem surely lies with the nature of the product. PPI, a derivative of credit insurance, was identified at an early stage by the FSA as inherently complex and far from homogenous. The policies are hedged around with eligibility criteria, conditions, waiting periods, exclusions and payment calculations: reading and understanding a typical PPI policy is not for the faint hearted. Small wonder that the average retail sector employee, selling PPI alongside an unsecured loan, often as a tertiary product, struggles to provide a coherent, comprehensive and accurate oral explanation to a customer.

The situation is therefore not likely to improve soon. The FSA has power under the Unfair Terms Regulations only to challenge peripheral terms. Its toughening of the selling process in ICOBS does not seem to have brought about any improvement in the incidence of mis-selling.

The scale of complaints to the FOS is still an issue. The OFT/CC, obliged under their remit to approach PPI from the narrow perspective of anti-competitive practices, has had limited



success in securing voluntary bans on the sale of single premium PPI while seeking to introduce subordinate legislation. The insurers, normally the junior commercial partner in the relationship with the big distributors/intermediaries, have adopted the role of the dog that did not bark. The insurers are, however, the key to the problem if they can be persuaded to simplify the product and or at least make it more transparent. In the absence of such an initiative, the mis-selling issues are likely to persist regardless of the scale of the actions taken by any of the regulators.