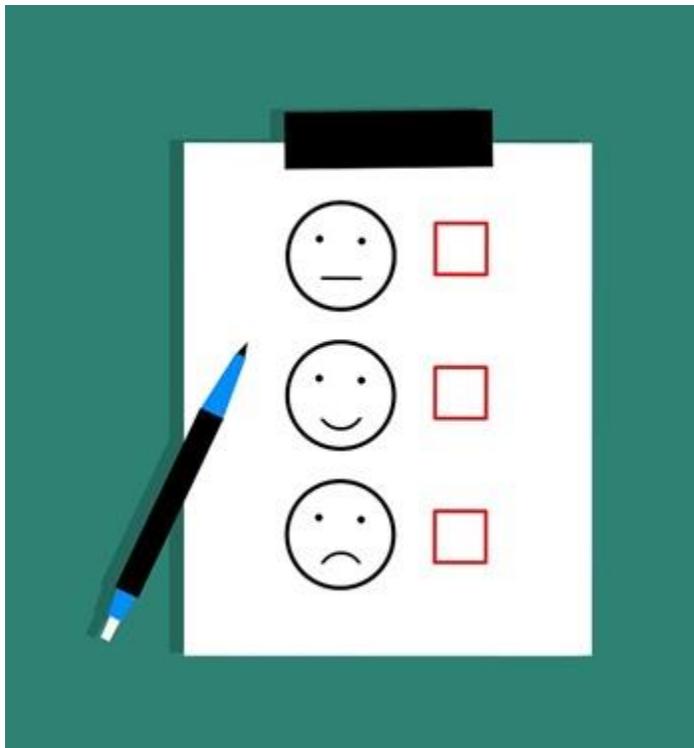


## Treating Customers Fairly

By [Ingrid Sapona](#) | November 2018 | 18 minute read

Treating customers fairly has been top of mind for regulators internationally and domestically for some time. On the Canadian scene, the fair treatment of customers (FTC as it is often referred to) falls under the umbrella of market conduct. FTC has gained so much attention that Malon Edwards, senior communications officer for the Financial Services Commission of Ontario and media contact for the Canadian Council of Insurance Regulators (CCIR), ***believes regulators have come to see their role in regulating market conduct*** as being just as important as prudential supervision.



Since 2011 ***the International Association of Insurance Supervisors (IAIS) has had a focus on the fair treatment of customers.*** FTC is addressed in Insurance Core Principle (ICP) 19 on Conduct of Business. ICP 19 requires insurance supervisors to set

requirements for the fair treatment of customers, both before an insurance contract is entered into and through the point where all obligations under the contract have been satisfied. In November 2017 the IAIS amended v ICP 19, making make it clear that the provisions on FTC apply to insurers and intermediaries.

**Here in Canada**, certain property and casualty insurers have had to report information about market conduct on the CCIR's Annual Statement on Market Conduct since 2017. The annual filing requires insurers to answer questions about the practices they have in place to ensure the fair treatment of consumers.

This year FTC is once again centre stage, as CCIR and the Canadian Insurance Services Regulatory Organizations (CISRO) jointly issued formal guidance (the Guidance) outlining how Canada's insurance regulators expect insurers and intermediaries to ensure that customers are treated fairly. As well, **at least one provincial regulator** also issued guidance on the fair treatment of consumers of financial services and products.

Because the CCIR-CISRO issued guidance represents the expectations on regulators across the country, the discussion in this Trends Paper focuses on its provisions to ensure CIP Society members are aware of the CCIR-CISRO activities. Mike Kosturik, BA, Chair, National CIP Society Council, recently voiced concerns that some in the industry might not be aware of the published final version of the Guidance or of the possible ramifications of them.

"The Guidance is definitely stretching the historical role between insurance carriers and their intermediaries – their brokers. They're expecting an oversight role of carriers that principally hadn't existed before," says Kosturik. "The reality is that brokers are separate and are regulated separately and legally independent from carriers. For these regulators to expect carriers to more directly influence brokers in the area of fair treatment of customers will be an obvious challenge because brokers have their own code of conduct," he says. Concerns aside, Kosturik thinks the Guidance is going in the right direction. "I think we as an industry have to recognize that consumers' expectations are changing and they are moving toward wanting a far greater understanding of who their insurance companies are and that is what I think the Guidance is aspiring to," he says.

## **Background**

In 2015 CCIR and CISRO developed a cooperative regulatory approach to market conduct supervision of insurance using the IAIS's ICPs as a reference. They established an information sharing agreement and framework for cooperative market conduct supervision in Canada. The framework provides the basis for development of market analysis of market conduct using the Annual Market Conduct Statement.

In its 2017-2020 Strategic Plan, CCIR announced it would be focusing on the fair treatment of consumers. **Its Fair Treatment of Customers Working Group** was charged with developing "guidance for industry participants regarding the expectations of CCIR members as they relate to the fair treatment of customers, including disclosures and

transparency, incentives management, client relationships and other topics that may arise.”

On May 3, 2018 CCIR and CISRO jointly issued a document called “[Guidance \[on\] Conduct of Insurance Business and Fair Treatment of Customers](#)” (the May draft). CCIR explained the purpose for the guidance saying, “we wanted to have a reference document that would ensure a common understanding in the insurance industry of the Canadian regulators’ overarching expectations with regard to the business conduct of the industry players toward their clients.”

The public had 45 days to submit written comments to CCIR. Interestingly, in the May draft, CCIR sought specific input on two specific areas:

- Harmonization – CCIR wanted commentary on whether their Guidance contradicts existing or future local instruments related to FTC.
- Agents and Representatives’ Responsibilities – specifically whether the Guidance strikes the right balance between roles and responsibility of different actors, such as insurers, agents, and representatives.

CCIR compiled the comments it received and [published them on its website](#). On September 27, 2018 CCIR published the final version of the Guidance (the September version or the [final Guidance](#)).

### **Guidance Highlights**

The Guidance is “principles-based”, rather than prescriptive. According to CCIR, it “... [provides insurers and intermediaries with the necessary latitude](#) to determine how best to achieve the expected customer outcomes, based on the nature, size and complexity of their activities.”

The Preamble provides insight into how regulatory authorities across Canada will assess the conduct of business against Customer outcomes. One interesting point of clarification added in the September version is that, “As part of their supervision, regulators adopt a risk-based approach in assessing conduct of business.”

An important principle of the Guidance is that insurers bear the ultimate responsibility for their product until the fulfillment of the contract. “The Insurer is responsible for the fair treatment of Customers throughout the life-cycle of the insurance product, as it is the Insurer that is the ultimate risk carrier.”

At the same time, the Guidance makes it clear that insurers and intermediaries have a shared responsibility to clients. The term “intermediaries” is specifically defined in the final Guidance:

““Intermediary” is given a broad meaning. It encompasses individual agents, brokers and representatives (“representatives”) as well as the business entities that are authorized to distribute insurance products and services, including managing general agencies, third party administrators and national accounts, as the case may be.

In Canada, Intermediaries that are subject to licensing and supervision can vary from jurisdiction to jurisdiction. This guidance applies to all intermediaries that are authorized to do business within any jurisdiction, whether licensed, registered or exempted from registration.”

Those familiar with the May draft will realize that this definition of Intermediary is somewhat broader than the earlier definition. At the same time, the terms “Distribution Firm” and “Agent Firm”, which were defined in the May version, have been deleted. Various commentators argued that those terms were confusing and they pointed out that the IAIS uses the term “intermediary”. It’s also worth noting that the term “representative”, which is used throughout the Guidance, is defined within the definition of Intermediary.

Another distinction in the definitions that garnered some comments is the fact that in some cases the Guidance refers to consumers and in some cases it refers to customers. Some wondered whether that was a typographical error or inconsistency. The September version maintained the distinction. As is evident from the definition section, the term “Consumer” is much broader – it includes all actual or potential customers of insurance products. Customers are defined as “policyholders (which, as the case may be, includes certificate holders) or prospective policyholders with whom an Insurer or and Intermediary interacts, and includes, where relevant, other beneficiaries and claimants with a legitimate interest in the policy.”

Section 1 deals with the conduct of business throughout the life-cycle of the insurance product and addresses CCIR’s expectations related to Insurers and Intermediaries’ conduct. Mirroring language from ICP 19, it describes establishment and implementation of policies and procedures as integral parts of a business culture that fosters FTC. Section 3 fleshes out the concept of business culture.

Section 1 also sets out the expectation that Insurers and Intermediaries have contractual arrangements between each other that ensure FTC, while reiterating that the insurer remains ultimately responsible for servicing policies throughout their life-cycle. In this regard, it also puts the burden on Insurers to ensure that Intermediaries have “appropriate policies and procedures in place in respect of the policy serving activities performed on the Insurer’s behalf.”

Section 2 notes that FTC encompasses things like ethical behavior, acting in good faith, and not engaging in abusive practices. It also fleshes out specific outcomes that go into ensuring FTC, including developing, marketing and selling products (including renewals) in a way that puts Customers’ interest ahead and providing Customers with information that is relevant, accurate, clear, sufficient, and not misleading before, during, and after the sale.

Section 3 discusses what goes into creating a Customer-centric business culture. It explains how the “tone from the top” influences the mindset, conduct, and actions of

everyone involved, and well as the daily decision-making.

Section 4 deals with the relationship between Insurers and Intermediaries and the expectations on Insurers for managing these relationships. For example, with respect to distribution of products, Insurers will have clear strategies and controls in place for selecting and managing arrangements with Intermediaries. Insurers are also expected to have written agreements that clarify respective roles to achieve the FTC and they are expected to analyze complaints about Intermediaries.

Section 5 sets out expectations related to Insurers and Intermediaries' relationships with regulatory authorities. Interestingly, the Scope section of the Guidance also specifically addresses the interplay of representatives' relationship with their regulators and with the codes of conduct/ethics of Insurers.

Section 6 is the heart of the Guidance. It sets out 12 Customer outcomes CCIR expects Insurers and Intermediaries to achieve. (The 12 Customer outcomes are set out in a side bar at the end of this paper.) Each outcome also includes a discussion of CCIR's expectations for how Insurers/Intermediaries can achieve the outcome.

Though a detailed discussion of the provisions of Section 6 are beyond the scope of this Paper, it's worth noting a few clarifications and additional expectations included in the final Guidance that were not included in the May version.

Under S. 6.2's Conflict of Interest discussion, CCIR added the following as an example of a situation that might give rise to a conflict of interest: "where relationships with an Insurer or Intermediary other than the customer influences the advice given to the customer". Also added to the final Guidance is the explicit expectation that Insurers and Intermediaries will, "Place a Customer's interests ahead of their own."

Under S. 6.3's Outsourcing discussion, CCIR added the explicit expectation that Insurers and Intermediaries will, "Provide training to service providers, when appropriate, to ensure fair treatment of Customers."

Under S. 6.5's Distributions Strategies discussion, CCIR made it clear that though the Insurer is ultimately responsible for oversight of distribution of their products, Intermediaries will also be held accountable. Another change made in this subsection specifically refers to "the digital needs of Customers". The new wording clarifies that regardless of how distribution strategies evolve, CCIR expects "that the Customers' needs [will] be fulfilled regardless of the distribution model or the medium used." This change is likely a result of some public criticism that the May version didn't seem to reflect the digital revolution impacting the insurance industry.

### **Industry Reaction**

There was near universal agreement by those who submitted formal responses that the fair treatment of customers is of utmost importance to the industry. As well, they applauded the idea of creating national standards and of taking a principles-based

approach, rather than a prescriptive approach. In its formal response, the Insurance Bureau of Canada (IBC) voice strong support for creation of a national standard for a principles-based approach to FTC and pointed out that FSCO's Treating Financial Services Consumers Fairly guidance (also issued in September 2018) contains "more prescriptive expectations" than CCIR's Guidance. The IBC summed up its concerns about the differences in approach as follows: "Differing expectations can have an adverse effect on insurers conducting business in multiple provinces that want to be agile and adopt uniform business practices."

Daniel Mirkovic, President and CEO of Square One Insurance Services, which operates in B.C., Alberta, Saskatchewan, Manitoba and Ontario, agrees that it makes sense to put some sort of guidelines in place. But, pointing to the differences between the CCIR and FSCO guidelines, he worries about possible conflicts when other regulators release their own guidelines. "CCIR is putting forward proposals that each individual regulator needs to adopt. The fact that they've released this Guidance really doesn't mean a lot unless the individual regulators adopt it. Otherwise it's just a best practice," he says.

Another common reaction by those who have reviewed the Guidance is that it basically reflects what has already become industry best practice in terms of FTC and so they see it as merely complimenting their own minimum standards. "I would say 90% of what's in there is already legislated or considered a best practice and something we've already been doing," says Maryann Besharat, Vice President, Legal Compliance at Intact. "Any reputable company is going to be doing these things. Think about privacy – that you're protecting the personal information of your customers – that's already legislated. Even if the Guidelines took it a step further, it's common sense for a corporation to protect the personal information of their policyholders," she adds.

A specific concern raised in some of the public comments that does not appear to have been addressed in detail by CCIR is with respect to advice relevant to sales via alternate distribution channels now available in the marketplace.

Square One's Mirkovic also pointed out that it's not just issues unique to the digital distribution channel that aren't clearly addressed by the Guidance. Square One has an unusual business model. It is a licensed insurance agent that sells directly to customers. It also acts as a managing general agent. "On behalf of Mutual Fire, we do almost everything on behalf of our underwriter, The Mutual Fire Insurance Company of British Columbia. It's a special program we built. We do all of the product development, sales and marketing, policy issuance and billing. We even handle claims on their behalf," says Mirkovic. "Take our business, for example. We only have one home policy. So, of course we can provide advice and ensure people understand what they're purchasing through us and we can ask questions to make sure they have the necessary coverage. But, we're not going to be able to offer them another competing product if our product is not the right fit for them. It's not clear whether CCIR took that kind of situation into account. That was some of the feedback we provided to them after the May draft. Some products – like life insurance, mortgages, or mutual funds – are much more complex and may require different types of sales processes or advisory processes than simple

products – like auto, home, and travel products. In my opinion, they haven't quite reached that balance," he said.

As well, in its formal response to the May draft, Square One suggested it would be helpful for CCIR to provide some illustrations. "For a lot of these, they are motherhood statements and they should provide examples as to what they mean. For example, if they are looking for annual sales training – they should provide those as examples. With just a motherhood statement on its own, it's going to be hard to get compliance. You're going to have people read it in different ways," Mirkovic says.

One of the most serious concerns raised by various commentators is that supervising the conduct of various parties (for example, certain intermediaries) is best left to specific regulators. As the IBC put it, "... where an intermediary is separately regulated, and where the insurer has no direct ability to affect or monitor behaviour, the insurer should not be responsible for enforcing supervisory expectations on the independent intermediary or held accountable for any adverse behavior by the intermediary."

Square One's Mirkovic also thinks that since insurance brokers are already regulated it would be better to impose these requirements through those regulators, rather than through regulators who oversee insurers. "With the number of agents and brokers out there, this type of guideline really needs to come from the insurance brokers' regulators," he says. "While the insurance companies can do audits, if you're in a broker scenario, the insurance company can only audit the files it has with that broker. Insurers can't audit the files a broker has with others, but the (B.C.) Insurance Council, which regulates the activities of agents, salespersons and adjusters, can come in and do a full audit. The Insurance Council has access to all the customer records, regardless of who the insurance provider is," he says.

The potential for an increased compliance burden has also been flagged as a concern. Intact's Besharat says that in speaking with their relevant stakeholders, concerns about possible increased compliance burdens have come up. "That's why it's very important to us to collaborate with those stakeholders and provide sufficient awareness about the expectations of the Guidelines to subsequently determine how can we best achieve compliance in a way that is not burdensome, but that also ensures that we can attest to the focus on the fair treatment of customers." she says.

But, it's not clear that brokers fear that insurers will suddenly become more proactive in managing the broker relationship. Karen Ritchie, Senior Vice President, of Toronto-based brokerage Baird MacGregor LP/Hargraft LP, doesn't believe brokers are too concerned about the Guidance because they already focus on FTC. "I'd say the brokerage industry is sort of staying away from commenting on the CCIR Guidelines because in Ontario, for example, we already have all of these regulations and FTC guidelines that we work by already," she says. Ritchie, who is on the board of the Toronto Insurance Council added, "From what I understand, most of the insurance companies are saying. 'Hey, we don't want to get into overseeing independent brokers and telling them how they should behave – they do that on their own'." From a practical

standpoint, Ritchie points out that another reason insurance companies may refrain from taking too close an oversight role over brokers is that insurance companies might be concerned that they could then be liable if something goes wrong.

Indeed, Ritchie thinks the main impetus for the Guidance is to ensure that insurers focus on FTC. “A lot of the insurance companies that used to operate only through the broker distribution channel now have a direct sales channel as well. So, if they’re operating direct to the consumer, they should have to abide by the same kind of criteria that brokers already do under legislation governing us,” she says.

## **Conclusion**

A lot has been said about the benefits to the industry of a harmonized approach to FTC. In the spirit of ensuring the fair treatment of customers, it’s also worth remembering that consumers benefit by not being subject to different standards of fairness by different financial sectors.

[As Malon Edwards noted in an article in Canadian Underwriter in May 2018](#), the insurance industry is already practicing many of the principles identified in the Guidance but the Guidance is still useful. “Consumers merit getting clarity on who to turn to and what to expect from the insurance industry. Developing guidance ... [helps] industry participants align in responding to these expectations.”

Intact’s Kosturik also thinks the insurance industry stands to benefit by embracing the spirit of the Guidance. “If we don’t move toward this guidance collectively, I think we’re more prone to being disrupted by the alternatives that are coming at us from many different quarters. For example, though digital, on-line distribution may not historically have involved an intermediary, our vested interest is in continuing to show the value of brokers and other intermediaries that provide a real face or voice to the customer relationship,” he said.

## **Here are the 12 Customer Outcomes specified in Section 6:**

### **>S. 6.1 Governance and Business Culture**

CCIR and CISRO expect fair treatment of Customers to be a core component of the governance and business culture of Insurers and Intermediaries.

### **>S. 6.2 Conflicts of Interest**

CCIR and CISRO expect that any potential or actual conflicts of interest be avoided or properly managed and not affect the fair treatment of Customers.

### **>S. 6.3 Outsourcing**

CCIR and CISRO expect that functions related to conduct of insurance business outsourced to service providers do not hinder the quality of services or jeopardize the Insurer’s or the Intermediary’s ability to achieve fair treatment of Customers.

### **>S. 6.4 Design of Insurance Product**

CCIR and CISRO expect that the design of a new insurance product or significant

adaptations made to an existing product take into account the interests of the target Consumers' group.

>S. 6.5 Distribution Strategies

CCIR and CISRO expect that distribution strategies are tailored to the product, consider the interests of the targeted Consumer groups and result in consistent Consumer protection independently of the distribution model chosen.

>S. 6.6 Disclosure to Customer

CCIR and CISRO expect that a Customer is given appropriate information to make an informed decision before entering into a contract.

>S. 6.7 Product Promotion

CCIR and CISRO expect promotional material is accurate, clear, not misleading and consistent with the result reasonably expected to be achieved by the Customer of the product.

>S 6.8 Advice

CCIR and CISRO expect that when provision of advice is required by law before concluding the contract, Customers receive relevant advice, taking into account the Customer's disclosed circumstances.

>S. 6.9 Disclosure to Policyholder

CCIR and CISRO expect that policyholders are provided information which allows them to make informed decisions throughout the lifetime of their contracts.

>S. 6.10 Claims Handling and Settlement

CCIR and CISRO expect claims to be examined diligently and fairly settled, using a simple and accessible procedure.

>S. 6.11: Complaints Handling and Dispute Resolution

CCIR and CISRO expect complaints to be examined diligently and fairly, using a simple and accessible procedure.

>S. 6.12 Protection of Personal Information

CCIR and CISRO expect protection of confidentiality of personal information policies and procedures adopted by Insurers and Intermediaries to ensure compliance with legislation relating to privacy protection and to reflect best practices in this area.