

Consultation Response

5 June 2017

FCA CP17/7: Insurance Distribution Directive Implementation – Paper 1

- The Chartered Insurance Institute welcomes the transposition of the Insurance Distribution Directive (IDD), and looks forward to working with the FCA and Treasury in its implementation.
- We were actively involved in the discussions at the EU level that resulted in the Directive's provisions on professional standards. We participated in consultations on good supervisory practices led by the European Insurance and Occupational Pensions Authority (EIOPA) that formed the backbone of the IDD provisions.
- While we support the professional requirements set out, we have several points to note: First, the IDD is being introduced at the same time as the Senior Managers & Certification Regime which identifies additional requirements for staff roles carrying a higher risk.
- Second, the IDD 15 hours of CPD should be seen as a *minimum* standard for staff filling positions which have lower risk of harm to the public. Staff that hold qualifications and/or positions that carry higher risk such as Senior Management or Significant Harm Functions should be required to meet a stronger CPD regime.
- Finally, in terms of helping compliance, we encourage an approach which encourages firms to think more carefully about linking CPD to annual learning needs.

About the Chartered Insurance Institute

The Chartered Insurance Institute is the world's leading professional body for insurance and financial planning with over 125,000 members in 150 countries. Our Royal Charter remit is to secure and justify the confidence of the public in the insurance profession.

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Our overall views

Background of our work on the professionalism provisions

The CII has been actively involved in discussions leading to the current professionalism provisions within the Insurance Distribution Directive (IDD) since before the European Commission first consulted on a possible proposal

for a re-cast Insurance Mediation Directive in 2011.¹ We participated in the ensuing public debates about the role of enshrining professional standards at the EU level.

We then liaised with the newly-formed European Insurance & Occupational Pensions Authority (EIOPA) when it became clear that it was charged with not only providing technical input into the IMD-2's professionalism provisions but also creating its capacity to "develop EU-wide training standards" further to that organisation's founding Directive.²

- In September 2012, EIOPA published a stocktake of EU-wide professional standards, and we responding to this consultation.³ The challenge was that any attempt to harmonise EU-level professional standards need to reflect the wide range of approaches among member states.
- In November 2012, the CII sent to EIOPA a policy submission describing various approaches to improving knowledge and ability among distributors of insurance products, including minimum qualifications for practitioners, Continuing Professional Development (CPD), and Codes of Ethics. It also set out options for verifying these standards such as industry self-regulation versus professional body regulation versus supervisory regulation. It explored the pros and cons of each of the approaches and finally set out recommendations for developing a phased approach to professional standards regulation.
- In March-December 2013, EIOPA consulted on the creation of set of good supervisory practices regarding knowledge and ability requirements aimed at encouraging some degree of convergence on approaches to professional standards. The final document adopted many of the CII's recommendations, including developing a CPD scheme.⁴

This work by EIOPA's did much to inform the subsequent debates in the Parliament on developing the final provisions at Article 10(2) of the IDD. Although the Delegated Acts from the original IMD-2 text were subsequently removed, the CPD requirements were refined, as was the list of knowledge and competence requirements at IDD Annex I.

In view of this input into the debate, the CII is supportive of this requirement for all those distributing insurance to meet the 15 hours of CPD. We applaud this effort to introduce professional standards at an EU level and we will actively support firms in complying with it. However we point out that the IDD is being introduced at the same time as the Senior Managers & Certification Regime which identifies additional requirements for staff roles carrying a higher risk. Therefore the IDD 15 hours of CPD should be seen as a *minimum* standard for staff filling positions which have lower risk of harm to the public. Staff that hold qualifications and/or positions that carry higher risk such as Senior Management or Significant Harm Functions should be required to meet a stronger CPD regime.

Several opinion surveys suggest that customers assign high importance to the ethical conduct of the practitioners serving them. For example, in a survey of retail consumers conducted for the CII:⁵

- 80% said they were less likely to trust advice from a broker they believed was not committed to a clear code of ethics;
- Nearly 90% would not trust those who did not commit. The same number would expect them to be punished if they failed to do so and/or be more comprehensively regulated; and

¹ Until 2015, the present Insurance Distribution Directive (IDD) went under the title of the Re-cast Insurance Mediation Directive (IMD-2), in this consultation, the acronym appropriate to the date will be used.

² Art.9(d), Regulation (EU) 1094/2010 of the European Parliament and Council establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority). Adopted 24 November 2010 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0048:0083:EN:pdf>

³ EIOPA, [Report on a mapping exercise on Industry Training Standards applied by national competent authorities](#), 28 Sep 2012.

⁴ EIOPA, [Report on Good Supervisory Practices Regarding Knowledge and Ability Requirements for Insurance Product Distributors](#), 27 Nov 2013.

⁵ Several research projects including: CII Consumer Survey by YouGov, June 2009, sample size 2,064 adults in Great Britain; CII Consumer Survey by Opinium, April 2012, sample size 2,015 adults in Great Britain.

- Over 90% deemed it unacceptable that no insurance brokers are obliged to abide by a clear code of ethics. Just 3% thought this was acceptable.

In a 2011 survey for the CII of small and medium sized businesses:⁶

- 72% expected insurance brokers to be subject to disciplinary procedures if they fail to act ethically;
- 87% of respondents considered 'ethical behaviour' an important part of professionalism; and
- 89% expected insurance brokers to adhere to a clear code of ethics that ensures they act in their best interest.

To implement good conduct across the industry in Europe, the best practice is not just having principles, but also communicating and embedding this behaviour in a way that creates an appropriate culture. Competent authorities would ensure that insurance firms have taken steps to develop good conduct and ethical practices within their organisation and be able to provide evidence on how they do this. This might involve:

- **Developing:** requiring firms to develop or abide by principles underpinning good conduct and ethical practices.
- **Communicating:** conveying these principles to individual practitioners at all levels, explaining why they are important, their application in day-to-day practices, and the consequences of not applying them. Best practices should include practical staff training and communications material.
- **Embedding:** these principles must be reflected in the activities, business decisions and culture at all levels within firms. One approach might be for competent authorities to ask firms to provide evidence of how they have embedded these practices. Another approach might involve incorporating conduct assessment into the regulator-firm supervisory relationship.

There is a link between more ethical practices and lower regulatory risk. Insurance undertakings and intermediaries that can clearly demonstrate close adherence to ethical conduct principles throughout their culture and practices should be given some sort of supervisory recognition.

Our one misgiving on this theme is that there is no mention of the role of professional bodies in delivering and overseeing practitioner knowledge and ability. For the same reason that EIOPA was correct in acknowledging the role of professional bodies for continuing professional development (CPD), those bodies also provide an impartial approach to delivering other aspects of professionalism, including providing learning material and testing these objectively; and setting out, communicating and enforcing ethical standards. This is often the most effective way of driving impact to raise standards beyond simple "regulatory compliance".

Assisting with compliance

We are developing solutions to assist firms in implementing the IDD. We have developed a Good Practice Hub on our website that will provide practitioners with information on particularly the professionalism requirements, as well as a routinely updated briefing on the key features and progress of IDD implementation. This is being published on the public (pre-pay wall) part of our site. We are also developing a solution to help firms comply with the 15 hours of CPD, and ensure they do this in a manner that encourages employees to consider a range of information sources to qualify as appropriate CPD, and also facilitates record-keeping should the regulator wish to follow this up.

⁶ CII SME Survey by Opinium, August 2011. Sample size: 310 insurance decision-makers in GB businesses in the following categories: micro (6-10 employees), small (11-49) and medium (50-249). Results weighted to reflect the proportions of these firms in the UK (according to Department of Business, Innovations and Skills data).

Responses to specific questions

Application of the Directive

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

We have no comments on the approach on the scope of the IDD. However, we do think that interpreting the definition of an Ancillary Insurance Intermediary should be clearer to help firms determine whether the rules apply to them. At the moment there seems to be considerable confusion about the definition of an “In-Scope All” and it requires considerable effort with the Perimeter Guidance to determine application. We suggest creating a clearer definition of “In-Scope Alls” to make this clearer.

Professional, organisational and prudential requirements

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

The CII broadly agrees with your overall approach on the IDD’s professional requirements. We do have two reservations on its implementation in the UK context: one around the 15-hour requirement as a minimum; and the other concerning selection of qualifying CPD.

Number of hours

Although we are happy to support the sector in complying with the 15 hours of CPD, we think the number of required hours should be varied according to degree of risk.

Holders of CII qualifications (be they those in general insurance, life and pensions, investment advice or mortgages) are required to complete 35 hours of CPD each year, of which 21 has to be structured. This amount was agreed following an extensive review process in 2010 including comparing best practices with other professional bodies. This is strictly enforced, and in 2011, the CII dealt with 337 disciplinary cases concerning members not fulfilling their CPD requirements. These requirements are also reflected in the financial adviser professional regime following the reforms to that market that came into effect in 2012.

We supported the IDD provision of 15 hours of CPD because we believed in the creation of an EU-wide minimum standard for all those who transact insurance; while the higher standard of 35 hours should be for members particularly filling higher risk functions.

This is particularly relevant for the Senior Managers & Certification Regime (SMCR) when it is widened to all FSMA firms next year. We hope the FCA and the Prudential Regulation Authority considers the more robust 35 hour CPD regime is considered as a mandatory base for Senior Managers and those filling Significant Harm Functions.

Qualifying CPD

The consultation lacks clarity on what should effectively constitute CPD, and there is a real risk that the requirements will promote a regulatory box-ticking exercise. There is no suggestion of what should constitute CPD regardless of the role, and the relevant section of the consultation does not stipulate the extent to which it will be subject to supervision. We are also concerned that staff close to consumers will be encouraged to merely read material to meet the requirement. Paragraph 3.11 reads:

“We propose to issue guidance that the format and content of the CPD can be modulated according to the nature and complexity of the employee’s role. For example, CPD could include:

- completing eLearning modules relevant to insurance distribution
- time spent reading insurance product literature or publications from bodies such as the FCA, PRA or Financial Ombudsman Service (FOS)

- attending internal briefings on insurance distribution practices or market developments.”

It would seem that those individuals whose roles closely affect consumers might end up having virtually no guidance on complying with a CPD regime that is designed to help these very sorts of roles better serve their customers. Moreover there seems to be little to link this regime to actual staff learning requirements, which is what the CPD regime was supposed to do.

We would favour a system that helps firms tailor the learning requirements of different levels of staff taking into a range of factors including exposure to customers, risk characteristics, information needs, and soft skills such as empathy. At the CII, we are working on developing a solution to help firms consider these various factors and design a set of CPD resources that best fits the staff member, and also provides a record-keeping resource.

Conduct of business requirements

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

Yes. We support introducing new rules into ICOBS requiring insurance distributors to act honestly, fairly and professionally in the best interests of their customers; ensuring these principles are reflected in marketing communications, and in remuneration and performance management practices. Although this material is already reflected in the Handbook, it is merely guidance whereas enshrining them as rules will provide great clarity for the sector and learn lessons from previous experiences.

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

Yes. We agreed with the IDD requirement to extend the to all distributors the pre-contractual disclosure requirements in place under the IMD. We agree with the approach taken by the FCA to require firms to disclose both the type of remuneration as well as its source.

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

The illustrative examples set out in the consultation are sensible.

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

No. We have supported the FCA’s efforts to encourage firms to communicate more efficiently with their customers and there is a need to ensure that the disclosure requirements are consistent with this.

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 would favour Option 3. We support the Insurance Product Information Document (IPID) for retail and small business customers, however we question the appropriateness of applying the full IPID to all types of customers in every situation. In our view the “commercial customers” definition should be amended to omit small and medium sized enterprises. Research that we have undertaken into the information needs of various types of customers reveals that small business principles are akin to retail consumers in their needs; whereas business from medium sized and larger can afford to have staff that could spend more time considering risk management issues.

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?

We would call for a distinction between small firms and other commercial customers. This way, small businesses (using the BIS definition of firms with 49 or fewer employees) would receive the same disclosure requirements as consumers; whereas firms with 50 employees or more would receive a greatly simplified IPID than the one set out in ICOBS 6 Annex 2 to better target the information needs of commercial customers.

Ancillary insurance intermediaries

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

We have no comments on the approach on the scope of the IDD. However, we do think that interpreting the definition of an Ancillary Insurance Intermediary should be clearer to help firms determine whether the rules apply to them. At the moment there seems to be considerable confusion about the definition of an “In-Scope AI” and it requires considerable effort with the Perimeter Guidance to determine application. We suggest creating a clearer definition of “In-Scope AIs” to make this clearer.

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