



CCIR and CISRO Release Draft “Fair Treatment of Customers” Guidance

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- The [Canadian Council of Insurance Regulators](#) (CCIR) and the [Canadian Insurance Services Regulatory Organizations](#) (CISRO) recently jointly released draft guidance entitled “[Guidance: Conduct of Insurance Business and Fair Treatment of Customers](#)” (“Draft Guidance”).
- The Draft Guidance sets out the expectations of CCIR and CISRO regarding the fair treatment of customers by insurance businesses.
- One aim of the Draft Guidance is to encourage consistency in fair treatment expectations across all Canadian jurisdictions (CCIR and CISRO are umbrella organizations of provincial and territorial insurance regulators). As the Draft Guidance recognizes, the harmonization goal is complicated slightly by the fact that some jurisdictions are already in the process of independently developing similar, but slightly different, frameworks (e.g. the Financial Services Commission of Ontario (FSCO) draft guideline that we recently [discussed](#) and the British Columbia Ministry of Finance consultation paper which we also recently [discussed](#)).
- Comments on the Draft Guidance were due on June 18, 2018.

Background on the Draft Guidance

Context

The Draft Guidance is merely one example of an accelerating global shift in regulatory focus. While regulators’ primary emphasis has traditionally been on solvency regulation it is now increasingly on market conduct regulation. As the worst of the global financial crisis continues to recede, insurance sector regulators around the world are intensifying their focus on market conduct behaviour and the expectation that insurers and distributors will treat customers fairly throughout the life cycle of the product, from initial design and pricing through to claims settlement. The effort is perhaps the most advanced in the U.K., in part as a result of issues arising from widespread mis-selling there of creditor insurance products (known in the U.K. as payment protection insurance, or PPI).

The Draft Guidance is based on [Insurance Core Principle 19 \(ICP 19\) Conduct of Business](#), as developed by the International Association of Insurance Supervisors and is intended, among other things, to demonstrate CCIR and CISRO members’ efforts to comply with international standards in advance of the next [IMF Financial Sector Assessment Program \(FSAP\)](#) in Canada (the most recent FSAP had not assessed Canadian provincial regulators as favourably overall as Canada’s federal prudential regulator, the Office of the Superintendent of Financial Institutions (OSFI)).

Who is affected by the Draft Guidance?

The Draft Guidance applies to insurers and intermediaries, who are collectively responsible for ensuring that customers are treated fairly.

Flexibility of approach

The Draft Guidance acknowledges that expectations for the conduct of insurance business may differ depending on the nature of the customer with whom an industry participant interacts, the type of insurance provided and the distribution strategy. The Draft Guidance is focused on customer outcomes, as described below, and is flexibly designed so as to facilitate the achievement of those outcomes. Specifically, it gives insurers and distributors the latitude to decide which strategies, policies, processes, procedures and controls will apply when they offer insurance products and services to customers, taking into account the nature, size and complexity of their activities as well as the regulatory obligations of agents and representatives.

How it is organized

As its full title suggests, the Draft Guidance has two parts. The first relates to the **conduct of an insurance business**, focusing on how insurance businesses should respond at the institutional level to the fair treatment expectation. The second part considers fair treatment from a **customer perspective**.

Key definitions

The Draft Guidance is built upon certain defined terms, including “Intermediary”, “Distribution Firm” and “Agent Firm”. The “Agent Firm” title is not currently found in the Canadian insurance regulatory regime or used in common industry parlance, and the definition describes what would more typically be called a managing general agency (MGA). Overall, the definitions are highly reflective of Quebec regulatory nomenclature and style, which is distinct from that found in the rest of Canada.

Implementation

Once the Draft Guidance is finalized, it will be up to regulators in each jurisdiction to determine – based on their specific legislation and public policy objectives – whether they choose to introduce a guideline or other measures in conformity with the Draft Guideline.

CCIR/CISRO discussion questions

The Draft Guidance includes three specific questions to be considered during the consultation process:

1. Do any conflicts exist between the Draft Guidance and fair treatment policies that have been implemented or proposed at the provincial or territorial level?
2. Does the Draft Guidance strike the right balance between the roles and responsibilities of insurers, distribution firms, agents and representatives?
3. Will intermediaries be overburdened with audit response requirements as a result of the introduction of the Draft Guidance, given the similar obligations already imposed on them by regulators, SROs and insurers?

Conduct of an Insurance Business

In considering the impact of the fair treatment expectations on insurance businesses at the institutional level, the Draft Guidance considers the following:

- Fair treatment of customers
- Conduct of business
- Corporate culture
- Relationships between insurers and intermediaries
- Relationships with regulatory authorities

Fair treatment of customers

Although the entire Draft Guidance could be said to be “about” the fair treatment of customers, the fair treatment concept is also considered in its own separate section. Key elements of fair treatment – which are elaborated elsewhere in the document – include taking account of the customer’s needs and interests, providing accurate and high-quality information, being attentive to privacy issues and dealing with claims, complaints and disputes in a fair and timely manner.

Conduct of business

The Draft Guidance emphasizes consistent standards of fairness across the life-cycle of the product – from product design through to the conclusion of the insurer-insured relationship. This consistency should extend to all parties that are involved on the insurer’s behalf, including other members of the insurer’s corporate group and any intermediaries that provide services on the insurer’s behalf.

Insurers are accordingly expected to ensure that intermediaries have policies and procedures in place that complement the insurer’s own policies and procedures. The Draft Guidance recommends that such obligations form part of the contractual arrangements between issuers and intermediaries.

Corporate culture

The Draft Guidance states that an insurance organization should ensure that customer-focused values drive all aspects of its business. In particular, fair treatment of customers should be part of the corporate culture at all levels of the organization, from strategic decision-making to front-line customer interactions. The document observes that a focus on long-term customer relationships will ultimately lead to greater business success than a focus on short-term financial goals.

From a reporting perspective, the Draft Guidance suggests that insurance organizations should monitor their progress on fair treatment and regularly report the results internally at all levels.

Relationships between insurers and intermediaries

One aspect of the Draft Guidance that has attracted attention is the degree to which it delves into insurer-intermediary business relationships. Not only are insurers expected to have systems and controls in place to ensure that they choose qualified and competent intermediaries, they are also expected to ensure that distributors of their products have appropriate “fair treatment” policies of their own. Written agreements should be established to clearly define the scope of the contracted services while at the same time ensuring that customers are presented with accurate product information. Ongoing monitoring of intermediaries will also be necessary to ensure their continued suitability and adherence to fair treatment principles.

As noted above, CCIR and CISRO will consider whether and how to deal with the possibility that intermediaries already subject to regulation by regulators and SROs may become overburdened with audit requests once the Draft Guidance has been implemented.

Relationships with regulatory authorities

In addition to the above, insurers are expected to make reports to the regulatory authorities when intermediaries are “unsuitable” or “not duly authorized” in a way that could affect the fair treatment of customers. Depending on the circumstances, these reports could focus either on recurring issues or on particular intermediaries.

Related to this is a proposed requirement to “implement the necessary mechanisms” to alert relevant regulators to any “major operational incidents” that could harm the rights or interests of customers or damage the organization’s reputation.

Fair Treatment from the Customer Perspective

In considering the impact of the fair treatment expectations on insurance businesses from the perspective of their interactions with customers, the Draft Guidance considers:

- Governance and corporate culture
- Conflicts of interest
- Outsourcing
- Design of insurance products
- Distribution strategies
- Disclosure to customers
- Product promotion
- Advice
- Disclosure to policyholders
- Claims handling and settlement
- Complaints handling and dispute resolution
- Protection of personal information

For each of the above, the document specifies an “outcome” and CCIR and CISRO’s expectations about the manner of achieving it. The following is a summary of some of the more important outcomes and expectations in the document.

Governance and corporate culture

Outcome

Fair treatment will be a core component of the corporate culture and governance structure of insurers and distributors.

Key expectations

- Boards and senior management will design and implement fair treatment procedures, including mechanisms and controls that identify departures from relevant organizational standards and respond to them appropriately.
- Fair treatment of customers will be a focus of employee training, evaluation and remuneration.

Conflicts of interest

Outcome

Conflicts of interest will be avoided or managed so as not to impair the fair treatment of customers.

Key expectations

- Avoid compensation structures and performance targets that are insufficiently linked to customer outcomes.
- Identify and deal with conflicts between customers or between a customer and a business interest of the insurer. If disclosure is the preferred resolution, ensure that the customer understands the conflict and its' potential implications.
- Decline to act if a conflict cannot be resolved satisfactorily.

Outsourcing

Outcome

Outsourcing should not adversely affect the quality of services offered or the fair treatment of the outsourcer's customers.

Key expectations

- Monitor performance, while retaining full and ultimate responsibility for the outsourced functions.
- Only deal with service providers who will promote fair customer treatment and ensure that such treatment is required in the relevant contracts.
- Ensure that service providers respect customer privacy.

Design of insurance products

Outcome

New products and alterations to existing products are expected to take into account the fair treatment of consumers.

Key expectations

- Follow a product development process that responds to the needs of a variety of consumer groups.
- Ensure that the product is targeted appropriately at consumers for whom it is likely to be appropriate, while "preventing or limiting" access to consumers for whom it is likely to be inappropriate.
- Intermediaries should provide information to insurers about the types of customers that have purchased the insurers' products.

Distribution strategies

Outcome

Distribution strategies should be tailored to the product and be consistent with respect to the consumer protections that they incorporate.

Key expectations

- Ensure that distribution strategies are appropriate for the product and include the provision of advice where this is necessary.
- Intermediaries should provide information to insurers about the effect of the chosen distribution strategy on fair treatment.

Disclosure to customers

Outcome

Insurers and intermediaries should ensure that customers have been provided with enough information to make an informed decision about purchasing an insurance product.

Key expectations

- Use plain language wherever possible.
- Disclosures should be provided on paper or another “durable medium”.
- Focus on key features of the contract, particularly the rights and obligations of the customer, the customer’s cancellation rights, and any provisions that could adversely affect the benefits payable.
- Intermediaries should be clear about the services they provide and their relationship with the insurer(s) with whom they contract.

Product promotion

Outcome

Product promotional material must be accurate, clear and not misleading.

Key expectations

- Ensure that promotional material is reviewed by independent functions (an internal review by the insurer’s or intermediary’s compliance team would appear to be sufficient).
- Promotional material is expected to be easily understandable and to “state prominently” the basis on which benefits may be claimed as well as any “significant limitations”.
- Important statements or warnings should not be hidden or diminished.
- On learning of an inaccuracy in existing materials, ensure that the materials are withdrawn and that customers whom the insurer or intermediary knows to be relying on the inaccurate statement are informed.

Advice

Outcome

When advice is given, it should take into account the customer's disclosed circumstances and be provided before the contract is concluded.

Key expectations

- Before advice is provided, information about the customer's financial knowledge, needs, circumstances, risk profile, etc., should be sought.
- When advice is provided, it should be communicated in writing, on paper or in a "durable and accessible medium", and a record should be kept in a client file.
- Insurers and distribution firms will periodically review client files to monitor the quality of the advice that is being provided.
- Where advice is not required by law but would normally be expected and the customer waives the advice, the insurer or intermediary should obtain and retain a waiver of the advice.
- Insurers and distribution firms should establish ongoing training programs for their advisors.

Disclosure to policyholders

Outcome

In order to be able to make informed decisions, policyholders can expect to receive key information on an ongoing basis during the term of their contracts.

Key expectations

- Ensure that consent is obtained, as appropriate, when there are changes in terms and conditions of a contract.
- Ensure that significant changes in the insurer's status are communicated (e.g. changes in its legal name, its head office address or corporate changes such as acquisitions).
- Ensure that changes in policy terms or in legislation applicable to the policy are communicated.

Claims handling and settlement

Outcome

Claims are expected to be "examined diligently and fairly settled" by means of a "simple and accessible procedure".

Key expectations

- Ensure that claimants are informed about the procedures for settling their claims and that they are provided with timely information about the status of their claims.
- Provide clear explanations of key factors such as depreciations, discounting and negligence.
- Ensure that procedures are as simple as possible and that necessary determinations are made impartially.

Complaints handling and dispute resolution

Outcome

Customer complaints are expected to be “examined diligently and fairly” by means of a “simple and accessible procedure”.

Key expectations

- Establish policies and procedures to deal fairly and promptly with complaints.
- Ensure that complainants are provided with timely information about the status of their complaints, while maintaining good records of the process.
- Provide clear information about independent dispute resolution processes.
- Analyze complaints to identify trends that can lead to the correction of root causes.

Protection of personal information

Outcome

Insurers and intermediaries are expected to follow best practices with respect to the protection of personal information while complying with all relevant legislation.

Key expectations

- Establish safeguards to ensure the confidentiality of personal information.
- Establish training programs to ensure that privacy protection is part of the organizational culture.

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