

LONG-TERM CARE INSURANCE CONTRACTS INSTRUMENT 2004

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
 - (2) section 141 (Insurance business rules);
 - (3) section 145 (Financial promotion rules);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part B of Annex E comes into force on 31 October 2004 and ceases to have effect on 13 January 2005;
 - (2) Part C of Annex E comes into force on 14 January 2005; and
 - (3) the remainder of this instrument comes into force on 31 October 2004.

Amendments to the Conduct of Business sourcebook

- D. The Conduct of Business sourcebook is amended in accordance with Annex A to this instrument.

Amendments to the Insurance: Conduct of Business sourcebook

- E. The Insurance: Conduct of Business sourcebook is amended in accordance with Annex B to this instrument.

Amendments to the Training and Competence sourcebook

- F. The Training and Competence sourcebook is amended in accordance with Annex C to this instrument.

Amendments to the Authorisation manual

- G. The Authorisation manual is amended in accordance with Annex D to this instrument.

Amendments to the Glossary

- H. The Glossary is amended in accordance with Annex E to this instrument.

Citation

- I. This instrument may be cited as the Long-Term Care Insurance Contracts Instrument 2004.

By order of the Board
20 May 2004

Amended by Addendum
19 October 2004

Amended by Addendum
5 November 2004

Amended by Addendum
25 November 2004

Annex A

Amendments to the Conduct of Business sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

Transitional provisions

...

COB TR1

(1)	(2) Material to which the transitional provision applies: The COB provisions in Table COB TR 2 with the labels indicated	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.0	<i>Extra time provisions</i>				
1.1	<i>ETPI</i>	R	Transitional Relief		
			<p>...</p> <p>(2) Paragraph (1) does not apply to the following:</p> <p>...</p> <p>(k) ...;</p> <p><u>(l) (from 31 October 2004) any rule in COB inserted or amended by the Long-Term Care Insurance Contracts Instrument 2004 and, in the case of an amendment, to the extent of such amendment.</u></p>
	...				

...

3.8.7 G ...

- (6) A firm which offers general insurance contracts, providing benefits for the policyholder's care in the event of the policyholder's disability or incapacity, should avoid using terms which state expressly or imply that the policy will be available for the policyholder to claim on in the long-term, that is, for any period beyond the expiry of the policy. So a general insurance contract should not be promoted as being capable of providing long-term care insurance for the policyholder in the long-term, and expressions such as "long-term care" and "lifetime care" should generally be avoided in relation to general insurance contracts. If a general insurance contract provides benefits over the long-term in the event of a claim being made, a firm should make clear that the long-term aspect relates only to the availability of benefits in the event of a claim, not to the duration of the policy itself.

...

5.3.13 G ...

- (4) COB 5.3.29G contains guidance which is relevant for assessing the suitability of:

...

- (f) ISA or PEP transfers;~~and~~
- (g) contracting out of SERPS; and
- (h) borrowing to invest.

...

5.3.29 G Table Guidance on matters which should be taken into account when assessing the suitability of ...

...

H Borrowing to invest

When considering the suitability of a particular investment product which is linked directly or indirectly to any form of loan or mortgage, a firm

- (a) should take account of the source of the funds being invested and the suitability of the overall transaction; and

- (b) must follow any relevant suitability and other rules in COB and MCOB.

For example, the circumstances in which a recommendation to enter into a regulated lifetime mortgage contract and invest the funds into a long-term care insurance contract might be appropriate are limited, and both COB 5.3 and MCOB 8.5 apply.

...

- 6.2.16A R (1) When a long-term care insurance contract which is
- (a) not a pure protection contract and which was issued on or after 1 January 1995; or
- (b) a pure protection contract and which was issued on or after 31 October 2004;

is varied so as to bring into effect provisions for long-term care benefits, the firm must provide the private customer with appropriate key features in good time sufficient to enable the private customer to consider them before the variation takes effect.

- (2) If the circumstances of the variation, whether by the exercise of an option or otherwise, make it impossible to provide the key features before the variation takes effect, the firm must do so as soon as possible afterwards.

...

- 6.2.18 R When a *policyholder* applies to vary
- (1) a life policy issued before 1 January 1995; or
- (2) a pure protection contract issued before 31 October 2004 and which would after 30 October 2004 be a long-term care insurance contract ;

(or is personally recommended to do so) and the variation of the policy gives rise to a right to cancel under COB 6.7.7R, information must be given to the policyholder by the firm that is personally recommending, arranging or effecting the variation before it is put into effect, unless COB 6.2.19R applies. The firm must believe on reasonable grounds that the information given is sufficient to enable the policyholder to understand the consequences of the variation.

...

- 6.4.1 R COB 6.4 applies to a firm in accordance with COB 6.1.1R, in respect of occupational pension schemes, self invested personal pension schemes, income withdrawals, cash deposit ISAs, traded life policies, stakeholder pension schemes, packaged products, and other deposits and long-term care insurance contracts.

...

Long-term care insurance

6.4.29 R At each anniversary of the date on which a *long-term care insurance contract* which is based on single *premium* investment bonds was entered into, the *insurer* must:

- (1) provide the *private customer* with a table based on the format of COB 6.5.24R containing at least the current fund value and projected future policy values (as in the column "What you might get back");
- (2) where it is the case, inform the *private customer* of the possibility that future policy values may be insufficient to fulfil the original purpose of the contract; and
- (3) inform the *private customer* how to obtain advice on *investments* in respect of *long-term care insurance contracts*, and that it is in his best interest to do so.

6.4.30 G In the case of a *long-term care insurance contract* in which:

- (1) long-term care benefits are available after commencement of the *policy* at the option of the *policyholder*; and
- (2) as a result of the exercise of that option a new *contract of insurance* is offered to the *policyholder*;

provision is made in TC 2.5.5AR so that, in respect of the contract containing the option, an *employee*, although engaged in advising on *long-term care insurance contracts* need not be required to pass an appropriate examination for *long-term care insurance contracts* to do so.

...

6.5.14 G A *firm* might include information on the following under 'risk factors', when relevant:

...

- (14) ...;
- (15) ...; and
- (16) in the case of a *long-term care insurance contract* which is based on single *premium* investment bonds, the fact that the income produced by the bonds may be insufficient to continue to meet the *premiums* of the underlying *contract of insurance*. The description could also explain the consequences of this, including, if it is the case, that capital may be eroded, further single *premiums* may be payable, or the cover reduced.

6.5.15 R A *firm* must include a *projection*, illustrating how the principal terms of the proposed transaction apply to the *private customer*:

- (1) where the proposed transaction is for a *life policy (other than a long-term care insurance contract which is a pure protection contract)*; or

...

6.5.16A G A *projection* is not appropriate for a *long-term care insurance contract* which is a *pure protection contract*. *Policy* benefits and *premiums* must be illustrated in accordance with the relevant provisions of COB 6.5.49R.

...

6.5.21 G The information required by COB 6.5.20R should include:

...

(3A) for a *long-term care insurance contract*, information to make *policyholders* aware of the importance of:

- (a) regularly reviewing their circumstances and the likely costs of long-term care with a view to ensuring that their long-term care needs continue to be appropriately covered; and
- (b) seeking advice in the event of change affecting the *policyholder's* long-term care needs, or in the event of a variation of the contract terms so as to provide long-term care benefits;

(3B) for a *long-term care insurance contract* in which the *insurer* has the right to review the *premium*:

- (a) a statement of that fact, the frequency of any right to vary the *premium* payable and a description of the circumstances which would give rise to a variation of the *premium*, for example, a change in *claims* experience;
- (b) a statement of the consequences of not paying any increased or extra *premium* resulting from any review, such as a reduction in *policy* benefits;
- (c) a statement of the rate of investment return assumed in the *premium* calculation together with a note of each other main assumption subject to variation;
- (d) a statement that the higher the assumed rate of investment return, the greater the chances of being asked to pay increased or extra *premiums* following a *premium* review;

(e) if the rate of investment growth assumed in the *premium* calculation is more than the intermediate rate shown in COB 6.6.50R, an illustration of the potential increased regular *premium* or additional single *premium* that may be payable following the first *premium* review, assuming that the rate of investment return achieved up to the review and assumed thereafter was at the intermediate rate shown in COB 6.6.50R;

(3C) for a *long-term care insurance contract* in which long-term care benefits are available after commencement of the *policy* at the option of the *policyholder*, a statement of the amount of *premium* payable for that option. Where any change to the level of cover requires further underwriting this should, where possible, be made clear at the outset.

(4) for a *long-term care insurance contract* which is based on single *premium* investment bonds -

...

6.5.25 R When completing COB 6.5.24R, a *firm* must:

...

(9) ~~in the case of a *long-term care insurance contract packaged product*~~ in the case of a *long-term care insurance contract* based on a single *premium* investment bonds, where the standard ten-year table does not illustrate adequately how the charges taken from a *policy* can increase considerably with age:

...

6.5.38 R A *firm* must include under the heading 'How much will the advice cost?' either the statement prescribed in (1), ~~or (1A)~~ or (1B), as applicable, or the information required by (2):

(1) for *life policies* (other than *long-term care insurance contracts* which are *pure protection contracts*) or *stakeholder pension schemes*: 'Your adviser will give you details about the cost. The amount will depend on the size of the *premium* and the length of the *policy* term. It will be paid for out of the deductions'; or

...

(1B) for *long-term care insurance contracts* which are *pure protection contracts*: 'Your adviser will give you details about the cost. The amount will depend on the size of the *premium* and the length of the *policy* term.'

...

Right to cancel

6.7.7 R A *customer*, who is an individual, has a right to cancel:

...

- (4) a variation of a *life policy, pension contract or stakeholder pension scheme* for which a right to cancel applies under *COB 6.7.23R, COB 6.7.23AR* and *COB 6.7.26AR*.

...

- 6.7.23 R (1) After an increase in regular or single *premiums* or payments (including a *pension transfer*) to a *life policy, pension contract or stakeholder pension scheme*, a *retail customer* has a right to cancel (see *COB 6.7.7R(4)*) in the following circumstances unless (2) applies:

...

- (b) ...; or
- (c) any variation where the increase represents the proceeds of a *pension transfer*; or
- (d) the variation of a long-term care insurance contract to provide long-term care benefits.

- 6.7.23A R When under a long-term care insurance contract, a new contract is issued to provide for long-term care benefits, a policyholder who is an individual has a right to cancel unless COB 6.7.23R(2) applies.

...

After *COB 8* insert the following new chapter, *COB 8A*:

8A Claims handling

8A.1 Application and purpose

Who and what ?

8A.1.1 R This chapter applies in respect of *claims handling* under *long-term care insurance contracts* to:

- (1) an *insurer*;
- (2) a *firm* acting on behalf of a *policyholder*; and
- (3) a *managing agent*.

8A1.2 R Throughout this chapter, references to an *insurer* apply equally to a *managing agent*.

8A1.3 G An *insurer* is responsible for *claims handling*. A *managing agent* is responsible for *claims handling* for *policies* underwritten at Lloyd's. An *insurer* or a *managing agent* remains responsible for *claims handling* if it outsources any of its *claims*-related activities, including where it gives an intermediary authority to *handle claims* on its behalf. An *insurer* or a *managing agent* is not responsible for the administration and performance activities that a *firm* carries out on behalf of a *policyholder* in connection with a *claim*. In relation to these activities, a *firm* which acts on behalf of *policyholders* should refer to COB 8A.3.

8A1.4 G An *insurer* should refer to the *rules* and *guidance* set out in SUP 2.3.5R to SUP 2.3.10G in respect of any *person* to whom it outsources its *claims handling* functions.

8A1.5 G This chapter applies to *claims* made by or on behalf of *policyholders*.

Purpose

8A.1.6 G (1) The purpose of this chapter is to ensure that:

- (a) *claims* are handled fairly;
- (b) *claims* are settled promptly;
- (c) *policyholders* are provided with information on the *claims handling* process and with an explanation of why a *claim* is rejected or not settled in full, where relevant; and
- (d) *firms* acting on behalf of *policyholders* disclose and manage any conflicts of interest that may exist.

(2) This chapter reinforces:

- (a) *Principle 3* (Management and control), which requires a *firm* to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
- (b) *Principle 6* (Customers' interests), which requires a *firm* to pay due regard to the interests of its *policyholders* and treat them fairly; and
- (c) *Principle 8* (Conflicts of interest), which requires a *firm* to manage conflicts of interest fairly, both between itself and its *policyholders* and between a *policyholder* and another *client*.

8A.2 Claims handling: general

Requirements to handle *claims* promptly and fairly

8A.2.1 R An *insurer* must carry out *claims handling* promptly and fairly.

8A.2.2 G When handling the *claim* of a *policyholder*, an *insurer* should comply with the *rules* and *guidance* in COB 8A.4.

8A.2.3 G An *insurer* should refer to the *guidance* in SYSC 3.2 (Areas covered by systems and controls) in its procedures for *claims handling*. For example, an *insurer* should have in place systems and controls which take account of reasonably foreseeable peaks in demand, to allow it to deal with *claims* promptly in such circumstances.

8A.2.4 G An *insurer* should refer to the *guidance* set out in TC 1 (Commitments) in respect of the competence of any *person* who carries out *claims handling* on its behalf.

Giving policyholders guidance on claiming

8A.2.5 R When an *insurer* is informed that a *policyholder* wishes to *claim* under his *policy* it must give the *policyholder* reasonable guidance to help him make a *claim* under his *policy*.

Rejecting or refusing claims

8A.2.6 R An *insurer* must not:

- (1) unreasonably reject a *claim* made by a *policyholder*;
- (2) except where there is evidence of fraud, refuse to meet a *claim* made by a *policyholder* on the grounds:
 - (a) of non-disclosure of a fact material to the risk which the *policyholder* could not reasonably be expected to have disclosed;
 - (b) of misrepresentation of a fact material to the risk unless the misrepresentation is negligent; or
 - (c) of breach of warranty, unless the circumstances of the *claim* are connected with the breach and unless:
 - (i) under a ‘life of another’ contract, the warranty relates to a statement of fact concerning the life to be assured and that statement would have constituted grounds for rejection of a *claim* by the *insurer* under COB 8A.2.6R(2)(a) or (b) if it had been made by the life to be assured under an ‘own life’ contract; or
 - (ii) the warranty is material to the risk and was drawn to the attention of the *policyholder* before the conclusion of the contract.

8A.3 Duties of firms acting on behalf of policyholders

8A.3.1 R COB 8A.3 applies to a *firm*.

8A.3.2 G COB 8A.3 will usually apply to a *firm* that is not an *insurer*, but it may also apply to an *insurer*, for example, if it were dealing with a *claim* on a *policy* insured by another *insurer*.

A firm's duty of care, skill and diligence

- 8A.3.3 R A *firm* when acting for a *policyholder* in relation to a *claim* must act with due care, skill and diligence.
- 8A.3.4 G The *rules* and *guidance* in COB 8A.3 do not seek to set out the full extent of the duties owed by *firms* to any *person* for whom they act, nor do they displace the general law on the duties of *agents*.

A firm's duty to avoid conflicts of interest

- 8A.3.5 R (1) A *firm* must not, in connection with any *claim*, put itself in a position where its own interest, or its duty to any *person* for whom it acts, conflicts with its duty to any *policyholder* for whom it acts, unless:
- (a) it made proper disclosure to that *policyholder* of all information needed to put the *policyholder* in a position where he can give informed consent to the arrangement; and
 - (b) it has obtained the prior informed consent of the *policyholder*.
- (2) A *firm* must decline to act for the *person* or *policyholder* referred to in (1), or any of them, unless in the particular circumstances of the case disclosure and informed consent are sufficient to enable it to reconcile the conflict.
- 8A.3.6 G COB 8A.3.5R imposes a requirement on a *firm* to avoid conflicts of interest in relation to *claims* where it acts on behalf of a *policyholder* unless it can manage them by disclosure to, and the obtaining of consent from, the *policyholder*.
- 8A.3.7 G A *firm* should consider whether it is possible to manage the conflict by disclosing the conflict to the *policyholder* and obtaining his consent. Where a *firm* acts for a *policyholder* in arranging a *policy*, it is likely to be the agent for the *policyholder* in connection with the preparation and handling of any *claim* against the *insurer*. If the *firm* intends to be the agent of an *insurer* in relation to *claims* under that *policy*, it will need to consider whether it is at risk of putting itself in the position where it cannot act without some breach of duty either to the *insurer* or the *policyholder*. The *firm* should consider whether disclosure and consent are sufficient to reconcile the conflicting obligations. An example of a circumstance in which disclosure and consent are unlikely to be sufficient and when a *firm* may well consider it should not act for the *insurer* or the *policyholder* or either, is where the *firm* knows that the *policyholder* will, to obtain a quick payment, accept a low amount in settlement of a *claim* and also knows the *insurer* is willing to settle for a higher amount.
- 8A.3.8 R If a *firm* acts for an *insurer* and not for a *policyholder* in relation to a *claim* on a contract which it *arranged* for that *policyholder*, the *firm* must inform the *policyholder* that, in relation to that *claim*, it is acting on behalf of the *insurer* and not the *policyholder*.

- 8A.3.9 G *COB* 8A.3.8R would apply, for example, where a *firm* has delegated authority for *claims handling* and deals with a *claim* in relation to a contract that is sold to a *policyholder*, if the *firm* is not acting on behalf of that *policyholder* in relation to the *claim*.
- 8A.3.10 R If a *firm* is notified of a *claim* in relation to a *policy* which it has *arranged*, and the *insurer* has not given it the authority to deal with that *claim*, it must:
- (1) forward the notification to the *insurer* promptly; or
 - (2) inform the *policyholder* immediately that it cannot deal with the notification.
- 8A.4 Policyholders: performance standards for handling claims
- Responding to notification of the claim
- 8A.4.1 R An *insurer* must respond promptly to a notification by a *policyholder* of a *claim*.
- 8A.4.2 G Notification of a *claim* is a demand of the *insurer* to pay or provide a benefit insured under the *policy*, for example, by submitting a *claim* form or giving the equivalent information orally, where permitted by the *policy*. An enquiry that precedes such a demand, for example, as to whether a particular loss is covered, and therefore whether a *claim* could be made under the terms of the *policy*, is not notification of a *claim*.
- 8A.4.3 G *COB* 8A.4.1R requires an *insurer* to respond promptly once it has received notification of a *claim*. Generally a prompt response would be one within *five business days* of a *policyholder* making a *claim*, although in some circumstances a prompt response could be less than *five business days*, such as where the *policyholder* would expect a swifter response because of the nature of the *claim* or the terms of the *policy*.
- 8A.4.4 R The response referred to in *COB* 8A.4.1 R must:
- (1) provide the information set out in *COB* 8A.4.5 R;
 - (2) be in a *durable medium*, unless the notification by the *policyholder* is made orally and the *insurer* does not require the *policyholder* to complete a *claim* form; and
 - (3) provide the *policyholder* with a *claim* form, if the *insurer* requires one to be completed.
- 8A.4.5 R The information referred to in *COB* 8A.4.4 R (1) is:
- (1) that the *claim* relates to a risk that is clearly outside the scope of the *policy*, if that is the case (in which case no further information need be provided);

- (2) the action that will be taken by the *insurer* and when that action will be taken;
- (3) if the *insurer* is appointing any other parties to contact the *policyholder* on the *insurer's* behalf, in respect of each other party appointed the following information, if known (but, if the purpose of the appointment is to investigate the validity of a *claim*, the information need not be given if it would limit or prevent the effective investigation of the *claim* or any part of it):
 - (a) its name (unless the other party trades under the name of the *insurer*);
 - (b) its function; and
 - (c) the work it will carry out in relation to the *claim*.

8A.4.6 G The purpose of the *rules* and *guidance* in COB 8A.4.1R to COB 8A.4.5R is to provide the *policyholder* at an early stage with information in relation to the processing and settlement of his *claim* by the *insurer*. COB 8A.4.5R (1) is intended to prevent a *policyholder* pursuing a *claim* for which he is clearly not covered. It is not intended to pre-empt the outcome of an investigation of a *claim*.

8A.4.7 G The purpose of COB 8A.4.5R (3) is to ensure that a *policyholder* knows the name and function of any party who will contact him in relation to a *claim* as a representative of the *insurer*, for example, an outsourced *claims handling* company. An *insurer* would not be expected to notify the *policyholder* of other parties who are appointed to investigate the validity of a *claim* if this would limit or prevent an effective investigation. However, if a third party is appointed to liaise with the *policyholder* on the *insurer's* behalf, as well as assess the validity of the *claim*, the *insurer* would be expected to disclose the information in COB 8A.4.5R (3) unless it would limit or prevent an effective investigation.

Investigation and processing of the claim

8A.4.8 R An *insurer* must keep the *policyholder* reasonably informed about the progress of his *claim*.

8A.4.9 G Where the investigation of a *claim* is likely to be protracted, an *insurer* should provide periodic progress or status reports, when appropriate, to a *policyholder*, including providing the *policyholder* with any relevant update in relation to the information provided under COB 8A.4.4R. The *insurer* should also respond without undue delay to any reasonable request by the *policyholder* for information.

Determining the claim

8A.4.10 R An *insurer* must notify the *policyholder* as soon as practicable whether it:

- (1) rejects all of his *claim*;

- (2) rejects his *claim* but without prejudice to the rejection makes an offer in compromise; or
- (3) accepts all or part of his *claim*.

8A.4.11 R If the *insurer* rejects the *claim* but without prejudice to the rejection makes an offer in compromise, it must notify the *policyholder* of the terms of that offer as soon as practicable.

8A.4.12 R If the *insurer* accepts all or part of the *policyholder's claim*, it must notify the *policyholder* as soon as practicable whether:

- (1) as to the parts it accepts, it agrees to provide the money, property or service claimed by the *policyholder* in full; or
- (2) it makes some other offer in compromise. In that event, it must notify the *policyholder* of the terms of its offer.

8A.4.13 R (1) Unless the *insurer* accepts the *policyholder's claim* in full, the *insurer* must explain why it rejects all or part of the *policyholder's claim* or accepts his *claim* or makes a compromise offer, specifying any relevant term of the policy.

- (2) The *insurer* must offer the *policyholder* the choice of receiving the information at COB 8A.4.13R (1) in a *durable medium*.

8A.4.14 R The *insurer* must, in respect of each part of the *claim* which it accepts, inform the *policyholder* whether the *claim* will be settled by paying him, or by paying another *person* to provide goods or services, or by providing those goods or services.

Settling a claim

8A.4.15 R An *insurer* must settle a *claim* by a *policyholder* promptly.

8A.4.16 G (1) Settlement terms are agreed when:

- (a) the *insurer* accepts the *policyholder's claim*; and
- (b) the *policyholder* accepts the *insurer's* offer of settlement.

- (2) When the *insurer* settles the *claim* by paying the *policyholder*, the *insurer* should aim to make payment within five *business days* after the *insurer* and the *policyholder* have agreed settlement terms, subject to any pre-conditions laid down by the *insurer* or in law being met by the *policyholder*. This does not prevent the *insurer* paying a *claim* before the *policyholder* has finally agreed settlement terms.

- (3) The *guidance* in (2) will not apply if the *insurer* settles the *claim* by:

- (a) payment against a liability due on a future date;
- (b) the provision of goods or services;

- (c) making payments on a date specified by the *policyholder*; or
- (d) payment of the *claim* through another party (eg a care home) on a monthly or some other basis;

and in the case of (a) or (b) the *insurer* should make prompt payment or arrange for prompt provision of the goods or services after the *insurer* and the *policyholder* have agreed settlement terms.

8A.4.17 G The arrangements for settlement set out in COB 8A.4.16G (3)(b) apply to arrangements to supply goods or services to the *policyholder*. In such situations, the goods or services should be provided promptly but where they cannot be, the *insurer* should inform the *policyholder* when to expect them.

8A.4.18 G An *insurer* should note that unless it has previously informed a *policyholder* that a *claim* will not be met in full or in part until *premiums* have been paid, the *insurer* may not delay the payment of a *claim* on the grounds that *premiums* are outstanding.

Pre-Action Protocols

8A.4.19 G A *policyholder* who does not accept an *insurer's* rejection of his *claim* (or part of it) may challenge that rejection. If he chooses to do so through the courts, *firms* should be aware that, in England and Wales, there are pre-action protocols which lay down certain requirements as to the steps to be taken before proceedings are issued. This chapter does not displace these requirements, to which *firms* should have regard in the event that a rejection of a *claim* moves towards litigation.

8A.5 Record keeping

8A.5.1 R An *insurer* must make and retain, for the duration of the *claim* and for a minimum of six years after the *insurer's* obligations to the *policyholder* under the *long-term care insurance contract* have ceased, the following information in relation to each *claim* made against a *policy* issued by it or handled by it:

- (1) details of the *claim*;
- (2) a record of each communication with the *policyholder* including the date on which it was made; and
- (3) the date the *claim* was settled or rejected and details of settlement or rejection including information relevant to the basis for the settlement or rejection.

12.1.15 R Table: This table applies *COB* to *firms* when carrying on the activity to which *COB* 12.1.7R (2) relates.

Chapter	Description	Application
...
<u>8A</u>	<u>Claims handling</u>	<u>Applied</u>

Schedule 1
Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COB 8A 5.1</u>	<u>Claim under a long-term care insurance contract</u>	<u>Details of the claim; a record of each communication with the policyholder, including the date it was made; the date the claim was settled or rejected.</u>	<u>As soon as practicable</u>	<u>The duration of the claim and 6 years after the insurer's obligations to the policyholder under the long-term care insurance contract have ceased</u>
....				

Annex B

Amendments to the Insurance: Conduct of Business sourcebook

In this Annex, underlining denotes new text .

...

2.2.8 G A firm which offers general insurance contracts, providing benefits for the customer's care in the event of the customer's disability or incapacity, should avoid using terms which state expressly or imply that the policy will be available for the customer to claim on in the long-term, that is, for any period beyond the expiry of the policy. So a general insurance contract should not be promoted as being capable of providing long-term care insurance for the customer in the long-term, and expressions such as "long-term care" and "lifetime care" should generally be avoided in relation to general insurance contracts. If a general insurance contract provides benefits over the long-term in the event of a claim being made, a firm should make clear that the long-term aspect relates only to the availability of benefits in the event of a claim, not to the duration of the policy itself.

...

...

3.8.3 G ...

(8) A firm which offers general insurance contracts, providing benefits for the customer's care in the event of the customer's disability or incapacity, should avoid using terms which state expressly or imply that the policy will be available for the customer to claim on in the long-term, that is, for any period beyond the expiry of the policy. So a general insurance contract should not be promoted as being capable of providing long-term care insurance for the customer in the long-term, and expressions such as "long-term care" and "lifetime care" should generally be avoided in relation to general insurance contracts. If a general insurance contract provides benefits over the long-term in the event of a claim being made, a firm should make clear that the long-term aspect relates only to the availability of benefits in the event of a claim, not to the duration of the policy itself.

Annex C

Amendments to Training and Competence sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

TC Table: Transitional Provisions relating to designated investment business
1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision : coming into force
7	<u>TC 2.4.1R (1) and (2), TC 2.4.5R, TC 2.7.5R</u>	<u>R</u>	(1) <u>This transitional provision applies in respect of an <i>employee</i> of a <i>firm</i> employed at 31 October 2004 to engage in or supervise the activities referred to at TC 2.1.4R 1(ha), if the <i>employee</i> has been assessed by the <i>firm</i> as competent to engage in or supervise the activities specified at TC 2.1.4R 1 (f) and those activities involve selling <i>contracts of insurance</i> which after 30 October 2004 would be <i>long-term care insurance contracts</i>, and that assessment is current as at 30 October 2004.</u>	<u>From 31 October 2004 to 30 October 2006</u>	<u>31 October 2004</u>
			(2) <u>A <i>firm</i> may for the purposes of TC 2.4.1R (1) and (2), TC 2.4.5R and TC 2.7.5R assess an <i>employee</i> described in (1) as competent to engage in or supervise the activities referred to at TC 2.1.4R 1(ha), without requiring the <i>employee</i> to pass an appropriate examination in <i>long-term care insurance</i> under TC 2.4.5 R or TC 2.7.5R (1), but only if the activity or role for that <i>employee</i> after 30 October 2004 is the same or substantially</u>		

			<u>the same as that in respect of which the <i>employee</i> had been assessed as competent at 30 October 2004.</u>		
			<p>(3) <u>If a <i>firm</i> has assessed an <i>employee</i> as competent under (1) and (2), any other <i>firm</i> which subsequently employs the individual may also assess him as competent on the same basis provided that:</u></p> <p>(a) <u>the activity which the <i>employee</i> engages in or supervises continues to be the same, or substantially the same, as that in respect of which the <i>employee</i> had been previously assessed as competent; and</u></p> <p>(b) <u>the individual has not experienced any significant break of relevant employment as described in (a) since the previous assessment.</u></p>		
<u>8</u>	<u>Paragraph 7 above</u>	<u>G</u>	<p><u>Until 30 October 2006, a <i>firm</i> may rely on paragraph 7 to assess as competent an <i>employee</i> who advises on or supervises those advising on <i>long-term care insurance contracts</i>, if that <i>employee</i> had been assessed by the <i>firm</i> as competent at 30 October 2004 to advise or supervise those advising on <i>investments</i> which would be, after 30 October 2004, <i>long-term care insurance contracts</i>, and the activity or role of that <i>employee</i> after 30 October 2004 remains the same or substantially the same as it was prior to that date.</u></p> <p><u>After 30 October 2006 a <i>firm</i> may not rely on paragraph 7 to assess an <i>employee</i> as competent: the <i>employee</i> must be assessed as competent and must have passed an appropriate examination on long</u></p>	<u>From 31 October 2004 to 30 October 2006</u>	<u>31 October 2004</u>

			<u>term care insurance if they are to advise on or supervise advising on long-term care insurance contracts.</u>		
9	<u>Paragraph 7 above</u>	G	<u>A firm which relies on paragraph 7 of this table in establishing the competence of an individual advising on or supervising those advising on long-term care insurance contracts should have regard to TC 2.6. In particular, a firm should keep under review the status of an employee deemed competent under paragraph 7 and consider whether an employee may no longer be competent to advise or supervise advising on long-term care insurance contracts (for example in the light of repeated failures to pass an appropriate exam).</u>	<u>From 31 October 2004 to 30 October 2006</u>	<u>31 October 2004</u>
...					

2.1.4 R Table: Activities to which TC2 applies

	Activity	Extent of Application
1. Employees engaging in:
	(f) <i>advising on investments</i> which are <i>packaged products</i> (other than <i>broker funds</i> or as in (g), (h) or (ha));	
	...	
	<u>(ha) advising on investments which are long-term care insurance contracts;</u>	

...

2.5.1A ¹	R	The time limits to which TC 2.5.1 applies	
		Activity in TC 2.1.4 R	Examination must be passed:
		1. (a) - (c)	before starting the activity
		(d) - (e)	within 30 months of starting the activity
		(f) - (g)	within two years of starting the activity

¹ The table at 2.5.1AR will become part of the Handbook from 1 July 2004 under the provisions of FSA 2004/26

		(h)	(no examination requirement)
		(ha)(i) - (l)	within two years of starting the activity
		(m) - (o)	before starting the activity
		(p) - (q)	within two years of starting the activity
		(r)	(no examination requirement)
		2. (a) - (g)	within two years of starting the activity

Exemption from an appropriate examination

...

2.5.5A R If a long-term care insurance contract provides that:

- (1) long-term care benefits are available after commencement of the *policy* at the option of the *policyholder*; and
- (2) as a result of the exercise of that option a new *contract of insurance* is offered to the *policyholder*;

an *employee* engaged in the activities referred to at TC 2.1.4R 1(ha) need not, in respect of the contract containing the option, be required to pass an appropriate examination for *long-term care insurance contracts*.

2.5.5B G TC 2.5.5AR applies to the situation where a contract contains an option for the *policyholder* to take out a second, separate contract and that second contract provides for long-term care benefits. Both contracts will be *long-term care insurance contracts* and subject to the rules applying to such contracts. However, TC 2.5.5AR provides that, where the two contracts are separate, an *employee* engaged in advising on the first contract (containing the option) need not be required to pass an appropriate exam for long-term care insurance. An *employee* advising on the second contract, which provides the long-term care benefits, must, however, have passed an appropriate exam for long-term care insurance.

2.5.6 G A *firm* should, for the purposes of TC 2.8.1R (Record keeping), make and retain records of the criteria governing its decision to apply ~~TC 2.5.5R~~ to an *employee*.

(1) TC 2.5.5R; or

(2) TC 2.5.5AR;

to an *employee*.

...

Schedule 1
Record keeping requirements

...

Table: Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>TC 2.5.6G(1)</u>	Appropriate examinations - regulatory module only	Criteria for application of <u>TC 2.5.5R</u> to the <i>employee</i>	At the time of the application of the <i>rule</i>	For 3 years only after an <i>employee</i> ceases to engage in or oversee an activity or for PTS indefinite
<u>TC 2.5.6G(2)</u>	<u>Appropriate examinations</u>	<u>Criteria for application of TC 2.5.5AR to the employee</u>	<u>At the time of the application of the rule</u>	<u>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite</u>
...				

Annex D

Amendments to the Authorisation sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.6.28 G Rights to, or interests in, all the *specified investments* in AUTH 2.6 (except rights to, or interests in, rights under a regulated mortgage contract) are themselves treated as *specified investments*. The effect is that, in most cases, an activity carried on in relation to rights or interests derived from any of those *investments* is also a *regulated activity* if the activity would be regulated if carried on in relation to the *investment* itself. The exception is where the rights or interests relate to a *pure protection contract* or a *general insurance contract*.

...

2.9.8 G Broadly speaking, the exclusions focus on cases where the main business of a *person* is to sell goods or supply services but where certain activities may have to be carried on for the purposes of that business which would otherwise be *regulated activities*. The exclusions are not available where the customer to whom goods are sold or services are supplied is an individual. They are also not available where what is at issue is a transaction entered into, or service provided, in relation to rights under a ~~*life policy contract of insurance*~~ or units in a *collective investment scheme* (or rights to, or interests in, either).

...

AUTH 2 Annex 2

...

AUTH Table:

3 Notes to Table 1

...

Note 5B:

Life policy is the term used in the *Handbook* to mean ‘qualifying contract of insurance’ (as defined in Article 3(1) of the *Regulated Activities Order*), and except in COB 3, AUTH App 1 and AUTH App 5 the term also includes a *long-term care insurance contract* which is a *pure protection contract*.

...

AUTH Table:

5

Table 3: Securities, contractually based investments and relevant investments [see notes 1 and 2 to Table 3]		
SECURITY (ARTICLE 3(1))	CONTRACTUALLY BASED INVESTMENT (ARTICLE 3(1))	RELEVANT INVESTMENT (ARTICLE 3(1))
...	...	
	<i>life policy (but excluding a <u>long-term care insurance contract which is a pure protection contract</u>) [see note 5B to Table 1]</i>	...

Annex E

Amendments to the Glossary of definitions

In this Annex, underlining denotes new text and striking through denotes deleted text.

PART A

<i>claim</i>	(1) (in <i>COMP</i>) a valid claim made in respect of a civil liability owed by a <i>relevant person</i> to the claimant. (2) (in <u><i>COB</i></u> , <i>ICOB</i> , <i>LLD</i> , <i>SUP</i> and <i>TC</i>) a claim under a <i>contract of insurance</i> .
<u><i>claims handling</i></u>	<u>(in <i>COB</i>) in relation to a <i>claim</i> under a <i>long-term care insurance contract</i>, <i>carrying out</i> the contract (by an <i>insurer</i>) or <i>paying or declining to pay a claim</i> on behalf of a <i>member</i> (by a <i>managing agent</i>).</u>
<i>contractually based investment</i>	(in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)): (a) a <i>life policy</i> <u>(except a <i>long-term care insurance contract</i> which is not a <i>qualifying contract of insurance</i>);</u> (b) an <i>option</i> , <i>future</i> , <i>contract for differences</i> or <i>funeral plan contract</i> ; (c) <i>rights to or interests in an investment</i> falling within (a) or (b).
<i>designated investment</i>	a <i>security</i> or a <i>contractually-based investment</i> (other than a <i>funeral plan contract</i> and a <i>right to or interest in a funeral plan contract</i>), that is, any of the following <i>investments</i> , specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments), <u>and a <i>long-term care insurance contract</i> which is a <i>pure protection contract</i>:</u> ... (l) <i>rights to or interests in investments</i> in (a) to (k) (article 89) <u>but not including rights to or interests in rights under a <i>long-term care insurance contract</i> which is a <i>pure protection contract</i>.</u>
<i>designated investment business</i>	... (ea) <u>assisting in the administration and performance of a <i>contract of insurance</i>, but only if the <i>contract of insurance</i> is a <i>designated investment</i>.</u> ...

life policy

- (1) (except in *COB*, *AUTH App 1* and *AUTH App 5*):
 - (a) (in accordance with the definition of "qualifying contract of insurance" in article 3(1) of the *Regulated Activities Order*) a *long-term insurance contract* other than a reinsurance contract and a *pure protection contract*; or
 - (b) a *long-term care insurance contract*.
- (2) (in *COB* except COB 3):
 - (a) a *long-term insurance contract* in (1) or
 - (b) a *pension policy*.
- (3) (in *COB 3*, *AUTH App 1* and *AUTH App 5*) a *long-term insurance contract* in (1) (a) or a *pension policy*.

PART B

long-term care
insurance contract

(in accordance with article 1 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2003) a contract of insurance in respect of which the following conditions are met:

- (a) the purpose (or one of the purposes) of the policy is to protect the policyholder against the risk of becoming unable to live independently without assistance in consequence of a deterioration of mental or physical health, injury, sickness or other infirmity;
- (b) benefits under the contract are payable in respect of:

 - (i) services;
 - (ii) accommodation; or
 - (iii) goods;

which are (or which is) necessary or desirable due to a deterioration of mental or physical health, injury, sickness or other infirmity;
- (c) the contract is expressed to be in effect until the death of the policyholder (except that the contract may give the policyholder the option to surrender the policy); and
- (d) the benefits under the contract are capable of being paid throughout the life of the policyholder.

PART C

long-term care
insurance contract

a long-term insurance contract which:

- (a) (i) provides (or would at the *policyholder's* option provide) benefits for the *policyholder* which are payable or provided in the event that the *policyholder's* mental or physical health has deteriorated to the extent that he is incapacitated so that he is unable to live independently without assistance, and is not expected to recover to the extent that he can live independently without assistance; and
 - (ii) those benefits are payable or provided in respect of:
 - (A) services;
 - (B) accommodation; or
 - (C) goods;

which are necessary or desirable for the continuing care of the *policyholder* because of the incapacity referred to in (i); and
 - (iii) the benefits under the contract are capable of being paid periodically for all or part of the period during which the *policyholder* is unable to live independently without assistance;
- or
- (b) is sold or held out as providing benefits for the *policyholder* as set out in (a).

ADDENDUM

LONG-TERM CARE INSURANCE CONTRACTS INSTRUMENT 2004

In this Addendum, underlining indicates new text and striking through indicates deleted text.

Annex A of this instrument is amended as follows:

...

...

Long-term care insurance

6.4.2932 R At each anniversary of the date on which a *long-term care insurance contract* which is based on single *premium* investment bonds was entered into, the *insurer* must:

...

6.4.~~3033~~ G In the case of a *long-term care insurance contract* in which:

...

...

ADDENDUM

LONG-TERM CARE INSURANCE CONTRACTS INSTRUMENT 2004

This addendum inserts new text into this instrument to reflect the Handbook text previously introduced by an earlier instrument, FSA 2004/39.

Annex A to this instrument is amended by deleting the text in COB 6.2.18R in its entirety and replacing it with text which is not underlined. Otherwise, underlining indicates new text and striking through indicates deleted text.

- 6.2.18 R (1) When a *policyholder* applies to vary:
- (a) a *life policy* issued before 1 January 1995; or
 - (b) a *pure protection contract* issued before 31 October 2004 and which would after 30 October 2004 be a *long-term care insurance contract*;

(or is *personally recommended* to do so) and the variation of the *policy* gives rise to a right to cancel under COB 6.7.7R, information must be given to the *policyholder* by the *firm* that is *personally recommending*, arranging or effecting the variation before it is put into effect, unless COB 6.2.19R or COB 6.4.27R to COB 6.4.31R (telephone sales and other exemptions) applies.
- (2) When giving the information in (1), the *firm* must:
- (a) believe on reasonable grounds that the information given is sufficient to enable the *policyholder* to understand the consequences of the variation; and
 - (b) in the case of a variation which results in a new *distance contract*, in good time before the variation is put into effect, provide all the contractual terms and conditions and the information in COB App 1.

...

Post-sale rRight to cancel

- 6.7.7 R A retail customer, ~~who is an individual~~, has a right to cancel:

ADDENDUM

LONG-TERM CARE INSURANCE CONTRACTS INSTRUMENT 2004

Annex A to this instrument is amended by replacing the text shown amending COB 6.5.14G with the following text:

- 6.5.14 G The description which a *firm* is required to provide under COB 6.5.13R(2) might include information on the matters set out in the following non-exhaustive list:

...

(17) ...: and

(18) in the case of a long-term care insurance contract which is based on single premium investment bonds, the fact that the income produced by the bonds may be insufficient to continue to meet the premiums of the underlying contract of insurance. The description could also explain the consequences of this, including, if it is the case, that capital may be eroded, further single premiums may be payable, or the cover reduced.