

Implementing the Insurance Distribution Directive

June 2018

Name**Respondent Type**

Publish the response with my/our name***Responses from organisations***

Association of Personal Injury Lawyers

Stewarts Law LLP

The Law Society of England and Wales

Representative Group

Law Firm or Other Legal Services Provider

Law Society

Publish the response anonymously***Responses from individuals***

ID-07

ID-12

Anonymous

Anonymous

Publish my/our name but not the response***Responses from Organisations***

Cardiff and District Law Society

Forsters LLP

Law Society

Law Firm or Other Legal Services Provider

Solicitors Regulation Authority
199 Wharfside St
Birmingham
B1 1RN



20 November 2017

By email: idd@sra.org.uk

Dear Sirs

Implementing the Insurance Distribution Directive (IDD)

We are grateful for the opportunity to respond to this consultation. We are content with the revised rules, and believe that they are not overly onerous. Indeed, the position set out in the rules is not vastly different to the present situation, and most firms will already be compliant or will require little change to their behaviour to continue to be compliant.

Information requirements

It is right that solicitors should be completely transparent about insurance arrangements made on behalf of their clients. We suggest that the requirement that firms must disclose, before the conclusion of a contract of insurance, if they have 10 per cent or more voting rights or capital in an insurer, or an insurer has 10 per cent or more voting rights or capital in the firm¹, should be widened to reflect the current legal services climate. This rule should be widened to encompass a requirement that firms should declare if they are part of an Alternative Business Structure (ABS) with an insurer, before concluding a contract of insurance. While solicitors involved in ABS' may not have 10 per cent voting rights or capital in an insurer, the structure of the ABS will mean that the firm jointly owns a company with insurers. Clients deserve to know whether their solicitor is involved with a certain insurer, as this will almost certainly affect which insurance services are recommended to them.

We hope that our comments prove useful to you. If you have any queries in relation to our response, please do not hesitate to contact Alice Taylor on alice.taylor@apil.org.uk.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alice Taylor', written in a cursive style.

Alice Taylor

Legal Policy Officer

¹ Draft Amended SRA Financial Services (Conduct of Business) Rules 2001, Appendix 1, rule 2(d) and (e)

Implementing the Insurance Distribution Directive

Response ID:18 Data

2. About you

1.

First name(s)

Julian

2.

Last name

Chamberlayne

6.

I am responding..

on behalf of an organisation

7.

On behalf of what type of organisation?

Law firm or other legal services provider

8.

Please enter your organisation's SRA ID (if applicable)

486857

9.

Please enter your organisation's name

Stewarts Law LLP

10.

How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.

1) Do you have any comments on our proposed rule changes?

These comments all relate to ATE insurance, which is commonly used by commercial clients, as well as the individuals around which the consultation language seems to focus. Stewarts' clients (both individuals and commercial parties) frequently use ATE insurance and we would be happy to meet with the SRA to discuss aspects of the new proposed rules. The below references to rules are to the newly-proposed rules.

a. In the consultation paper we see the SRA view that "... EPFs can be classed as ancilliary insurance intermediaries...". Will this be confirmed within the new rules? One reason for this is that, from following through definitions in the Directive, 'ancilliary insurance intermediaries' do not have to do 15 hours CPD per year. This contrast with 'insurance intermediaries' which do. 15 hours CPD per year would run counter to the new SRA CPD regime and would raise further questions: does any lawyer who is involved in a few hours of ATE related work once every few years have to do 15 hours CPD?; does all that 15 hours have to relate to insurance? (that would surely be disproportionate); can the 15 hours be performed by one person

in the organisation with a role in setting up ATE insurance procedures in the firm?

b. COB Rule 10 states "Each record made under these rules shall be kept for at least six years". Is the SRA proposing that the record retention requirement trumps the clients' right to delete under the GDPR?

c. Many law firms will use an FCA-regulated broker to source and advise on ATE insurance; but the law firm will still give some advice on the ATE policy proposed. The broker gives its own demands and needs statement:

i. Looking at COB Appendix 1 3.1(c) and 3.2(a), will there be confirmation in the rules that, whilst a law firm might give a 'personal recommendation', the 'analysis of a sufficiently large number of insurance contracts available on the market' can be delegated to a broker?

ii. In that situation is 3.1(a) applicable to the law firm (personal recommendation on the basis of a fair and personal analysis)?

iii. If it is in fact 3.1(c) that is applicable in that situation (no contractual obligation to conduct insurance distribution activities with certain insurance undertakings and not giving advice on the basis of a fair and personal analysis) will it be confirmed that, whilst 3.1(c) states "the firm must provide the names of the insurance undertakings with which the firm may and does conduct business" that this is not intended to require provision of all insurance brokers the firm conducts business with and can instead be ring-fenced to the individual broker engaged on that case, or certain brokers or insurers relevant to certain departments of a firm or that are relevant to a subject matter?

d. COB Appendix 1 4.1 states "Prior to the conclusion of a contract of insurance, a firm must specify on the basis of information obtained from the client, the demands and needs of that client". What is the minimum threshold of the firm's involvement in the contract of insurance in order for the firm to have to provide a demands and needs statement? Does activity currently considered to be 'arranging' insurance require a statement of demands and needs?

e. COB Appendix 1 3.1 and 4.4 make reference to a firm 'proposing' a contract of insurance. Does 'proposing' a contract of insurance differ from giving a 'personal recommendation' for a contract of insurance? (if so a new defined term for 'proposing' would bring clarity on the division between the two activities).

f. COB Appendix 1 10.3(b) sets out that a firm must communicate information "in an official language of the Member State in which the insured risk, or proposed insured risk, is situated or in any other language agreed upon by the parties". Can "the language in which relations have been conducted" be added to this list? Some firms might not expressly contract with a client to communicate in a certain language. If relations being conducted in a certain language is to be taken as implied agreement to that language being used for insurance documents, it would be best to make that clear. It would make sense to also allow communications in the language of the Member State in which the client is based (including branches for international corporates).

g. COB Appendix 1 13.4 sets out that when "dealing with a client who is an individual and who is acting for purposes which are outside his trade or profession the information provided under paragraph 13.1 must include an Insurance Product Information Document":

i. It strikes us that providing both a demands and needs statement and an Insurance Product Information Document at least some unnecessary duplication of materials. This will increase costs for the clients without any appreciable benefit. In fact clients may find it confusing to receive two similar documents. We suggest that the rules be drafted in a way that, for applicable clients, the Insurance Product Information Document be considered to also meet the requirement of a demand and needs statement.

ii. If an Insurance Product Information Document is provided by a FCA regulated broker does the law firm have to provide one as well?

12.

2) Do you need further guidance on insurance distribution activities and if so on what aspects in particular?

Implementing the Insurance Distribution Directive

Response ID:16 Data

2. About you

1.

First name(s)

James

2.

Last name

Woolf

6.

I am responding..

on behalf of an organisation

7.

On behalf of what type of organisation?

Law society

8.

Please enter the name of the society

The Law Society

9.

How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.

1) Do you have any comments on our proposed rule changes?

Implementing the Insurance Distribution Directive
A response from the Law Society of England and Wales

1. The Law Society welcomes the opportunity to respond to the consultation on the European Insurance Directive ('the Directive').

2. We share the SRA's view that the new legislation is likely to impact practitioners that carry on insurance distribution activities, in particular those involved in personal injury, conveyancing and probate.

3. We note that the legislation comes at the time of increased uncertainty for the profession given the current programme of the SRA's Handbook reform. That is why it is important the SRA provides appropriate advice and guidance to the profession, both in the interim period and once the Handbook reform is completed, to mitigate against uncertainty and any other unforeseen consequences of the changes.

4. In particular, we recommend that the SRA provides clarification on the issue of the applicability of the current Continuing Competence regime when considered in the light of the conditions required by the

Directive. The Directive sets a minimum of 15 hours per year of CPD requirement for staff involved directly in insurance distribution activities. There are no minimum hourly requirements for SRA authorised practitioners as the SRA has replaced these by the Continuing Competence regime.

5. In addition, the profession would benefit from the SRA's guidance on meeting the Directive's customer care conditions. For example, the Directive sets the requirements that all insurance distributors need to act fairly and 'in the customer's best interests', communicate in a manner that is clear, fair and not misleading, and make sure that remuneration does not conflict with the duty to act in the customer's best interests. While the SRA's Handbook outlines indicative behaviour in relation to general customer care, we feel that guidance specifically tailored to the insurance distribution activities would be welcomed by those engaged in providing advice on insurance products.

6. In conclusion, we strongly recommend that the SRA publishes guidance for the profession that will assist the profession in implementing the Insurance Directive. The SRA could also consider providing specific training on the Insurance Directive for those members of staff manning all relevant helplines, prior to the implementation period.

11.

2) Do you need further guidance on insurance distribution activities and if so on what aspects in particular?

Implementing the Insurance Distribution Directive

Response ID:7 Data

2. About you

10.

How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

11.

1) Do you have any comments on our proposed rule changes?

There should be a general exemption for firms that have no interest in promoting insurance - those who neither own any interest in nor receive any referral fee or commission from insurance companies - where the insurance is incidental to other transactions. The rules concerning acting in the client's best interest should be adequate.

12.

2) Do you need further guidance on insurance distribution activities and if so on what aspects in particular?

No.

Implementing the Insurance Distribution Directive

Response ID:12 Data

2. About you

7.

How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

8.

1) Do you have any comments on our proposed rule changes?

NO

9.

2) Do you need further guidance on insurance distribution activities and if so on what aspects in particular?

PLEASE PRESCRIBE WORDING/PRECEDENT/FORMS IN THE RULES FOR BUSY PRACTITIONERS. IN RELATION TO:

- THE DISCLOSURE STATEMENT;
- THE QUESTIONNAIRE TO CLIENTS TO ASCERTAIN THEIR NEEDS; AND
- THE DEMANDS & NEEDS STATEMENT FOR DIFFERENT TYPES OF CLIENTS/WORK, SUCH AS RESIDENTIAL, CORPORATE.