



Joseph Thompson
Strategy & Competition
Financial Conduct Authority
25 The North Colonnade Canary Wharf
London E14 5HS

1 June 2017

Dear Joseph,

AFM Response to FCA consultation CP17/07, IDD Implementation 1

1. I am writing in response to this consultation paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:
 - comment on the proposals, and stress the impact of short implementation dates for the Directive.
2. The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a defined community (on a not for profit basis). Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of £16.4 billion, and employ nearly 30,000 staff¹.
3. The nature of their ownership and the consequently lower prices, higher returns or better service that typically results, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion. In particular, FCA and PRA are required to analyse whether new rules impose any significantly different consequences for mutual businesses².
4. In addition, the Bank of England and Financial Services Act 2016 now provides an additional Diversity clause for FiSMA, to require the PRA and FCA to take account of corporate diversity and the mutual business model in all aspects of their work³.

¹ ICMIF, <http://www.icmif.org/global-mutual-market-share-2013>

² Financial Services Act 2012, section 138 K: <http://www.legislation.gov.uk/ukpga/2012/21/section/24/enacted>

³ <http://www.legislation.gov.uk/ukpga/2016/14/section/20/enacted>

5. The Insurance Distribution Directive implements significant change to the operational structure of the UK insurance market, as it does in other parts of Europe. With extensive conduct rules already in the UK, the broad framework is already in place. Hence, for AFM members, and probably insurers in the UK more generally, it is the second FCA consultation which provides the more detailed technical implementation rules, that will have greatest effect.
6. As we have communicated to FCA previously, the short timescale between the Policy Statement to follow that second consultation, and the final implementation of IDD, presents a real challenge to small insurers. We are equally aware that FCA's own timetable is impacted by delayed decisions from Europe. The likely consequence is that if firms are to comply fully and in the spirit of the new regime, they will have to put significant resources into play over a short period, raising costs and risking diversion of management attention.
7. We suggest FCA takes a pragmatic approach to early implementation of the revised rules by firms. More generally, we urge FCA to explore how it can make its implementation approach proportionate, so that the desire to improve transparency and consumer protection is not outweighed by excessive disclosure materials, or costs of implementation that raise prices to consumers.
8. Our answers to the questions raised in the consultation are attached. We would welcome the opportunity to discuss further the issues raised by our response.

Yours sincerely,

A handwritten signature in black ink, appearing to be the initials 'AB' followed by a stylized flourish.

Chief Executive
Association of Financial Mutuals

Responses to specific questions raised in the paper

Q1: Do you have any comments on our proposed approach to the application of the IDD?

We agree that wherever appropriate FCA retains existing rules, and replaces current conduct requirements with those covered under the IDD where they have a different effect.

Q2: Do you agree with our proposed approach to incorporating the IDD knowledge and competence requirements? If not, please explain why.

The IDD brings new requirements for record-keeping for CPD. Smaller organisations will accept the need for ongoing development of their staff, but many will not have extended detailed record-keeping to all relevant ex-employees, and may not have facilities for the retention of records or to make those records available to employees. We suggest FCA highlights clearly these requirements to firms covered by the IDD, and takes a constructive approach to supporting implementation in a proportionate way.

Q3: Do you agree with our proposed PII requirements? If not, please explain why.

FCA has also explored PII arrangements for intermediaries in its recent consultation on FSCS funding reform. We responded to that consultation, with concerns that the current FCA approach to supervising intermediaries, as well as their PII rules, do not do enough to prevent increasing levels of compensation scheme claims.

Q4: Do you have any comments on our intended approach to implementing the IDD requirements concerning the protection of client assets, in particular:

- *The mandatory application of CASS 5 to reinsurance mediation?*
- *Narrowing the scope available options for reinsurance contracts, for example only allowing risk transfer?*
- *The potential application of CASS 5.8 to reinsurance mediation?*

We have no comments other than we agree that the general approach to application via the FCA handbook is appropriate.

Q5: Do you agree with our proposals for implementing the IDD requirements in relation to complaints and out-of-court redress? If not, please explain why.

We agree with the approach.

Q6: Do you agree with our proposed amendments to ICOBS 2? If not, please explain why.

As AFM members are not-for-profit and mutual insurers, the 'customer's best interest' rule is a concept they are comfortable with- and it is a principle that is hardwired into

their operating model. As the consultation states, the current FCA rules are not significantly different from the requirements of the IDD. However, the process of adapting existing disclosure materials to comply with the IDD requirements should not be dismissed as insignificant, particularly for those parts of the distribution chain that had not previously produced each aspect of the new disclosure material.

Given the very short time that is likely to be available to firms, between the final rules being provided and the planned implementation date, the work required will be significant, particularly where firms will need to produce new KIDs or IPIDs, and overhaul all financial promotion material.

Table 4 in Appendix 2 suggests implementation of the general principles will be deliverable at 'minimal cost'. However, with regard for example to financial promotions, draft ICOBS 2.2 rules in Annex F to Appendix D, sets a higher bar than the current rules: from example, from 'take reasonable steps' to 'ensure that' the financial promotion is 'clear, fair and not misleading, and that 'marketing communications are always clearly identifiable as such'. Firms will need to review carefully how current and new disclosure materials comply.

We are not aware of any AFM members that were asked to contribute to the survey covering this issue as set out in your cost benefit analysis, though we have heard views from some of our members that contradict the views of those firms that were surveyed.

It would be helpful in the second consultation for FCA to spell out what is expected, and whether this requires an overhaul and re-printing of all marketing literature to ensure that it is unambiguously branded as such.

Q7: Do you agree with our proposed amendments to ICOBS 4? If not, please explain why.

We agree with the proposal to incorporate changes on pre-contract disclosure in the IDD into ICOBS 4.

We note the comments drawn from FCA's work on behavioural economics, exploring the difference between information and advice. We note in this context that FCA's recent guidance consultation GC17/4⁴ may reduce the benchmark of what advice is, with the consideration by FCA of 'streamlined advice'.

In paragraph 5.13 FCA highlights the need for making information meaningful to customers. Similarly, proposed changes to COBS 14 consulted on in CP17/6, at around the same time as this consultation and also emanating from the smarter communications work, introduce the need to ensure information does not disguise, diminish or obscure important information⁵. This suggests that, for example, it would not be appropriate for an insurer to add the KID alongside the existing KFD (or similar materials). As this is not covered in this consultation, we would welcome FCA clarity on this issue in the second consultation.

⁴ <https://www.fca.org.uk/publication/guidance-consultation/gc17-04.pdf>

⁵ See Appendix 7: <https://www.fca.org.uk/publication/consultation/cp17-6.pdf>

Q8: Do you have any comments on the illustrative examples set out in Table 1 (in relation to remuneration disclosure)?

We consider the examples of remuneration disclosure in Table 1 are helpful and relevant.

Q9: Do you have any comments on our proposal to amend the Glossary definitions of 'durable medium', 'fee' and 'remuneration'?

The approach taken by FCA is consistent with the requirements of the IDD and other directives. It is not entirely clear in relation to the term durable medium, whether the extent of FCA's review of the meaning of this term is limited to removing the references to floppy disks. We assume there would be no further changes, and this being the case we agree with the revision proposed.

Q10: Do you agree with our proposed amendments to ICOBS 5? If not, please explain why.

We agree. The principles around establishing the level of cover, the amount of excess and the nature of usage in paragraph 5.44 are helpful for non-advised sales.

Q11: Do you have any comments on the illustrative examples set out in Table 2 (in relation to requirements concerning the customer's insurance demands and needs)?

The illustrative examples in Table 2 are helpful, though it would be useful to have a further example which covers the point on generic statements in paragraph 5.47.

Q12: Do you agree with our proposed amendments to ICOBS Chapter 6 to incorporate the IDD cross-selling requirements? If not, please explain why.

We agree.

Q13: What are your views on the provision of an IPID or other form of pre-contractual disclosure for commercial customers? Are there particular commercial customers (such as SME customers) that have different information needs?

We consider this aspect of the rulebook should be consistent with other aspects, so that FCA's definition of retail customers should apply across its rules. This would exclude the provision of the IPD to most commercial customers. More generally, we remain concerned that, with no detailed coverage of the IPID yet by FCA, that it avoids in its second implementation consultation doing anything other than reading across the EIOPA proposal as set out in February.

Q14: What are your views on the practical considerations of format and content if IPID requirements were to apply to some or all commercial customers?

As above.

Q15: Do you agree with our proposal to extend the professional, organisational and prudential requirements to in-scope AIs? If not, please explain why.

Q16: Do you agree with our proposal to align the conduct of business regime for in-scope AIs with that for insurance intermediaries? If not, please explain why.

Q17: Do you agree with our proposal to extend the professional and organisational requirements to CTI providers? If not, please explain why.

Q18: Do you agree with our proposed conduct of business regime for CTI providers? If not, please explain why.

Q19: Do you agree with our proposals for authorised firms distributing through out-of-scope AIs? If not, please explain why.

We agree with FCA's approach, though as our members tend not to distribute products through AIs we have no specific views on this chapter.