

CP12/14^{★★}

Financial Services Authority

Tracing employers' liability insurers – historical policies

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 17 October 2012.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-14-response.shtml.

Alternatively, please send comments in writing to:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

| | |
|--------------|--|
| CP | Consultation Paper |
| EL | Employers' Liability |
| PS | Policy Statement |
| ELCOP | Employers' Liability Code of Practice |
| ELTO | Employers' Liability Tracing Office |
| ELIB | Employers' Liability Insurance Bureau |
| ABI | Association of British Insurers |
| LMA | Lloyd's Market Association |
| ELR | Employers' Liability Register |
| DWP | Department of Work and Pensions |
| EEA | European Economic Area |
| FSMA | Financial Services and Markets Act 2000 |
| CBA | Cost-benefit analysis |
| ICOBS | Insurance Conduct of Business Sourcebook |

1

Overview

- 1.1** In this Consultation Paper (CP), we make proposals to help former employees who have work-related illnesses to trace their employers' liability (EL) insurer. As many years may have passed since individuals have left the employment where they contracted the illness, tracing the insurer to make a claim for compensation can be difficult, causing significant detriment to these consumers.
- 1.2** There have been a number of measures initiated by us, the industry and government to help people who find themselves unable to trace insurers, but these mainly relate to policies in recent periods. Our new proposals require all firms who may have actual or potential EL insurance claims to conduct effective searches of their records when they receive a request from claimants or other third parties regardless of the period to which they relate.

Equality and diversity

- 1.3** We have assessed the likely equality and diversity impacts of the proposals and do not consider that our proposals give rise to any concerns in this regard. However, any comments from respondents would be welcome.
- 1.4** We welcome comments on our proposals no later than 17 October 2012. We intend to publish our final rules, if approved, in January 2013, for implementation within six months from the making of our rules.

Who should read this paper

- 1.5** Our proposals will be of interest to both UK-authorized firms and EEA firms passporting into the UK that are carrying out contracts of insurance, and managing agents including in either case business accepted under reinsurance to close. Any references to firms in this CP include all of the above. It will also be of interest to those who are providing tracing services to consumers.

CONSUMERS

Our proposals may help you if you suffer from a work-related disease and are facing difficulties claiming compensation because you cannot trace your EL insurer. We want to impose new requirements on insurers to conduct an effective search of their records in response to a request from you, your representative, or other third party (including a qualifying tracing office).

2

Background

- 2.1 This CP addresses the significant detriment experienced by consumers who have contracted work related illnesses but because of the lapse of time are unable to, or are experiencing difficulty in tracing the appropriate insurer or insurers to properly direct their claim to. In a number of cases the employer will have ceased trading and the records that would enable the consumer to find the firm who is responsible for dealing with their claim may be missing or incomplete.
- 2.2 Some consumers who have contracted work-related illnesses experience mild or moderate side-effects but others, such as those with mesothelioma¹, are undergoing extensive medical treatment. In 2010², 3,559 consumers were unable to trace their insurer, 537 were consumers who contracted mesothelioma. Consumers are spending significant amounts of time and money searching for an insurer so they can submit a claim. In cases where they are unable to locate their insurer, some will be able to get limited compensation through different schemes³, but others will be left with no compensation.
- 2.3 A number of factors exacerbate the difficulties consumers face in locating their insurer. The time that has passed from exposure to manifestation of the disease can make remembering specific details of employment such as the full name of the employer and exact period of employment problematic. Consumers might not hold all the relevant information that would help them in tracing their insurer. Likewise, firms may not hold the relevant information going back several decades.
- 2.4 There have been a number of initiatives to support these consumers:
- The Association of British Insurers (ABI) and Lloyd's Market Association (LMA) have operated under a voluntary code of practice, the Employers' Liability Code of Practice (ELCOP) since 1999. Their members committed to search Employers Liability (EL) policy records and to keep their own records in an easily searchable format for 60 years.

1 Mesothelioma is a rare, usually fatal form of cancer of the lining of the lungs or abdomen, usually caused by exposure to asbestos.

2 Code of Practice for Tracing Employers' Liability Insurance Policies ABI/LMA report for 2010. These figures refer to enquiries received by the Employers' Liability Tracing Office.

3 Industrial Injuries Disability Benefit (IIDB) is a weekly non contributory benefit. The government has two lump sum schemes, established under the Pneumoconiosis etc (Workers' Compensation) Act 1979 and the Child Maintenance and Other Payments Act 2008.

- In February 2010 the Department of Work and Pensions (DWP) published a Consultation Paper setting out proposals to create an Employers' Liability Tracing Office (ELTO) and Employers' Liability Insurance Bureau (ELIB).
- ELTO was established on 1 April 2010. Its primary functions include uploading and managing a central database containing EL policies and co-ordinating searches undertaken by their members.

- 2.5 In February 2011 we published new rules on tracing employers' liability insurers.⁴ Our rules include requiring firms with actual or potential liability for UK commercial lines EL to produce an Employers' Liability Register (ELR).⁵ The register includes information about policies entered into, renewed or for which claims are made from April 2011.⁶ Firms are required to update the register every three months.⁷ Firms have the option of producing and updating their ELR through a qualifying tracing office (currently ELTO is the only tracing office that meets the requirements) or their own website.⁸
- 2.6 The ELR creates permanent records matching firms to employers for specific periods. For future consumers whose work-related illnesses relate to policies issued or renewed since April 2011, this will help them locate an insurer for a specific period if they need to. This is because a firm (or ELTO on behalf of their members) can readily search their ELR and confirm whether or not they provided EL cover to a particular employer during the relevant period.
- 2.7 For searches relating to policies issued or renewed before April 2011 ('historical policies') a search against the ELR is less likely to lead to a match. In such cases a consumer can ask firms to search their records for information relating to historical policies to ascertain whether or not cover was provided. Some firms are undertaking searches on a voluntary basis.⁹ If firms do not agree to search on a voluntary basis, consumers may find themselves unable to make a claim.
- 2.8 The DWP is proposing today a number of measures in this area. Among others, the creation of a scheme to pay additional support to anyone diagnosed from this date with mesothelioma who can't trace a liable employer or relevant EL insurance policy to claim against and the requirement that all insurers that provide EL insurance become members of ELTO. We consider that our proposals support those announced by the DWP.

4 PS11/4 *Tracing employers' liability insurers* February 2011.

5 ICOBS 8.4.4R (a)

6 ICOBS Annex 1

7 ICOBS 8.4.11R (2)

8 ICOBS 8.4.7R (1)

9 Members of ELTO, as part of their membership are expected to search on request from consumers or their representatives; members also receive search requests from ELTO.

3

Proposed requirements to conduct an effective search for historical policies

Previous consultation proposal

- 3.1 In our earlier Consultation Paper¹⁰ we proposed that all policies entered into, renewed or for which claims were made from 1 November 1999 should be included in ELRs. 1999 would align our proposal with the establishment of ELCOP, an industry-wide agreement on record keeping. However, we received significant objections to the proposal. Some considered that it would be a disproportionate requirement, while others considered that it fell significantly short of what was needed and would have an adverse effect on consumer protection. The objections are set out in detail in PS11/04. In light of consultation responses, and having considered the benefits to consumers, we restricted our requirements to policies issued, renewed or for which claims are made from 1 April 2011, but we committed to continue to consider how to address the issue of historical policies.
- 3.2 We subsequently held discussions with a number of stakeholders and firms on a range of issues including how firms held records and how they searched historical policies. We also explored options on how to reduce the number of consumers who cannot locate their firm. We now set out our revised proposals in this consultation.

Proposed requirements

- 3.3 We consider that all relevant firms should conduct effective searches to maximise the possibility that consumers can make a claim if they need to. We expect that firms, industry

¹⁰ CP10/13 *Tracing employers' liability insurers* June 2010.

and consumers will agree that these proposals are necessary to achieve an appropriate degree of protection for consumers.

- 3.4 We propose a requirement for all firms with actual or potential liability for UK commercial lines employers' liability (EL) insurance claims to take reasonable steps to conduct effective searches of their records for historical EL policies when they receive a request from a consumer, their representative or other third party (including a qualifying tracing office). Our proposals also set out that firms must put in place and operate in accordance with a tracing policy. We also propose requiring firms to respond to all enquiries within one month unless the request is from a qualifying tracing office and no evidence of a historical policy is found. Finally, our proposals include setting out what the responses should say to the requester.
- 3.5 A firm's searches are not limited to searching for the policy document itself. We are aware that for some historical policies, the actual policy document may no longer exist but other documents may exist that indicate that cover was provided, for example, cover notes and schedules. For this reason we defined historical policy to mean a UK commercial lines employers' liability insurance policy or other evidence of cover issued or renewed before 1 April 2011.
- 3.6 Our requirements will apply to the same firms that our original requirements apply to i.e. both UK-authorized firms (including UK branches of non-EEA insurers authorised in the UK) and EEA firms passporting into the UK, whether providing cover cross-border services or through a branch.¹¹ It will also apply to firms carrying out contracts of insurance and managing agents, including in either case business accepted under reinsurance to close. Any references to firms in this CP include all of the above.

Firm visits

- 3.7 We know from firm visits that some firms' retention of historical records may be incomplete. The level of detail contained in records retained varied from firm to firm. Records were held in a number of different formats such as microfiche and ledgers. Those that were computerised were likely to be held on different IT platforms. Firms employed very different methods for retaining and searching their historical policies. Some used more manual processes, relying on human judgement to search, while others had more automated processes.

Tracing policy

- 3.8 The steps a firm will take to conduct effective searches will vary from firm to firm because of these variations. Our proposal requires firms to create and operate in accordance with a tracing policy. This policy will document the following:

¹¹ ICOBS 8.4.1R

- a list that will identify where their historical EL policies are held or are likely to be held;
- details of the different types of records to be searched by the firm, such as electronic files, paper files, and microfiche;
- details of how the firms conduct searches; and
- details of how and in what circumstances the firm may decide not to conduct a search.

Therefore, a firm must carry out an assessment of where their records are held or are likely to be held and the policy will then set out how they will be searched.

- 3.9** A firm must describe how they carry out searches. Firms may consider including a summary of all the different systems used to search such as the ELR and explain the main features of any systems used, for example, whether the system will search and return near matches on names.
- 3.10** The policy will also set out why and what circumstances a firm decides not to conduct a search. For example, a firm may filter search requests if appropriate. If there is no possibility that they wrote cover, because the request relates to a period when they did not write EL business, there is no need to conduct an effective search.

Timing and content of response

- 3.11** ELTO members are familiar with returning search requests within one month and we believe this is a reasonable period of time in which to require firms to conduct and return searches. ELTO will first carry out a search against their central database and when a match is not found, ELTO members receive weekly lists of mesothelioma cases to search and monthly lists for other cases. When a search enquiry has come through ELTO, ELTO will respond back to the requestor.
- 3.12** We propose a requirement for firms to respond to search requests within one month of receiving the request. Where the search enquiry is received through a qualifying tracing office (ELTO) and when no evidence of a historical policy has been found, our proposed rules do not require any response. This is in line with existing ELTO requirements. In all other cases, a response must be provided back to the requestor within one month of receiving the request. The requestor could be the claimant, their representative or other third party including ELTO.
- 3.13** Where a firm has established that a historical policy does exist, the response should confirm that cover was provided and set out any available information that is relevant to the request received such as the name and address of the policyholder or one of its named subsidiaries.
- 3.14** Where there is not an exact match but taking into consideration the name of the policyholder, the location and nature of the business or other factors, there is evidence to suggest that a historical policy does exist, but the firm is unable to confirm that cover was

provided, the response should set out any information relevant to the request and describe the next steps (if any) the firm will take to continue the search.

3.15 Where the firm has conducted a search but no historical policies have been found, (other than when the search request is received through a qualifying tracing office) the response should set this out clearly and explain that reasonable steps were taken to conduct an effective search.

Q1: Do you agree with our proposal requiring all firms with actual or potential liability for UK commercial lines employers' liability (EL) insurance claims to take reasonable steps to conduct effective searches of their records for historical policies?

Q2: Do you agree with our proposal requiring firms to put in place and operate in accordance with a tracing policy?

Q3: Do you agree with our proposal requiring searches to be returned within one month of receipt of the request?

Q4: Do you agree with our proposals on the contents of the response?

Why we are proposing these requirements

- 3.16** It is likely that there will be some consumers who will not be able to locate a firm. However, where firms do hold historical EL policies our proposed requirements mean they must conduct an effective search for these policies and identify whether they wrote cover. Firms have a legal obligation to pay valid claims when they are due.
- 3.17** Requiring firms to effectively search their historical policies we believe will maximise the probability of a consumer locating a firm to claim against. This may alleviate some of the uncertainty experienced by consumers of not knowing whether or not they will be able to make a claim. We consider that our requirements will achieve an appropriate degree of protection for consumers.
- 3.18** Furthermore, establishing an effective industry wide searching regime will demonstrate to consumers and their representatives that there is an effective search process in place.

- 3.19** We consider that our proposed requirements around searching provide a more proportionate solution, and achieves a better outcome for consumers, when compared to backfilling ELRs to 1999. As detailed in PS11/4, whilst firms were party to ELCOP, the requirement was to keep policy records in a format accessible for their own tracing purposes. There was no agreed industry format or system for maintaining this data, and it would require significant expense to translate all this data. Firms will be more able to comply with our proposed requirements, which are less prescriptive because they take into account that firms may hold records in a number of different formats, possibly at different locations, and the volumes also vary. All of these variances will be reflected in the way that firms will take reasonable steps to conduct searches to identify whether they provided cover.
- 3.20** Our requirements are for all historical policies, not just those written since 1999, therefore they go further than our original proposal and in this sense will achieve a higher degree of protection for consumers.

Timetable

- 3.21** A number of firms are already searching and possess the infrastructure to implement our requirements quickly. Accordingly, we propose that firms have in place an effective search regime of their historical EL policies within six months from the making of our rules.

Q5: Do you agree with our proposal for the timing of the implementation of our requirements?

Annex 1

Cost-benefit analysis

1. When proposing new rules, we are obliged under section 155 of FSMA to publish a cost-benefit analysis (CBA). Its purpose is to provide an estimate of the costs and an analysis of the benefits of the proposed rules.
2. To inform the CBA we held discussions with a number of stakeholders. We also sent an electronic survey to 23 firms, of which 14 responded. These respondents are broadly representative of the 218 firms that have confirmed to us they have liability or potential liability for UK commercial lines EL contracts.¹

Population of firms

3. In 2010, 3559 consumers were unable to trace their insurer, 537 of whom had contracted mesothelioma. The average mesothelioma claim is approximately £170,000. The number of search requests received by firms varies, most firms received on average between 20,000 to 30,000 requests per year. Around 20% of these requests were for mesothelioma claims.
4. Of the 218 firms that have confirmed to us they have liability, 159 (73%) firms have confirmed to us that they are members of ELTO. A significant number of the 218 firms, including ELTO members, are currently searching their records when requested by claimants and therefore will not be materially affected by the proposed rules. These firms include those with the largest historic and current EL books. Firms that have placed all their policy data on to an ELR will also not be materially impacted by the rules.
5. However, not all firms are searching or are searching only in a few instances, as some firms receive very few enquiries. Firms that are members of ELTO tend to receive significantly more search requests on a regular basis than non-members. We believe our requirements may lead to an increase in the number of search requests non-ELTO firms receive. Our estimates are based on the costs that will apply to these firms. The DWP has announced today proposals to require all insurers that provide EL insurance to become members of

¹ As required by ICOBS 8.4.6R

ELTO and abide by its rules. As a consequence these firms will have to incur some of those costs in the future to comply with Government regulations.

Compliance costs

6. We anticipate there will be both one-off and on going costs for those firms who have not entered all their records on to an ELR, of undertaking substantial numbers of effective searches. This means that firms that are already searching effectively, such as ELTO members, will not incur significant incremental costs as a result of our proposals.
7. Our estimates for the costs of our proposals are based on the information we received from ELTO firms, rather than non-ELTO firms, as the responses we received from ELTO firms provided a more complete description of the cost of searching and therefore a better estimate of the costs in complying with the proposed rules.
8. Table 1 summarises the one-off and ongoing costs on a per firm basis for those not undertaking significant numbers of extended searches.

Table 1: Summary of compliance costs per firm

| Population of firms that fall under proposed rule | Number of firms that do not belong to ELTO | Estimated one-off compliance costs | Estimated ongoing compliance costs (per year) |
|---|--|------------------------------------|---|
| 218 | 59 | Minimal – £150,000 | £2,000 – £50,000 |

9. We would expect the incremental costs to vary substantially between firms because of the difference in the number of policies they have written and held, the different systems that policies are held on and searched for on, how many requests they have received to search and whether they have done any searching.²

One-off costs

10. Firms will incur one-off costs when they set up the infrastructure to enable them to search effectively. This includes having a tracing policy. Some firms will be better placed to meet our requirements as a result of the number and type of historical records, or because they already have systems in place to begin effectively searching.
11. The majority of reported costs we received were mostly in the region of £25,000. For one firm we received a cost of £150,000 while a few firms reported they incurred minimal one off costs. This high cost may be applicable to firms with a very large historical book without the systems already in place to conduct effective searches.

² While our estimates should be representative for the vast majority of firms affected, it is possible that for a few firms our cost estimates are not representative if they have a large and complex book of records in a form not easily searchable.

12. Our estimates for the one-off costs to firms not currently receiving and undertaking substantial numbers of effective searches are between nil and £150,000 per firm. We would expect most firms to be near the lower end of this range as these firms will in most cases have smaller historical books and because firms will already have some systems in place.

On going costs

13. Ongoing costs will include staff costs to conduct the searches of historical policies, audit, compliance and management costs.
14. Most ELTO firms reported costs in the region of £25,000 or less per year with one firm reporting their costs were £50,000 per year and another firm reporting costs of £2,000 per year.
15. Therefore we estimate costs will range from £2,000 – £50,000 per firm per year for firms not currently receiving and undertaking substantial numbers of effective searches. We expect that for most firms the incremental costs will be at the lower end of this range given they will generally have much smaller historical books of EL business compared to ELTO firms.

Benefits

16. The benefit of our proposed rules is an increase in the number of consumers who receive the compensation to which they are entitled. This will in some cases substantially increase the compensation consumers receive and will also reduce claimants' reliance on government-funded compensation schemes. These compensation payments are transfers from firms to claimants.
17. This benefit arises in three different ways.
- By making effective searching mandatory more records will be checked and there will be a greater chance that the firm that insured the consumer's employer will be identified. Firms will have an incentive to ensure that they are seen to be searching effectively and not viewed as depriving consumers of their compensation.
 - We would also expect those firms who are already conducting searches to increase the quality of their searches, as the proposed rules will cause firms to reassess their search methods and processes to ensure they are compliant with the rules.
 - As more positive matches are made, they are added to a firm's own ELR or, if they are a member of ELTO, onto ELTO's electronic database. As more historical policies are entered onto the ELR or ELTO database, there is a greater likelihood that the insurance policy covering the claimant will be identified through searching an ELR without conducting extensive searches. Consumers will benefit in this instance from faster identification of the firm with coverage.

18. While predicting the number of successful extended searches due to the proposed rules is impossible, we have considered the potential scale of these benefits.
19. The average compensation payment made by firms to consumers with mesothelioma is £170,000, compared to around £18,000 from government schemes. The average non-mesothelioma claim is much smaller, for example, a typical claim for noise-induced hearing loss is likely to be around £5,000. While the increase in the number of traced policies due to the proposed rules is inherently uncertain, a small increase in tracing is likely to lead to significant benefits for consumers. For example, if only 5% of the currently unmatched extended search requests are traced each year, this implies compensation to claimants of at least £5.5m per year, of which £4.5m would go to mesothelioma claimants.
20. Under the Compensation Act 2006, victims of mesothelioma can claim full compensation from any responsible person. This responsible person will then be able to claim back contributions from other responsible persons. Requiring all relevant firms to conduct effective searches for their EL policies will enable the fairer operation of this legislation, as firms who have paid compensation to a consumer will be more likely to be able to identify other firms from whom they can claim a contribution.
21. Compensation payments from firms will also reduce the burden on government compensation schemes.

Q6: Do you have any comments on our cost-benefit analysis?

Annex 2

Compatibility statement

1. This annex explains our reasons for concluding that the proposals and draft rules in this CP are compatible with our general duties under section 2 of the Financial and Services and Markets Act 2000 (FSMA) and with the regulatory objectives set out in sections 3 to 6. Sections 155 and 157 of FSMA require us to make this statement.

Compatibility with our statutory objectives

Consumer protection

2. The aim of our proposals is to assist consumers in tracing a relevant EL insurer to make a claim for compensation.
3. Our objective is to reduce the number of consumers that are currently unable to locate an EL firm and receive compensation.

Compatibility with the principles of good regulation.

4. Section 2(3) of FSMA requires that, in carrying out our general functions, we must have regard to the principles of good regulation. The most relevant to our proposal is:
 - The principle that a burden or restriction which is imposed on a person, or on the carrying out of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the impositions of that burden or restriction.
5. We considered that our requirements are proportionate. Informed by our CBA, we consider the overall benefits of these proposals are proportionate to the costs that firms will incur.

Compatibility with FCA

6. The FCA will have an objective of securing an appropriate degree of protection for consumers and we consider our proposed requirements are in line with this objective.

Why our proposals are the most appropriate for the purpose of meeting our statutory objectives

7. In developing our proposals we engaged with a number of firms and stakeholders. For the reasons stated above we consider that this is the most appropriate option of meeting our objective of securing the appropriate degree of protection for consumers.
8. We considered backfill to 1999 but in our view this would not achieve sufficient consumer protection as the long latency period of mesothelioma means that currently the majority of claims relate to policies written before 1999. Our requirements are for all historical policies therefore they go further than our original proposal and will achieve a higher degree of protection for consumers because the searches are not restricted by date. We did consider taking no action but we consider our requirements are necessary to secure better protection for these consumers.

Annex 3

List of questions

- Q1:** Do you agree with our proposal requiring all firms with actual or potential liability for UK commercial lines employers' liability (EL) insurance claims to take reasonable steps to conduct effective searches of their records for historical policies?
- Q2:** Do you agree with our proposal requiring firms to put in place and operate in accordance with a tracing policy?
- Q3:** Do you agree with our proposal requiring searches to be returned within one month of receipt of the request?
- Q4:** Do you agree with our proposals on the contents of the response?
- Q5:** Do you agree with our proposal for the timing of the implementation of our requirements?
- Q6:** Do you have any comments on our cost-benefit analysis?

Appendix 1

Draft Handbook text

EMPLOYERS' LIABILITY INSURANCE: (AMENDMENT) INSTRUMENT 2012

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 156 (General supplementary powers); and
 - (3) 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 on [June 2013.]

Amendments to the Handbook

- D. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Employers' Liability Insurance: (Amendment) Instrument 2012.

By order of the Board
[date]

Annex

Amendments to Insurance: Conduct of Business sourcebook (ICOBS)

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

8.4 Employers' Liability Insurance

Application

8.4.1 R ...

(3) In this section references to:

- (a) an 'employers' liability register' are to the employers' liability register referred to in *ICOBS* 8.4.4R(1)(a);
- (b) a 'director's certificate' are to a statement complying with the requirements in *ICOBS* 8.4.4R(1)(b);
- (c) *employers' liability insurance* include business accepted under reinsurance to close covering *employers' liability insurance* (including business that is only included as employers' liability insurance for the purposes of this section); ~~and~~
- (d) a 'qualified director's certificate' are to the statement complying with the requirements in *ICOBS* 8.4.4R(1)(b)(ii); and
- (e) a 'historical policy' are to a United Kingdom commercial lines employers' liability insurance policy or other evidence of cover issued or renewed before 1 April 2011.

...

8.4.3 G The purpose of *ICOBS* 8.4 is to assist individuals with claims arising out of their course of employment in the *United Kingdom* for employers carrying on, or who carried on, business in the *United Kingdom*, to identify an *insurer* or *insurers* that provided *employers' liability insurance* (other than certain co-insurance and excess cover arrangements) by requiring *insurers* to produce an employers' liability register and to conduct effective searches for historical policies. In particular it aims to assist ex-employees whose employers no longer exist or who cannot be located.

...

Requirement to conduct effective searches for historical policies8.4.14 R A firm with actual or potential liability for United Kingdom commercial

lines employers' liability insurance claims must take reasonable steps to conduct effective searches of their records when they receive a request to carry out a search for a historical *policy* from a *consumer*, their representative or another third party (including a qualifying tracing office).

8.4.15 R A *firm* must put in place a written *policy* for complying with ICOBS 8.4.14R and operate in accordance with it. The *policy* must cover at least the following matters:

- (1) details of where the *firm's* historical *policies* to be searched are held or are likely to be held (including details of records which are archived or stored off site);
- (2) details of the different types of records to be searched by the *firm*, such as electronic files, paper files, and microfiche; and
- (3) details of how the searches will be carried out, including a description of how and in what circumstances the *firm* may decide not to conduct a search.

8.4.16 R (1) When a *firm* receives a request under ICOBS 8.4.14R, it must provide a response, in writing, to the requester within one *month* of receiving the request.

(2) This rule does not apply when the requester is a qualifying tracing office and the *firm* has conducted a search but no historical *policies* have been found.

8.4.17 R (1) Where a *firm* has established that a historical *policy* does exist, the response should confirm that cover was provided and set out any available information that is relevant to the request received.

(2) Where there is evidence to suggest that a historical *policy* does exist, but the *firm* is unable to confirm that cover was provided, the response should set out any information relevant to the request and describe the next steps (if any) the *firm* will take to continue the search.

(3) Subject to ICOBS 8.4.16R(2), where the *firm* has conducted a search but no historical *policies* have been found, the response should set this out clearly and explain that reasonable steps were taken to conduct an effective search.

Appendix 2

Designation of Handbook Provisions

FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so.

We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

| Handbook Provision | Designation |
|-------------------------------------|--------------------|
| ICOBS 8.4.1 R (e) | FCA |
| ICOBS 8.4.3 G | FCA |
| ICOBS 8.4.14 (R) – ICOBS 8.4.17 (R) | FCA |

PUB REF: 002961

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