

Guernsey Financial Services Commission

**Consultation Paper on
Disclosure Rules for Insurance Intermediaries**

December 2023

Contents

Introduction.....	3
Affected and Interested Parties.....	3
Purpose of the Consultation Paper.....	3
Consultation Period.....	3
Background.....	4
Relationships between insurance intermediaries and insurers.....	4
Proposed Changes.....	5
Disclosure Requirements – Relationship between intermediaries and insurers & Basis of Remuneration.....	5
Consultation Questions.....	6
Annex 1 – Insurance Intermediaries Rules and Guidance, 2021.....	7
Annex 2.....	9
For information – Insurance Core Principle 18 Intermediaries Disclosure – extract from IAIS Published Guidance.....	9

Introduction

Affected and Interested Parties

These proposals would affect licensed insurance intermediaries. At present, there are 35 intermediaries in the Bailiwick to whom these rules will apply, but only a proportion of them would be directly affected by the proposed changes.

Purpose of the Consultation Paper

In this Consultation Paper the Commission proposes to amend The Insurance Intermediaries Rules and Guidance (“the Rules”) for disclosure. This will require insurance intermediaries to disclose the nature of their relationship with the insurers with whom they deal as well as a requirement to disclose the basis on which they are remunerated. This change formalises a requirement in the existing codes of conduct for both financial advisers and authorised insurance representatives and represents good practice already in effect in industry. These disclosures have a positive impact on client protection as it is important for clients to be aware of conflicts of interest in buying insurance through intermediaries.

This change will bring the Bailiwick into compliance with the IAIS¹ Insurance Core Principles’ requirements laid out in ICP 18 in relation to “Intermediaries” (see Annex 2). This remedies a shortcoming highlighted in Guernsey’s 2019 [IAIS review](#)².

Consultation Period

Responses to this Consultation Paper are sought by 29 January 2024.

We welcome and encourage respondents to provide feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Commission’s website (www.gfsc.gg).

¹The International Association of Insurance Supervisors (IAIS) is an organisation of insurance supervisors and regulators which aims to promote effective and globally consistent supervision of the insurance industry. It sets international insurance standards which countries conducting international insurance business are expected to enact and enforce.

² [Detailed Assessment of Observance - IAIS Insurance Core Principles \(ICPs\) - Bailiwick of Guernsey](#)

Background

Section 2 of the Insurance Managers and Intermediaries Law (IMIL) prohibits a person from acting as an intermediary or professing to carry on the business of an intermediary unless the person is licensed. An insurance intermediary is defined under Section 2(4) as a person other than an insurance representative who by way of business:

- advises clients on their insurance requirements, and/or
- arranges contracts of insurance between insurers and clients.

The composition of the Bailiwick's industry is such that locally licenced intermediaries distribute the products of insurers from within and without the Bailiwick to local residents. There are currently 35 entities licensed in Guernsey as insurance intermediaries.

Relationships between insurance intermediaries and insurers

Close relationships between intermediaries and insurers are common and manageable, but when they remain undisclosed, a client that is ignorant of the connection might place too much reliance on the intermediary's recommendations, both at point of sale and in a loss event where the client is making a claim.

The key risks of not identifying the insurer and disclosing the intermediary-insurer relationship are as follows:

- If the insurer is not identified to the client before the point of sale, the client cannot make a fully informed decision about the policy before purchasing it.
- Unless the precise relationship between intermediary and insurer is explained clearly to the client before the point of sale, clients:
 - may misunderstand the disparate responsibilities of the intermediary and the insurer; and
 - cannot judge for themselves the risks posed by conflicts arising from the intermediary's relationship to the insurer.

It is important that clients are treated fairly and that they can have confidence that they have all the relevant information to select a suitable product.

Therefore, where the insurance intermediary offers products from a single insurer or from a limited range of insurers the intermediary must disclose this. Clients are then properly informed and may wish to investigate whether they can obtain a more suitable product or better terms elsewhere.

Potential conflicts of interest can arise for intermediaries if they are part of a wider group or have financial interest in an insurer or insurance group. The Commission recognises that in many cases such relationships are beneficial and is not seeking to restrict or prevent such

arrangements. However, they can give rise to conflicts of interest and should therefore be disclosed.

Information about the charges and commission arrangements for the intermediary is important for clients to be able to make a fully informed decision about a policy before purchasing it.

Proposed Changes

Disclosure Requirements – Relationship between intermediaries and insurers & Basis of Remuneration

It is important that insurance intermediaries provide clients with enough information to ensure they can make a fully informed decision before purchasing a policy. This includes disclosing their relationship with the insurers with whom they deal as well as the basis on which they are remunerated, which may be relevant in the context of any information they provide to clients.

The Commission is proposing to change the Rules to add requirements for insurance intermediaries to:

- Name and disclose their relationship to the insurers they represent, for example where they own or are part of the same group as the insurer,
- Disclose whether they are representing the client or are acting for and on behalf of the insurer,
- Identify and disclose where they are offering insurance products from a limited number of insurers (three or fewer), and
- Disclose the basis on which they are remunerated.

This should be done in a manner which is clear to their clients before the point of sale. Such disclosure is a well-established principle of good practice and would be expected as part of any intermediaries' obligation to ensure that clients are treated fairly, as laid out in the codes of conduct for both financial advisers and authorised insurance representatives.

The Commission will require information on the insurance intermediary's relationship with the insurers with whom they deal to be provided in writing to clients before entering into a business agreement. Information should also be provided on the intermediary's website or promotional material. In some circumstances, such as when the insurer and intermediary are under common ownership, it may be appropriate to additionally highlight this information verbally. Information on charging may be provided as part of a terms of business agreement, or separately.

As noted, this is a requirement of the international insurance standards set out by IAIS in part 18.5 of its insurance core principles. A copy of the relevant section of ICP 18 is attached in the Annex to this document.

Consultation Questions

Q1: Do you have any comments on the proposal that intermediaries should disclose to clients the relationship of the insurers with whom they transact as well as the basis on which they are remunerated?

Q2: Do you have any comments on the proposal that intermediaries should disclose to clients whether they are offering insurance products from a limited number of insurers (three or fewer)?

Responses to this consultation are requested by 29 January 2024.

Feedback may be provided online through the Consultation Hub section of the Commission's website, <https://consultationhub.gfsc.gg/>. Following the consultation, the Commission will provide a summary of the feedback received and a final update to the Rules.

Annex 1 – Insurance Intermediaries Rules and Guidance, 2021

Marked up Copy of the Amendment to Rules 7.4.4 and 7.4.5

7.4.4 Client relations – disclosure

(1) This rule does not apply where a licensee provides intermediary services to a client who is an eligible counterparty.

(2) Before a licensee provides insurance intermediary services to a client it must disclose to them, in writing:

- (a) the services and products offered;
- (b) the expertise of the licensee; and
- (c) the nature of the relationship between the licensee and the insurer with whom it is transacting
- (d) whether they are representing the client or are acting for and on behalf of the insurer.

(3) A licensee must not recommend a transaction to a client unless it has taken reasonable steps to make them aware of the risks involved; including conflicts of interest.

Guidance Note

Where the insurance intermediary has chosen to or is able to only select products from a limited selection of insurers (three or fewer) for a particular line of business, the intermediary should make appropriate disclosures to the client, including at least:

- the fact that the selection is limited (and to how many insurers)
- name of the insurer whose policies are offered,
- the nature of the relationship with any insurer whose policies are offered to the client. This would include such cases as, for example, being under common ownership, having financial interest in an insurer or insurance group, being an agent of the insurer, or any other situations from which conflicts of interest could arise.

Disclosures should be provided as part of a terms of business agreement. In addition, intermediaries would be expected to highlight such disclosure verbally when dealing directly with clients and to disclose appropriate information on websites and other media made available to clients.

7.4.5 Client relations – fees, charges, and remuneration

- (1) Before a licensee provides insurance intermediary services to a client it must disclose to them, in writing the basis on which the licensee is remunerated.
- (2) Before entering into an agreement to provide investment-services to a client, a licensee must disclose, to the client in writing, all fees and charges for providing those services, together with the basis of their calculations.
- (3) A licensee must disclose all remuneration to be received in connection with a transaction prior to the execution of the transaction. If the amounts are not known then the basis of the calculation must be provided. This does not apply –
 - (a) to transactions relating to general insurance business, unless the client requests disclosure; or
 - (b) to execution-only business, unless the client requests disclosure.
- (4) Remuneration must be disclosed in a manner appropriate to the category of client to which it relates.

Guidance Note

For the avoidance of doubt, disclosing the basis under which a licensee is remunerated does not necessarily entail a detailed breakdown of fees, but the type, such as fees, commission, other types of remuneration (including economic benefit), or any combination of those. The licensee should however disclose specific amounts if requested by the client.

Annex 2

For information – Insurance Core Principle 18 Intermediaries Disclosure – extract from IAIS Published Guidance



18.4.4 Relevant to governance, intermediaries are required to establish and implement policies and processes on the fair treatment of customers that are an integral part of their business culture (see Standard 19.2).

18.4.5 The governance of an insurer's direct sales staff is the responsibility of the insurer, and the governance of insurers is the subject of ICP 7 (Corporate Governance). Although ICP 7 is otherwise not directly applicable to intermediaries, it may be a useful source of information for intermediary supervisors.

18.5 The supervisor requires insurance intermediaries to disclose to customers, at least:

- **the terms and conditions of business between themselves and the customer;**
- **the relationship they have with the insurers with whom they deal; and**
- **information on the basis on which they are remunerated where a potential conflict of interest exists.**

18.5.1 In addition to disclosing matters relating to intermediaries themselves, intermediaries are required to disclose information on insurance products offered to customers (see Standards 19.5 and 19.6).

18.5.2 In setting disclosure requirements, the supervisor may take into account that there are differences in:

- the nature of different insurance products;
- the level of sophistication of different customers; and
- the way in which different types of insurance are transacted (for example, differences between commercial and personal (retail) lines).

The nature, timing and detail of disclosures may differ according to the circumstances. Nevertheless, disclosure requirements should provide adequate information to customers, taking into account these factors.

Terms of business

18.5.3 A terms of business agreement may be a convenient means by which an insurance intermediary can provide important information to a customer and satisfy many of the disclosure requirements. Such a document may include information such as:

- by whom they are licensed and supervised;
- the type of business for which they are licensed;
- whether they are independent or act on behalf of one or more insurers;
- information on the basis on which they are remunerated;
- the services provided, including whether they offer products from a full range of insurers, from a limited range or from a single insurer;



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- charging arrangements for the intermediation services;
 - cancellation rights in respect of the intermediation services;
 - notification of complaints;
 - client money arrangements, including treatment of interest;
 - confidentiality of information provided; and
 - the relevant law governing the agreement.
- 18.5.4 Insurance intermediaries should provide information on terms of business to customers and do so prior to an insurance contract being entered into. Where there is an ongoing business relationship between an intermediary and a customer, or once terms of business information has initially been provided in the case of policy renewals, the intermediary should review whether reiterating this information is necessary. Further information on terms of business might only be necessary where there are changes to the terms.
- 18.5.5 When insurance cover needs to be arranged immediately it may not be possible to provide documentation of terms of business at the point of arranging the contract. In such situations the information may be provided orally and followed up with written documentation within a reasonable period of time.
- 18.5.6 The supervisor may recommend, or require, that a copy of the terms of business, signed by the customer, is retained as part of the insurance intermediary's records. Where insurance is intermediated over the internet, the customer may be required to acknowledge the terms of business before a policy can be proceeded with. Electronic records should also be retained by the intermediary.

Intermediary status

- 18.5.7 An insurance intermediary's status may provide information to a customer on the extent of products from which recommendations are made and provide an indication of potential conflicts of interest. Where the insurance intermediary is only able to select products from a single insurer or from a limited range, the customer may wish to carry out their own research to see whether they can obtain better terms or a more suitable product elsewhere in the market.
- 18.5.8 It is particularly important that insurance intermediaries provide customers with information on their relationship with the insurers with whom they deal, specifically whether they are independent or act for one or more insurance companies, and whether they are authorised to conclude insurance contracts on behalf of an insurer or not.
- 18.5.9 Potential conflicts of interest can arise for some intermediaries if the intermediary is part of a wider group or if the intermediary has a financial interest, such as a shareholding, in an insurer or insurance group. Such relationships should be disclosed to customers.
- 18.5.10 Information on the insurance intermediary's status may be provided as part of a terms of business agreement or separately. Because of its importance, this information may also be highlighted verbally to the customer.



Remuneration

- 18.5.11 Insurance intermediaries are generally remunerated by way of fees and commissions, such as:
- fees paid directly by the customer;
 - fees or commissions paid indirectly by the customer, by way of deduction from premiums or funds invested; or
 - fees or commissions paid by the insurer.
- 18.5.12 Where insurers' direct sales staff carry out insurance intermediation as employees of the insurer, they may be salaried as well as receive any applicable commission.
- 18.5.13 Information on charging structures may be important information to customers. For example, for insurance products with an investment element, information on any fees or other costs deducted from the initial amount invested, as well as on fees or commissions deducted from the investment thereafter will be important.
- 18.5.14 Information on charging may be provided as part of a terms of business agreement, or separately. As fees and commissions vary by product and between product providers, they may need to be provided separately for each product recommended, often by inclusion in product documentation. Given their significance to some types of product, this information may also be highlighted verbally to the customer.
- 18.5.15 The supervisor may also require that, upon a customer's request to the intermediary, the customer is provided with further information on fees and commissions, including the level of fees and commissions. The intermediary should make the customer aware of his/her right to request information on fees and commissions. Communication should be clear and not misleading. In view of the impact of fees and commissions upon insurance products with an investment element, the supervisor may require that disclosure of fees and commissions is provided to customers prior to contracts being entered into in respect of all such products.
- 18.5.16 Some forms of remuneration of insurance intermediaries potentially lead to a conflict of interest. For example, an intermediary may be tempted to recommend a product which provides higher fees or commissions than another. Potential conflicts of interest for intermediaries may exist in a variety of circumstances (see ICP 19 Conduct of Business).
- 18.5.17 The supervisor should be satisfied that the intermediary has robust procedures in place to identify and avoid, or manage, conflicts of interest, and deliver outcomes aligned with customers' best interests. Where they cannot be avoided, or managed satisfactorily, this would result in the intermediary declining to act. Conflicts of interest may be managed or avoided in different ways depending on the nature and severity of the conflict of interest (see Application Paper on Supervising the Conduct of Intermediaries).
- 18.5.18 Additionally, circumstances in which conflicts of interest may arise may be covered in the codes of conduct issued by SROs or other professional bodies.



18.5.19 The supervisor should be aware of the use of non-monetary benefits, including, for example, “soft” commissions, offered by insurers to intermediaries. These may include less tangible inducements such as professional support, IT support, or corporate entertainment at sporting or cultural events. Such inducements may lead to conflicts of interest and are less transparent than fees or commissions and also need to be avoided, managed or prohibited as appropriate.