

# فراخوان ترجمه کتاب



پژوهشکده بیمه، به منظور کمک به گسترش دانش بیمه‌ای، ترجمه کتاب

## **Insurance broking fundamentals I10**

را در دستور کار خود قرار داده است. لذا از کلیه اساتید، پژوهشگران، صاحب‌نظران و کارشناسان دعوت می‌شود که در صورت تمایل به ترجمه کتاب مذکور، کاربرگ درخواست ترجمه پیوست را به همراه سوابق علمی و اجرایی خود و ترجمه صفحات ذکر شده با ذکر عنوان کتاب، حداکثر تا تاریخ ۱۴۰۵/۰۳/۲۰ به آدرس ایمیل [nashr@irc.ac.ir](mailto:nashr@irc.ac.ir) ارسال فرمایند.

# کاربرگ درخواست ترجمه کتاب

Insurance broking fundamentals I10

عنوان کتاب:

سال نشر: ۲۰۲۵

ناشر: Chartered Insurance Institute (CII)

## الف - اطلاعات عمومی

نام و نام خانوادگی	
شغل و سمت فعلی	
مرتبه علمی (ویژه اعضای هیات علمی)	
آخرین مدرک تحصیلی و رشته	
آدرس	
شماره تماس ثابت	
شماره تماس همراه	
پست الکترونیک	

## ب - سابقه تألیف/ترجمه (حداقل ۳ عنوان از آثار خود را اعلام بفرمائید)

ردیف	عنوان کتاب/ترجمه	سال انتشار	ناشر

## ج - سابقه اجرایی

ردیف	محل خدمت	مدت زمان خدمت

## Introduction

Having established what insurance brokers do, the different types of insurance broker and the range of services they offer, in this chapter we will be looking in more depth at the most important activity all brokers undertake: meeting their clients' needs.

Under the **law of agency** the broker as agent has a number of duties to their principal: their clients. These duties will be explained in more depth in chapter 4, but to summarise, brokers have a legal duty to act in the best interests of their clients. In addition, as we will see in chapter 5, the Financial Conduct Authority (FCA) requires the broker to conduct their business in line with the fair treatment of customers.

The UK financial regulatory framework was designed to protect consumers, and putting the customer's needs first is both a legal obligation and a regulatory requirement. When broking firms have a 'customer first' culture and everything they do is aimed at the provision of high quality client service, there are also benefits to the business. Satisfied clients are not only more likely to keep insuring through the same broker (resulting in a high client retention or 'renewal rate'), but they are also more likely to recommend the firm to their friends and associates. This should contribute to the establishment of a good reputation with customers, insurers and competitors alike.

The traditional broking services, also known as the **core broking functions**, can be summarised as follows:

- provision of products and services;
- negotiation and placement;
- selection of insurers;
- claims negotiation, collection and payment; and
- the design and operation of insurance programmes.

The quality performance of these core broking functions is essentially how insurance brokers meet their clients' needs and each will be explained in more detail in this chapter.



### Key terms

This chapter features explanations of the following terms and concepts:

Contract certainty	Demands and needs	Duty of disclosure	Fair analysis
Fair presentation	Fraud	Hard market	Law of agency
Loss experience	Material circumstances	Material facts	Remuneration
Soft market	Statutory	Suitability statement	Utmost good faith
Warranties			

## A Provision of products and services

There are many general insurance products which allow individuals and businesses to exchange the uncertainty of a potential loss for the financial certainty of paying a premium with the potential of receiving a payout in the event of a successful claim. This mechanism – where risk is transferred to an insurance company in exchange for a premium – has many benefits for the insured. Purchasing insurance products through insurance brokers also has many benefits for both individuals and businesses. It could be argued that the provision of these products and services is the primary role of insurance brokers. They must do this in line with their clients' needs, and the identification of their needs is a fundamental activity and one on which the regulator provides specific guidance. This can be found in the Insurance: Conduct of Business Sourcebook (ICOBS) 5 and also in the FCA's Principles for Business (PRIN) 6 where it states 'A firm must pay due regard to the interests of its customers and treat them fairly'. Further details of both ICOBS and PRIN can be found in chapter 5.

### Reinforce

If you have not already studied the IF1 unit, we recommend that you refer to chapter 1, section A, which discusses the concept of risk before moving on.



## A1 Identification of client needs

One reason as to why clients use the services of insurance brokers is because they may not know about or understand the intricacies of insurance. They may be unclear about the product they require and may need help in understanding how the policy they have or are considering buying will help them. Brokers, therefore, have an important role to play in helping clients to understand their insurance requirements, and they can achieve this through:

- identifying and clarifying a client's requirements – known as their **demands and needs**;
- identifying an insurance product/service that best matches these requirements using their in-depth skills and knowledge of the industry;
- providing information and advice on the products available; and
- explaining the result (of purchasing a particular product) to their client in terms the client can understand.

### Consider this...

What kinds of questions do you think a broker's clients might have about their personal insurance needs in the following scenarios:

- A potential client who has just bought a house with a mortgage provided by their bank.
- A retired client who is going on a skiing holiday with their children and grandchildren.
- An existing household client who has just bought an expensive ring.
- A client who is about to have an extension built to their home.



Some clients may have a full understanding of their insurance requirements, however, many clients may only have a general idea of which type of product they want. The broker can use their expertise to assist their client in distinguishing between their demands and needs. For example, a client's demand or want may be to obtain an insurance policy for their car, as they know the law requires them to have one. However, each motor policy has different features (such as third-party or fully comprehensive cover, inclusive breakdown cover or a replacement car following an accident, for example) which are suited to different clients depending on their requirements. These requirements are the client's needs. Clients may be unaware of their needs and it is through the broker's help that these needs can be established.

So how do brokers establish a client's demands and needs? The answer is by asking questions. This process is quite deliberate and usually requires the completion of a **proposal form**.

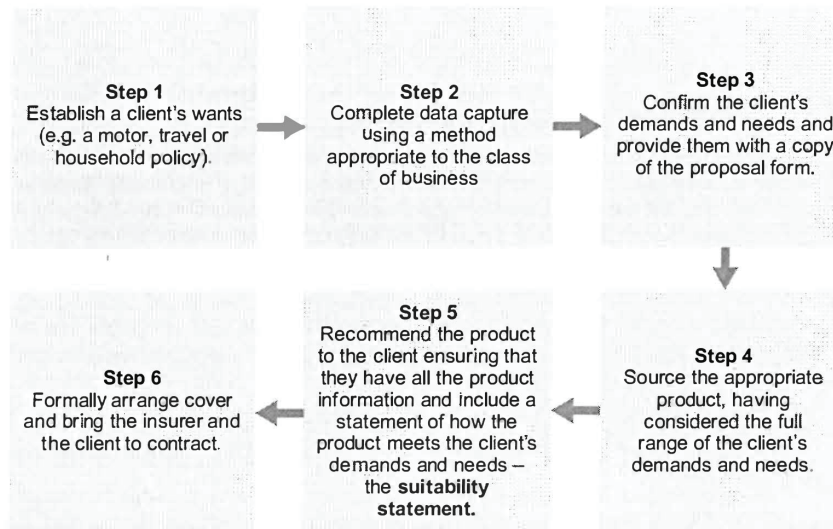
Most brokers follow an established format with different questionnaires for different types of insurance or business. Supplementary information is also gathered on a less formal basis during telephone conversations or during client visits.

The questionnaire forms the basis for the document which outlines the client's demands and needs: the demands and needs statement. The regulator requires a copy of this document, and it is also distributed to the client and must be agreed by all parties. Ideally, it is only when this agreement has been reached that the broker should commence their search for the most suitable insurance policy for their client.

## A2 The process of providing insurance products

Most brokers follow a standard process in order to establish their client's needs and provide them with the most appropriate products.

The following diagram shows the process:



#### Step 1

This is generally when first contact is made with the client. The client will have identified their wants; this may be in response to a new risk or the renewal of an existing policy.

#### Step 2

The broker then asks relevant questions to gather sufficient information about the risk and what the client wants, to establish what the client actually needs in terms of insurance coverage. Traditionally, brokers asked clients to complete a proposal form to support this important step and ensured they gathered all the relevant information to allow a complete search for the most appropriate insurance (step 4). However, while this is still the standard method of data capture for some classes of business, such as professional indemnity, proposal forms are not widely used anymore. In the London Market, paperless placement is now much more common. This is achieved via Placing Platform Limited (PPL).

#### Step 3

The broker uses the proposal form to complete a demands and needs statement, which is then shown to the client to obtain their agreement (this is recorded).

#### Step 4

The statement then forms the basis of the search for the most appropriate insurance policy. At this stage, the broker must, as a minimum, explain if any **warranties** or **conditions** apply and the repercussions for non-compliance, and make sure the following matters are taken into account:

- whether the level of cover is sufficient for the risks that the customer wishes to insure;
- the cost of the contract, where it is relevant to the customer's demands and needs; and
- the relevance of any exclusions, excesses (the first part of any claim for which the client is responsible), limitations or conditions in the contract.



#### Be aware

A warranty generally means a guarantee or promise which provides assurance by one party to the other that specific acts or conditions are true or will be met by either the insurer or the insured.

#### Step 5

Once the most appropriate insurance policy has been obtained, the broker has a duty to fully explain their recommendation and how it will deliver the client's demands and needs, in a way the client can understand. It may be the case that the broker has not been able to meet all of the client's demands and needs, and if so, the broker must make this clear.

The broker can do this by using a **suitability statement** which needs to record:

- the customer's demands and needs;
- how the recommendation addresses these demands and needs; and
- the reasons for the recommendation.

The purpose of the suitability statement is to ensure that customers have the necessary information to make an informed choice about whether or not to buy a specific insurance contract and whether a contract continues to meet their needs.

### Activity

Ask your manager for copies of proposal forms for as many different classes of business as possible. How do they differ? Does your firm have a standard suitability statement?



### Refer to

Refer to chapter 5 for more on the FCA

The identification and arrangement of suitable insurance products and services is the primary role of the broker and the FCA places particular emphasis on these processes and there are specific rules which must be followed. However, it could be argued that most brokers do this automatically and understanding clients and their needs is simply good business practice. The better the broking firm understands its clients, the better it will be at providing suitable insurance products.

## A2A Electronic placement

Platform Placing Limited (PPL) is a widely-used platform for the electronic placement of business within the London Market. PPL enables brokers and insurers to quote, negotiate, bind and endorse business digitally. Risks can be placed electronically to support face-to-face negotiations, removing paper from the process and creating a digital information flow and audit trail. Brokers and insurers use a range of different systems other than PPL, but utilising this technology for electronic placement is likely to render the traditional proposal form a thing of the past.

## B Negotiation and placement

Not only does the broker need to understand and record the client's demands and needs but they also need to collect all the relevant risk data, including the **material facts**, so that they can be presented to a suitable insurer and the most appropriate insurance product can be obtained.

The more certainty and understanding an underwriter has regarding any particular risk, the more accurately they will be able to underwrite the risk. Armed with all the facts, a broker is fully equipped to negotiate the best possible policy terms for their client – i.e. the widest cover at the most competitive price, in line with the customer's needs. The process of negotiating and placing insurance is the way in which client needs are ultimately met, and is known in the insurance market as 'broking' the contract.

## B1 Material facts

Insurance contracts are contracts of **utmost good faith** (*uberrimae fidei*).

A summary of the principle of utmost good faith was given in the case of **Rozanes v. Bowen (1928)**, as follows:

As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured...to make a full disclosure to the underwriter without being asked of all the material circumstances. This is expressed by saying it is a contract of the utmost good faith.

Insurance contracts rely on all parties to the contract observing utmost good faith, and historically their legitimacy was dependent on the insured making full and complete disclosure of all the material facts relating to the contract.

For reference only

A material fact was defined in s.18(2) of the **Marine Insurance Act 1906** as:

Every circumstance is material which would influence the judgement of a prudent insurer in fixing the premium or determining whether he will take the risk.

Generally speaking, a material fact was something that had a bearing on the risk insured, for example:

- household insurance: the risk address has a thatched roof; or
- motor insurance: the proposer has had three claims in the previous year.

### **B1A Impact of the Consumer Insurance (Disclosure and Representations) Act 2012 on duty of disclosure**

However, the Marine Insurance Act 1906 was perceived as:

'...archaic, unclear and unfair.' (Law Commission 2012)

It was argued that the act and the principal of utmost good faith allowed insurers to unreasonably avoid the settlement of claims to individuals and a need was identified to clarify the law.

As a result, the **Consumer Insurance (Disclosure and Representations) Act 2012** came into force, allowing consumers more protection and, in effect, rendering the principal of utmost good faith obsolete in consumer insurance contracts during pre-contractual negotiations.

Under the Consumer Insurance (Disclosure and Representations) Act 2012, consumers are **only required to take reasonable care not to make a misrepresentation** when providing information before a contract is entered into.

The Act replaces the duty of consumers to volunteer information before taking out insurance, with a duty to take reasonable care to answer the insurers' questions fully and accurately. The Act only allows insurers to avoid paying a claim in a situation where the misrepresentation was either deliberate, reckless or careless.

#### **Refer to**

See also *ICOBS 8: Claims handling* on page 5/16



#### **Be aware**

The Consumer Insurance (Disclosure and Representations) Act 2012 applies to 'consumers' and not to business/commercial customers.

The Act emphasises the need for brokers to ensure that their clients supply all the material facts so that they can make detailed and accurate presentations to underwriters. It may not always be clear whether a fact is material or not; there may be certain information which improves an underwriter's perception of a risk, but is not necessarily material. In this situation, it is preferable for the broker to present all of the information, as it is in the interests of both the broker and their client to present their client in the best possible light. A key principle within the Act is to disclose information with clarity and urgency, even where there is doubt that the information is material; this demonstrates the skill and professionalism of the broker and is, therefore, in the best interests of all parties.

### Example 2.1

Bob buys a house and is looking for insurance. The house is built about 100 metres from a stream which runs through the centre of the village. Bob understands that four years ago the house was damaged by flooding but he was not the owner of the property at the time. Should he declare this?

Yes. Insurers would certainly want to know about this and consider whether they would want to apply a higher rate or impose terms. In reality, the insurer would probably already be aware of the risk (through the use of mapping systems which can also identify subsidence) and probably also be aware of the claim through a shared database. They might send a surveyor, and if the house was well above the stream they might well accept the risk at standard rates and terms.



Other helpful guidelines on the topic of material facts include the following:

- discuss information with colleagues and insurers, but if you are still in doubt, disclose;
- non-disclosure will certainly prejudice your client, whereas disclosure rarely will;
- where applicable, loss information should include details on insured and uninsured losses; and
- failure to show certain very large losses in a claims experience because they are 'old' – say, more than five years – is naïve. The passage of time does not necessarily render a fact 'immaterial'. Most seasoned underwriters will be aware of the majority of large losses in their sector over the past, say, ten years, so omission simply makes the broker appear unprofessional. Therefore, judgment is required by brokers to decide what is and what is not a large loss and what is and what is not 'old'.

Ultimately, the purpose of insurance is risk transfer but, by not disclosing potential materials facts, a risk is introduced into the insurance itself which potentially defeats the object.

The client's **loss experience** is one of the key material facts that should be disclosed to underwriters. The data that needs to be captured includes insurance claims made and also any uninsured losses that have occurred.

Uninsured losses include:

- self-insured losses, e.g. losses where insurance had deliberately not been taken out; and
- unintentionally uninsured, e.g. where the policy did not operate to cover the loss or where the sum insured was insufficient.

Together with the requirements that the Consumer Insurance (Disclosure and Representations) Act 2012 places on brokers, they also have a duty under the Marine Insurance Act 1906 to disclose:

- every material fact known to them, including facts which in the ordinary course of business ought to have been communicated to them; and
- every material fact which the insured is bound to disclose, unless it comes to the insured's attention too late to communicate to the broker.

### Be aware

Clients may not be aware of the application of the law of material facts to insurance contracts so the broker has a responsibility to ensure that they explain those facts that are material and those that are not.





### Question 2.1

You are assisting your client to insure a house she has just purchased. Which of the following is not a material fact?

- a. The construction of the house.
- b. There is a stream nearby but it runs outside her boundary fence.
- c. The fact that the person she bought the house from made an accidental damage claim for a broken window just before they moved out.
- d. A household claim she made while at a previous address.

Under the Act, it is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer before the contract is entered into. This modifies the consumer's duty of utmost good faith by removing the obligation to disclose all material facts. They need only to respond honestly and with reasonable care to questions asked.

One unintended consequence of the Consumer Insurance (Disclosure and Representations) Act 2012, is the potential for personal lines proposal forms to increase dramatically in length as insurers seek to ask as many questions as possible. There may be a greater temptation for some clients to 'look to their brokers' to complete some or even all of their proposal form. This should be avoided as the proposal form remains the basis of the contract between the insurer and the insured.

## B2 Insurance Act 2015

The Insurance Act 2015, effective since 12 August 2016, seeks to extend the reforms made previously to consumer contracts of insurance.

The Act applies to **commercial (non-consumer)** insurance policies and amends insurance law in three main areas:

- the pre-contractual duty of disclosure and the effect of misrepresentations at that stage;
- the effect of warranties contained in the policy; and
- insurers' remedies for fraudulent claims.

### B2A Duty to make a fair presentation of the risk

The Insurance Act modifies the duty of utmost good faith that underlies insurance contracts by introducing the duty of '**fair presentation**'. The duty to volunteer information is retained (unlike the position for consumer insurances) and a commercial proposer must either:

- disclose to insurers 'every **material circumstance**' which the insured knows or ought to know; or
- provide the insurer with 'sufficient information' to put a prudent insurer on notice that it needs to make further enquiries into those 'material circumstances'.

### B2B Material circumstance

The Act sets out what is deemed a 'material circumstance' by stating:

A circumstance or representation is material if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms.



### Be aware

In effect, the definition has not changed from the previous position within the Marine Insurance Act 1906 (refer back to *Material facts* on page 2/5 on material facts).

Material circumstances are:	<ul style="list-style-type: none"> <li>those that the insured ought to know in the ordinary course of conducting their business. They include information known by the insured's senior management and the persons responsible within the business for arranging insurance.</li> <li>information that should reasonably have been revealed by a reasonable search of information held within the insured's own organisation.</li> <li>information held by others, such as the insured's brokers.</li> </ul>
Material circumstances are not:	<ul style="list-style-type: none"> <li>confidential information acquired through a business relationship unconnected to the contract of insurance.</li> </ul>
The insured <b>does not need</b> to disclose material circumstances which are already known, or ought to have been known, by the insurer. This includes:	<ul style="list-style-type: none"> <li>matters known to individuals who participate on behalf of the insurer in deciding whether to take the risk and on what terms (for example, underwriting teams);</li> <li>knowledge which is held by the insurer and is readily available to the person deciding whether to take the risk; and</li> <li>matters known by an employee or agent of the insurer, which should reasonably have been passed on to the person deciding whether to take the risk (for example, the claims department).</li> </ul>

## B2C Good faith

The disclosure must be made in a reasonably clear and accessible manner, material representations of fact must be 'substantially correct' and material representations of expectation or belief must be made in '**good faith**'. Individuals will be deemed to know matters they suspected and which they would have known had they not deliberately refrained from confirming or enquiring about them.

## B2D Remedies for non-disclosure

Prior to the implementation of the Insurance Act, an insurer would be entitled to avoid the whole contract where the commercial proposer had failed to disclose all material information. The undisclosed information did not need to relate to a loss; instead, the insurer simply had to show that it was unknown to the insurer and was material to the risk.

The Insurance Act distinguishes between breaches of duty which are:

- deliberate or reckless; and
- those which are innocent or negligent.

Apart from fraud, under the Insurance Act an insurer will only be entitled to avoid a policy entirely where the breach of duty of fair presentation is '**deliberate or reckless**' and where the insurer can show that it would not have entered into the contract had it known the information or would only have done so on different terms. The insurer may also retain any premium paid.

Where the breach is neither reckless nor deliberate the remedies provided in the Act are less severe.

They are intended to be proportionate and to reflect what the insurer would have done if it had known of the undisclosed information before entering into the contract.

So, an insurer will only be able to repudiate a claim and avoid a policy entirely where it can show that it would not have written the policy at all.

### Be aware

The Insurance Act still preserves the insurer's right to avoid a policy where fraud is involved.



## B2E Contracting out of the Insurance Act 2015

It is possible for the parties to the insurance contract to agree that the provisions of the Insurance Act 2015 will not apply, and therefore that the **previous law on disclosures would apply**. The Insurance Act requires insurers to be very transparent in their explanations to the proposers on the impact of contracting out; if an insurer is not, any 'contracting out' within the documentation may have no legal effect.