

# FCA to ban opt-out add-on insurance

On 1 April 2016, the FCA ban on opt-out selling across the financial services sector will come into effect and consumers will no longer be defaulted into purchasing add-on products.

To help consumers make informed choices, firms and their representatives selling add-on insurance products must comply with the FCA's new guidance on general insurance add-on sales by 30 September 2016.

This briefing examines the new rules and guidance to determine how firms should meet the FCA's requirements.

## New rules

### Operation of the ban

The ban on opt-out selling comes into effect through the operation of new rules on 'optional additional products'. The rules, which apply from 1 April 2016, will apply to insurance and banking customers, with amendments being introduced into the ICOBS and BCOBS sourcebooks respectively.

The new rules will also apply to 'clients' (a broadly defined term in the FCA Handbook which generally encompasses all customer types) through the COBS sourcebook and specifically to customers of Mortgage and Home Finance products through new rules in the MCOBS sourcebook.

### Optional additional product

The FCA definition of an optional additional product includes "...any type of good, service or right obtained in connection with, or alongside, a primary product" - whether it is financial in nature or not. This is unhelpfully not a defined term in the FCA's Handbook glossary, and is instead found in wording in [PS15/22](#).

The FCA has responded to respondents' feedback that the definition was drafted too broadly, and so would encompass both extensions or 'optional extras' (such as accidental damage and baggage cover) and customer options (such as

*"The ban on opt-out selling is designed to improve competition in the market around add-on sales and prevent the exploitation of customer biases, which can lead to customers purchasing products they do not need and overpaying for those products. The [FCA's] market study found that customers were overpaying for add-ons by as much as £108m to £200m per year. The Guidance on information provision is designed to encourage more informed and active decision-making by customers."*

FCA – Overview, PS 15/22 General Insurance Add-ons Market Study

## Checklist for firms...

In order to ensure compliance with the FCA's requirements, firms should:

- Consider how to demonstrate a customer's 'active election' of an add-on.
- Provide appropriate and timely information to customers so they can make an informed decision when purchasing the product.
- Identify the most common add-ons sold and monitor how information is provided to customers in respect of these products.
- Demonstrate good practice by helping customers compare packages of primary product and add-ons, and to make comparisons of packages easier, with a clear price for the whole package given.
- Displaying the annual price of add-ons (as well as monthly) to ensure the customer can adequately understand the overall price of the add-ons.
- Review customer information to ensure that product features, benefits, exclusions, terms and price are provided as required.

the right to set an excess or sum insured). In doing so, it confirmed that the application of the definition will include 'optional extras' but not customer options.

### Impact of new rules

Operation of the rules will mean that customers should not be defaulted into their purchase without their active election.

Selling practices will need to be reviewed to ensure the new requirements are met. Firms are, therefore, advised to review their operation of website configurations and call scripts to make sure that customers are not automatically selected for such products. However, there is an exemption for options selected on a price comparison website, and other option types detailed further in this note.

New selling practices will need to be considered and implemented to ensure compliance with the FCA's new 'active election' requirement, for example, the new requirement for a customer's 'express consent' could be met by a signature to a declaration.

### Renewable add-ons

The FCA has set out two scenarios on how the ban will apply to renewable add-ons:

- the renewal of add-ons that had been sold on an opt-out basis prior to implementation of the rules; and
- the renewal of add-ons sold after implementation of the rules.

In the first case, firms are expected to take reasonable steps to obtain consent to the renewal of add-ons from customers who have previously purchased add-ons by default. The FCA suggests satisfying this requirement through contact with the customer at renewal, letting them know that they own these add-ons and that the add-ons may be removed on request.

In the second scenario, the FCA rules now include transitional arrangements which give firms the option to obtain

## Background

- The FCA's decision to implement a ban and issue guidance is a result of a recent extensive policy exercise, driven by [MS14/1: the General Insurance Add-ons Markets Study](#) (the 'market study') published in July 2014.
- Following the market study results, the FCA found that competition in add-on markets is not effective and is not working in the best interests of customers. The FCA proposed four remedies to address this:
  - introducing value measures, to give consumers an indication of the value of a general insurance product e.g. claims acceptance rates;
  - introducing a deferred opt-in for Guaranteed Asset Protection Insurance (GAP);
  - introducing a ban on opt-out selling; and
  - improving information provided to customers buying add-ons.
- The FCA issued a discussion paper [DP15/4: Developing General Insurance Add-ons Market Study – Remedies: Value Measures](#) on the first remedy, but has not provided a response to the feedback received.
- The second remedy was consulted on in [CP14/29, a consultation paper on the Guaranteed Asset protection \("GAP"\) insurance market](#) published in December 2014. The FCA responded in [PS15/13: Guaranteed Asset Protection insurance: competition remedy](#) and included new rules requiring firms distributing GAP insurance in connection with the sale of a motor vehicle (add-on GAP) to:
  - provide customers with prescribed information to help them shop around and be more engaged when making decisions about purchasing the product; and
  - introduce a deferral period, which means GAP insurance cannot be introduced and sold on the same day.
- The last two remedies were consulted on in [CP15/13, a consultation paper on rules banning opt-out selling and improving information provided to customers buying add-ons](#).  
On 28 September 2015, the FCA published policy statement '[PS15/22 General Insurance Add-ons Market Study - Remedies](#)' which sets out the response to CP15/13. This statement also sets out the FCA's rules banning opt-out selling and Handbook guidance on what constitutes 'appropriate and timely information' for general insurance add-on sales – the rules and guidance of which are the focus of this briefing.

either 'active' election from their customers, or to take reasonable steps to inform their customers that the renewal of their add-on product is optional, that they may elect not to renew that product, and the effect (if any) on the primary product.

### Customer contact

The FCA has not been prescriptive about how customers should be informed of add-ons at renewal, nor have they been prescriptive about

who informs them. However, the FCA believes it is likely that the seller of the product will generally be in the best position to inform the customer. The customer will only need to be informed once, not after every subsequent renewal. This should apply to all customers, ensuring that all customers are aware of their add-on purchases.

### What is not captured by the rule?

The FCA has not extended the ban to cover the below:

- Free products - those offered to the customer at no extra charge (if the product subsequently becomes chargeable, firms will need to obtain an active election from customers).
- Unbreakable bundles – the FCA does not believe unbreakable bundles are formed of optional add-on products, but firms will still need to obtain consent to buying a bundle. The ban will, however, apply to unbreakable bundles sold as an optional product to another financial product, although the FCA recognises that such sales are rare.
- Options selected on a price comparison website, the option to auto-renew and overdrafts (this is due to ongoing work in the areas in both the UK and EU, together with the FCA's desire to maintain customer convenience).

### New guidance

#### Application

Alongside the new rules banning opt-out selling, the FCA has published extensive guidance on 'appropriate and timely information'. The guidance is aimed at firms operating price comparison websites for general

insurance products but also 'all other participants' in the distribution chain.

#### Context

The guidance is designed to complement the existing Handbook rule in ICOBS 6.1.5R, which requires that 'a firm must take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.'

Handbook guidance at ICOBS 6.1.6AG makes it clear that this 'appropriate information' rule applies equally to add-ons as to standalone products.

#### Requirements

In line with the new guidance, firms should:

- introduce add-ons to customers earlier in the sales process, in particular the most common add-ons;
- help customers compare packages of primary product and add-ons (for example, by giving a clear price for the whole package);
- display the annual price of add-ons (as well as monthly).

The proposed guidance also reminds firms that where add-ons are insurance contracts in their own right, the rules in ICOBS will apply and firms must provide information on the

features, benefits, exclusions, terms and price.

#### Legal basis

Under section 139A of the Financial Services and Markets Act 2000, the FCA has the power to give guidance. However, this provision is usually exercised in relation to Handbook guidance.

The guidance in respect of 'appropriate and timely information' appears to be standalone and the FCA has not given an indication of where it will be located if it is not in the Handbook. This obviously creates a risk that firms will not be able to ascertain easily the totality of the FCA's requirements and expectations. This is a concern, especially given the FCA's reminder that:

- FCA guidance and supporting material are potentially relevant to an enforcement case, for example to help assess whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by the Principles of Businesses or rules.
- The extent to which the FCA may take guidance and supporting material into account when considering a matter will depend on all the circumstances of the case.

## How we could help...

We have legal advisors available to:

- Undertake a comprehensive review of existing add-on sales processes and procedures against the new FCA requirements.
- Advise on any new sales practices and procedures.
- Review product information to ensure features, benefits, exclusions, terms and price details are set out to the extent necessary.
- Review timing of when information is provided and suggest any necessary improvements.

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