



Association of British Insurers

## **CONSUMER INSURANCE (DISCLOSURE AND REPRESENTATIONS) ACT IMPLEMENTATION RECOMMENDATIONS**

### **Background**

The Consumer Insurance (Representation and Disclosure) Act 2012 will come into force on 6<sup>th</sup> April 2013. It removes the duty on consumers to disclose any facts that a prudent underwriter would consider material, and replaces this with a duty to take reasonable care not to make a misrepresentation. One of the factors to be taken into account when determining whether or not a consumer has “taken reasonable care”, is whether or not the questions asked of them at policy inception were clear and specific.

Following discussions with ABI members, the Financial Ombudsman Service, and the Financial Services Authority, we believe there are certain practices which are more likely to result in consumers making misrepresentations that are neither careless, reckless or deliberate. We therefore have a number of recommendations for all customer-facing communications, including online, telephone and face-to-face, for all insurance product lines in order to reduce this occurrence.

We recognise there is consumer demand for a quick sales process. However, this must also be balanced against the need to gather accurate information about a consumer, price the risk accurately, and thereby reduce the prospect of misrepresentation or have a claim turned down:

## **Requirement**

### **Documentation (High Priority)**

Document and communication changes should be completed for all new (and renewal) business from April 6<sup>th</sup> 2013 onwards. We recommend firms take legal advice on how their documentation should be updated in order to comply with the changes introduced by the Consumer Insurance Act 2012. In particular, firms should consider removing any references to a “duty of disclosure” from consumer-facing documentation or communications, including FAQs and sales scripts, as these words may confuse the consumer into believing they are still under a duty to volunteer information. Under the Consumer Insurance Act 2012, this duty will no longer exist, but instead they will be under a duty to take reasonable care not to make a misrepresentation. Consumers will also no longer be expected to have to guess what is “material” to the insurer. Instead, this can be inferred from the questions asked by the insurer. Therefore, firms who have not updated their documentation for all new personal lines business from 6<sup>th</sup> April onwards may be in breach of ICOBS and COBS rules on ensuring consumer documentation is not misleading. Firms may also wish to note that the Consumer Insurance Act defines a *consumer* insurance contract as being “wholly or mainly for purposes unrelated to the individual’s trade, business or profession”.

## **Recommendations**

### **Assumptions**

As with default answers, a long list of assumptions is more likely to lead to misrepresentations, as consumers are less likely to read each assumption and check it is correct. The FOS believe that assumptions should be used sparingly, and that where they *are* made, consumers should have to actively confirm the validity/truth of them.

We therefore recommend that the wording be as straightforward as possible, and that assumptions be accompanied by tick boxes requiring consumers to actively read them and agree that they apply to their circumstances.

We also recommend that as few as possible assumptions are listed together.

Highlighting to consumers the consequences of agreeing to an assumption that does not reflect their circumstances by way of an additional warning would also decrease the likelihood of a misrepresentation.

### **Default answers**

The ABI has received anecdotal evidence from consumers and the FOS that the use of default answers (i.e. pre-ticked, or defaulted to “yes” or “no” or another answer from a drop-down list) are more likely to lead to consumers entering incorrect information on online forms. In addition, where answers automatically return to the default answer when moving between internet pages, this likelihood is increased. When adjudicating complaints, FOS will be less inclined to recognise a customer’s misrepresentation as deliberate or reckless where this was by way of a default answer.

We therefore strongly recommend that all default (i.e. pre-ticked, or pre-chosen) answers be removed so that the consumer has to make an active choice as to which answer is correct for them.

### **Help text**

Sometimes important clarification about the information being requested for a certain question lies within the help text. Some online systems require the customer to click on an icon to see this information. Some provide the information if the consumer simply hovers over the icon. Other helptext boxes will automatically pop up when the consumer starts to answer the question i.e. when they click in the answer box. Where a complaint goes to FOS, firms using this last system are most likely to be able to defend against a claimant who misrepresents information. The ombudsman has indicated that where a consumer would have had to hover over or click on an icon to get the information, insurers may not be able to rely on the help text as a way of ensuring their questions were clear. Consumers may sometimes mistakenly think they do not need to view the helptext, when it may in fact be relevant to their situation.

We recommend that the use of help-texts for online question sets be as transparent and user-friendly as possible, bearing in mind the FOS view that the fewer steps a consumer must take to be aware of any important information, the better. We do recognise however that where the help text is merely providing ancillary information, prompts such as ‘what do we mean by this?’ or question mark icons can offer a helpful alternative.

Help texts regarded as most important include those on:

- Under-insurance,
- Un-occupied property,
- Previous claims, accidents and losses (both motor and property),
- Vehicle value,
- Main driver

## **Rolled-up questions**

Rolled-up questions (where two questions are asked together) lack clarity and make it difficult for consumers to answer truthfully when their answers to the separate questions within the rolled-up question would be different. An example of this might be asking who the policyholder and main driver is in the same question. Two different answers may be possible, and this can confuse the consumer.

We recommend that as far as possible, all questions should be asked separately.

## **Warning Signs**

Under the new Act, consumers will still be under a duty not to misrepresent. This can be reinforced by warning notices communicating to the consumer the need to answer questions honestly and to the best of their knowledge.

Consumers should be warned at the point of sale about the consequences of not taking reasonable care to honestly answer all questions. An example of this might be:

‘Please take reasonable care to answer all the questions honestly and to the best of your knowledge. If you don’t, your policy may be cancelled, or treated as if it never existed, or your claim rejected or not fully paid’.

At the start of proposal form, consumers should be encouraged to read all the help texts.

Questions asking consumers for their ‘sum insured’ should include a warning notice about the consequences of under-insuring.

## **Sufficient evidence**

Where a complaint is taken to FOS and the insurer wishes to argue that there was a qualifying misrepresentation, FOS will require evidence of the questions asked of the consumer and their responses. The Statement of Fact (SoF) is useful, and consumers should always be encouraged to check and confirm their details are correct. However, for online and telephone sales, producing a Statement of Fact (SoF) alone is less likely to prove sufficient evidence that a consumer deliberately, or even carelessly, misrepresented. This is particularly true where the SoF does not match the questions asked at point of sale. Firms are likely to be required to provide a recording of the phone conversation or a copy of the question set the consumer filled in online.

Insurers and distributors may therefore find it helpful to have records of question sets used at any given point of time and recordings of telephone calls.

## **Renewals**

At renewal, consumers may not always be aware of their need to inform the insurer if their circumstances have changed. Insurers will have a greater defence on mis-representation disputes if at renewal, the consumer is sent a copy of the Statement of Facts with a letter requesting that the customer inform the insurer if any of the information is incorrect. An additional warning about that failing to correct information may affect their claim may help encourage consumers to take action. The FOS also believe that giving examples of the types of changes the insurer is most interested in would provide even more clarity for the customer. These examples could also include a note mentioning that the list is not exhaustive.

### **Question sets**

FOS cases indicate that there are certain questions consumers buying motor or property insurance most often misunderstand. This can lead to a misrepresentation, and it may result in insurers having certain categories of customer unintentionally on risk. ABI members have discussed these issues, and agreed on wording that they believe should be used by insurance distributors for those questions. This does not however prevent insurers from continuing to develop and use their own wording to ensure it is clear and specific.

We therefore recommend that insurance motor and property question sets be amended to reflect at least the spirit, if not the letter, of the suggestions in Appendix A (motor) and Appendix B (property) below.

## Appendix A: Motor question set

ISSUE	INFORMATION NEEDED BY INSURERS	SUGGESTED QUESTION SET
<p><b>Main Driver:</b> The main driver is not always the same person as the policyholder. If the consumer is not asked a specific question around who the main driver is, insurers will not be able to decline claims on the basis of misrepresentation if, for example, it turns out that the policyholder is actually the parent of the main driver.</p>	<p>There should be an explicit question asking who the main driver is, rather than an assumption.</p> <p>Although this can be inferred where the proposer is the sole driver, it is important to clarify.</p>	<ul style="list-style-type: none"> <li>- Who is the main driver of this vehicle?</li> <li>- Additional help text should explain what insurers mean by “main driver”: <i>The main driver is usually the person who drives the vehicle most frequently.</i></li> <li>- Drop-down options should allow the consumer to select either the policyholder or stated additional driver(s).</li> </ul>
<p><b>Owner/Registered keeper:</b> Insurers often ask about the owner and registered keeper of a vehicle in the same question when the owner and registered keeper can be different people. If the consumer is not asked a specific question about this, insurers will not be able to decline claims on the basis of misrepresentation if, for example, the policyholder is the registered keeper, but their spouse is the actual owner.</p>	<p>Who the legal owner of a vehicle is.</p> <p>Who the registered keeper is.</p> <p>A comprehensive drop-down list of options (i.e. spouse, daughter, son etc.)</p>	<ul style="list-style-type: none"> <li>- Who is the legal owner of this vehicle?</li> <li>- Who is the registered keeper of this vehicle?</li> <li>- ABI Code list should be used for the drop-down options.</li> </ul>
<p><b>Convictions:</b> Insurers and distributors often only ask about motoring convictions. Fixed penalties are not technically convictions, but they are often considered by insurers to be material to the risk. If the consumer is only asked about motoring convictions, an insurer would have no legal right to refuse to pay a claim where a consumer had not told them about a fixed penalty, material as it might have been.</p>	<p>Any convictions, endorsements and fixed penalties endorsed on a licence in the last 5 years for all the named drivers on the policy.</p> <p>Any pending prosecutions or convictions for all named drivers.</p> <p>Any unspent non-motoring convictions for all named drivers</p>	<ul style="list-style-type: none"> <li>- Have you, in the last five years, had any motoring convictions, driving licence endorsements or fixed penalties or have you been disqualified from driving?</li> <li>- Do you have any pending prosecutions for any motoring offence?</li> <li>- Do you have any non-motoring convictions which are not considered spent, or any pending prosecutions?</li> <li>- Additional help text should explain what a spent conviction is: <i>A “spent conviction” is a</i></li> </ul>

		<p><i>conviction which, under the terms of the Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time. If however you have received a prison sentence of four years or more, your convictions will never become spent.</i></p> <ul style="list-style-type: none"> <li>- The Polaris conviction list should be used.</li> <li>- Questions should be asked for all known/named drivers.</li> </ul>
<p><b>Secondary Convictions:</b> Some online websites only allow the consumer to input primary convictions. It is important for insurers to have a complete set of motoring convictions, including secondary convictions, as this may make a difference as to whether they accept a risk or not.</p>	<p>All convictions should be included in the drop down options offered to consumers.</p>	<ul style="list-style-type: none"> <li>- All secondary convictions to be included in the drop-down options given to consumers.</li> <li>- Suggested help text: <i>The code for your conviction may be on your driving licence. If you are unsure of what your conviction is, please check with the DVLA for the code.</i></li> </ul>
<p><b>No Claims Discount:</b> Consumers are not often aware that most insurers won't accept No Claims Discounts (NCDs) that are more than a certain number of years old. They are also sometimes unaware that they can only use an NCD on one policy at a time, so they will simply answer "yes" to a question about whether or not they have an NCD. Had insurers known the NCD was much older, or being used for another policy, they might have charged a higher premium but under the Consumer Insurance Act, the insurer would not be entitled to amend the premium until the next renewal.</p>	<p>That the NCD bonus is not in use on another vehicle.</p> <p>How old the NCD is.</p> <p>The country in which the discount was earned.</p> <p>It is would also be useful to get the message across that insurers differ in their treatment of NCD.</p>	<ul style="list-style-type: none"> <li>- How many years No Claims Discount (NCD) have you earned/do you have?</li> <li>- Is the NCD bonus currently being used on any other vehicle?</li> <li>- In what country was your NCD earned?</li> <li>- Options: UK, EU, Other.</li> <li>- What is the expiry date of the policy on which you earned this NCD?</li> <li>- On what type of vehicle did you earn this NCD?</li> <li>- Options: car, motorcycle, van, other.</li> </ul>

<p><b>Previous claims, accidents and losses:</b> It is not often clear to consumers what they are being asked about with regards to previous claims, losses or accidents. If they fail to disclose an important loss because they are unsure what they are being asked, the insurer will have difficulty defending any decision not to pay a claim on this basis. Consumers are sometimes asked about whether an accident was their fault or not, but the insurer is more interested in whether the claim affected their NCD.</p>	<p>Any accidents, claims, losses or damages to any vehicle in the past 5 years for all drivers on the policy, whether or not a claim was made, and regardless of blame.</p> <p>This includes all types of claims, damage or accidents such as fire, theft, or damage to glass (e.g. windscreens, windows).</p> <p>Questions about the cost of the claim can be removed as consumers don't often have accurate ideas of cost.</p> <p>The list of claims circumstances should be fairly comprehensive.</p> <p>Whether the NCD (or protected NCD) was affected by the claim.</p>	<ul style="list-style-type: none"> <li>- Have you had or caused any accidents, claims or damage involving any motor vehicle (including car, motorcycle or van) in the past 5 years, whether or not a claim was made, and regardless of blame?</li> <li>- Suggested help text: <i>We need to know details of all types of damage and accidents such as fire, theft, glass, malicious damage; including details of all incidents where you were not at fault or were driving a different vehicle.</i></li> <li>- This question should be asked for all the drivers on the policy.</li> <li>- Questions about the cost of claims should be removed as consumers are not necessarily able to answer these accurately.</li> <li>- Any questions asking whether consumer was at fault for an accident should be removed.</li> <li>- Was your no claims discount (NCD) affected when this claim was made?</li> </ul> <p>We would encourage you to use Polaris' list of claims in populating your drop-down options as it is very comprehensive.</p>
<p><b>Modifications:</b> Consumers do not understand what is meant by "modifications", and may not disclose important modifications. This could result in the insurer having modified cars on risk without realising, and they would not be able to refuse to pay a claim if they discovered important modifications at claims stage.</p>	<p>Questions about modifications should include examples of the most common types of modifications so that consumers know what they are being asked.</p>	<ul style="list-style-type: none"> <li>- Has the vehicle been changed in any way from the vehicle manufacturer's standard specification? This would include: <ul style="list-style-type: none"> <li>• Changes to the bodywork, such as spoilers or body kits</li> <li>• Changes to suspension or brakes</li> <li>• Cosmetic changes such as alloy wheels or paint</li> <li>• Changes affecting performance such as changes to the engine management</li> </ul> </li> </ul>



		<ul style="list-style-type: none"> <li>system or exhaust system</li> <li>• Changes to the audio/entertainment system</li> </ul> <p>- Please be aware that this is not a full list of all possible changes- all changes made from the manufacturer's standard specification must be disclosed.</p>
<p><b>Vehicle Value:</b> When answering questions related to the value of their vehicle, consumers will often assume that this is the amount they will receive should something happen to their vehicle. This is not the case and is potentially confusing to consumers.</p>	<p>The estimated value of the vehicle</p> <p>The Purchase Price of the vehicle.</p>	<ul style="list-style-type: none"> <li>- What is the estimated value of your vehicle?</li> <li>- Suggested help text: <i>This is the cost of replacing your vehicle with another of the same make, specification (for example, the level of equipment found in your vehicle), model, age, mileage and condition as your vehicle was. Please note that the value you quote is not necessarily the amount of pay-out you will receive in the event of a claim.</i></li> <li>- What was the purchase price of the vehicle?</li> </ul>

## Appendix B: Property Question Set

ISSUE	INFORMATION NEEDED BY INSURERS	SUGGESTED QUESTION SET
<p><b>Previous claims, accidents and losses:</b> It is not often clear to consumers what they are being asked about with regards to previous claims, losses or accidents. If they fail to disclose an important loss because they are unsure what they are being asked, the insurer will have difficulty defending any decision not to pay a claim on this basis.</p>	<p>Any household (contents and buildings) claims, loss, damage or any incidents suffered in the last 5 years whether the loss, damage or incident was insured or not.</p> <p>All loss or damage suffered by either the proposer or anyone living in the property.</p> <p>Monetary value of loss, or claims value.</p>	<ul style="list-style-type: none"> <li>- Have you or anyone living with you made any household (buildings or contents or personal belongings) claims or suffered any loss or damage - whether insured or not - in the last five years?</li> <li>- Drop-down options can help consumers answer the question. An option could be: I've had a loss but did not make a claim.</li> <li>- Suggested help text: <i>You should include any incidents that resulted in damage to property, items being stolen or injury to other people. You should include these incidents whether or not you made a claim, and whether or not you were paid for that claim. Examples of incidents that insurers need to know about are: any claim, burglary, vandalism, fire, water or storm damage.</i></li> <li>- Where relevant, help text can include: <i>You should include losses of personal belongings such as mobile phones, even if no claim was made.</i></li> </ul>
<p><b>Occupancy:</b> If the consumer is not asked if the property to be insured is actually occupied at point of sale, and a burglary were to occur because a property was unoccupied, an insurer could not refuse to pay a claim if they hadn't asked anything about this. Consumers sometimes don't understand what is meant by 'occupancy'.</p>	<p>Whether the property is occupied at the point the policy is taken out.</p> <p>If not, when it is to be occupied.</p>	<ul style="list-style-type: none"> <li>- Are you currently occupying the property?</li> <li>- Suggested help text: <i>you are occupying the property if you are living in the property as your main home with enough furniture and facilities for daily normal living and sleeping purposes. Regular visits or occasional overnight stays do not constitute occupancy.</i></li> <li>- If no, how long before the property will be</li> </ul>

		<p>occupied?</p> <ul style="list-style-type: none"> <li>- Options: within 7 days, within 30 days, over 30 days</li> </ul>
<p><b>Contents value:</b> Insurers often ask how much people want to insure their contents for instead of asking what the replacement cost of the contents in the home is. Consumers often don't understand the consequences of under-insurance, and expect to get the full value they have insured their home for, rather than a proportion.</p>	<p>The replacement value of the home's entire content as new.</p>	<ul style="list-style-type: none"> <li>- How much would it cost to replace the entire contents (including valuables or high-risk items) of your home as new?</li> <li>- Suggested help text: <i>Contents are your household goods including furniture, furnishings (such as curtains and carpets) and all the personal property in your home. If you do not insure for the full amount, you may find that in the event of any loss, your claim will not be settled in full.</i> <ul style="list-style-type: none"> <li>- <i>Valuables include items of gold, silver or other precious metal, antiques, clocks, collections(of stamp, coins, medals etc.), furs, jewellery, works of art, watches.</i></li> <li>- <i>High risk items include audio equipment, binoculars and telescopes, musical instruments, photographic equipment, computers, DVD/TV/video equipment.</i></li> </ul> </li> </ul>
<p><b>Flooding:</b> Flooding, subsidence, heave and landscape questions often have references to 'surrounding areas' without defining what this means. A consumer might not disclose important information about local flooding because they don't misunderstand "surrounding areas".</p>	<p>Whether the property has ever flooded.</p> <p>How close to flood plains, rivers, trees etc. the property is.</p>	<ul style="list-style-type: none"> <li>- To the best of your knowledge, has your property ever flooded?</li> <li>- Drop-down options should include: never, in the last 5 years, 5-10 years ago, over 10 years</li> <li>- References to 'surrounding area' should be replaced by "within 400m of your property".</li> </ul>
<p><b>Bankruptcy:</b> Questions about bankruptcy are asked only about the proposer, not others living at</p>	<p>Whether the proposer or anyone living with them has ever be made bankrupt or had a county court</p>	<ul style="list-style-type: none"> <li>- Have you or anyone living with you ever been made bankrupt?</li> </ul>

<p>the property. This information could affect an insurer's decision to take on a risk.</p>	<p>judgment (CCJ).</p> <p>If yes, whether the bankruptcy has been discharged.</p> <p>Whether the CCJ has been paid.</p>	<ul style="list-style-type: none"> <li>- Has the bankruptcy been discharged?</li> <li>- Have you or anyone living with you been served with any county court judgements (CCJs) or other judgements in relation to debt?</li> <li>- Has the judgement been paid?</li> </ul>
---	---	--

**March 2013 (first published December 2012)**