FINANCIAL SERVICES FACULTY

TOBA GOVERNANCE

GUIDE

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This guide explains how Terms of Business Agreements (TOBAs) support insurance intermediaries' compliance with the FCA's CASS 5 client money rules. It outlines the regulatory role of client and insurer or market counterparty TOBAs, highlights common weaknesses such as missing or unclear agreements and inconsistencies with operational practice, and sets out good-practice arrangements for risk assessment, ownership, training, oversight, independent review, change management and day-to-day controls. Overall, it emphasises that TOBAs should be managed throughout their lifecycle as a core part of a firm's ongoing client money governance framework, rather than treated solely as legal documents or reviewed only for the annual CASS audit.

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BACKGROUND

CASS 5 and FCA Requirements

A high-level definition of insurance distribution, as set out in the FCA Handbook, is the performance of a regulated activity involving dealing as agent in relation to, arranging, or assisting in the administration and performance of a contract of insurance. Such activity involves an intermediary providing services to clients or policyholders ("client(s)") in relation to insurance products offered by insurance providers ("insurer(s)"). Accordingly, for each insurance contract, the client and insurer(s) are the principal parties with whom an intermediary enters into commercial relationships, and those relationships are governed by contractual agreements.

In relation to client agreements, the FCA's CASS 5 Handbook refers to the general definition of "terms of business" in the Handbook glossary, namely "a statement in a durable medium of the terms and conditions on which a firm will carry on a regulated activity with or for a client or consumer". Although there is no specific definition of an insurer agreement, CASS 5 sets out explicit requirements regarding agreements between an intermediary and an insurance undertaking across various areas.

In practice, this has resulted in the use within the industry of the term "Terms of Business Agreement" ("TOBA"), representing separate agreements that an intermediary enters into with its

clients and insurers (or other market counterparties e.g. other insurance intermediaries who then inferface with an insurer). A TOBA with a client takes the form of formal terms of business, or a similar communication, which an intermediary is required to provide to clients when an insurance contract is entered into. According to the FCA, terms of business may be an acceptable means of meeting the FCA's requirements for notification, informed consent or written agreement from clients.

Conversely, a TOBA with an insurer (or other market counterparty) is generally a formal and private agreement entered into with the insurer (or other market counterparty). It captures not only requirements arising specifically from CASS 5, but also other commercial, operational and legal matters with potential indirect CASS implications, such as the regulatory status and compliance obligations of all parties, new business, renewals, amendments, termination provisions and ongoing contractual responsibilities.

Focusing specifically on CASS 5, the following are the most commonly applicable areas likely to be relevant to client TOBAs and insurer (or other market counterparty) TOBAs, as shown in the table below:

	Client TOBA	Insurer/ Market TOBA
Holding money as agent of an insurer (CASS 5.2.3R)	Yes	Yes
Intermediary is to act as the agent of the Insurer undertaking for premiums, claims monies and premium refunds (CASS 5.2.2G)		Yes
Provision for client money received by the intermediaries appointed representative, field representatives and other agents (CASS 5.2.3R)		Yes
Holding money in a non-statutory trust client bank account (CASS 5.4.4R)	Yes	Yes
Holding money in a designated client bank account (CASS 5.5.39R)	Yes	
Holding client money as a designated investment (CASS 5.5.14R)	Yes	Yes
Holding money in a bank outside the UK (CASS 5.5.53R)	Yes	
Holding money in a non-approved bank (CASS 5.5.41R)	Yes	
Passing money to a third party (CASS 5.5.34R / CASS 5.5.58R)	Yes	
Holding money in a group bank (CASS 5.5.47R)	Yes	
Commission arrangements (CASS 5.5.16R)	Yes	Yes
Interest and Investment returns (CASS 5.5.30R)	Yes	Yes
Insurer agreement to subordinate their interest to the interests of other clients (CASS 5.1.7G)		Yes

Note: some of the rules/guidance above in relation to inclusion in client TOBAs only explicitly state that "consumer clients" must consent through the TOBA, others are more wide ranging. Firms and auditors should therefore carefully read the rules referenced to assess their impact.

In summary, the holding and depositing of client money, together with related arrangements, are fundamental areas that an insurance intermediary should communicate to its clients through the client TOBA.

From a CASS protection perspective, the insurer TOBA becomes particularly important where the intermediary acts as agent of the insurer, resulting in risk transfer. In such circumstances, every monetary transaction passing through an insurance intermediary - whether a premium received from a policyholder, a claim payment made by an insurer, a return premium arising from a policy

cancellation or a commission payment - should be capable of being clearly identified, categorised and supported by the contractual provisions contained within the insurer (or other market counterparty) TOBA.

Firms are reminded of CASS 5.2.3R (2) which states that a firm must retain a copy of any agreement it enters to become an agent of an insurer (i.e. a “risk transfer agreement”) for a period of at least six years from the date on which it is terminated. This is longer than the CASS 5.5.84R retention of records rule.

Industry Practice regarding Insurer (or other market counterparty) TOBA

While insurer TOBAs (or other market counterparty e.g. other insurance intermediary) are bespoke legal agreements between insurers and intermediaries, industry experience demonstrates that a significant proportion of their content is largely standardised. More than two-thirds of the provisions contained within a typical insurer (or other market counterparty) TOBA reflect established market practice and therefore require little or no entity-specific amendment.

However, historically the UK insurance market experienced a large number of insurer-specific TOBAs, each drafted independently and containing differing legal and operational provisions. For intermediaries maintaining relationships with numerous insurers, this fragmentation increased the challenge of monitoring compliance across hundreds of individual agreements.

Recognising these challenges, the insurance market has increasingly acknowledged the benefits of adopting clearer, proportionate and more standardised TOBAs.

Greater standardisation can help reduce negotiation time, improve operational efficiency, strengthen regulatory compliance and minimise unnecessary administrative burden for both insurers and intermediaries.

Common Issues

Although the adoption of standardised TOBA templates has improved consistency across the insurance market, evidence from regulatory reviews and CASS assurance engagements continues to demonstrate that deficiencies relating to insurer (or other market counterparty) TOBAs remain one of the most common causes of qualified CASS Reasonable Assurance Reports.

Some of the most common issues identified regarding Insurer (or other market counterparty) TOBAs include:

- Missing, incomplete, unexecuted or unsigned TOBAs.
- Ineffective, unclear or ambiguous risk transfer provisions including around whether an insurer agrees to subordinate its interests to those of a firm’s clients and agrees for a firm to co-mingle insurer money with client money in a client money bank account.
- Absence of contractual provisions covering specific transaction types, including claims, commissions, refunds or other client money movements.
- Absence or lack of clarity regarding the timing of when the commission is earned or when a commission refund is due and inconsistency between TOBAs and actual operations.
- Incomplete or undocumented mapping between business transactions, client money arrangements and the relevant TOBA provisions.
- Inconsistencies between the legal entity identified within the TOBA and the entity undertaking the regulated insurance activities (the "Group Entity" mismatch).
- Inappropriate or unauthorised cascading of risk transfer arrangements through appointed representatives, introducers or other intermediary relationships.

Most common issues identified regarding client TOBAs have included:

- Outdated terms of business, not fully aligned with latest regulatory requirement(s).
- Inconsistency between the agreements and actual commission charging arrangements.
- Lack of appropriate evidence to demonstrate client TOBA being issued on timely basis to enable clients to make informed decisions.

In many cases, the underlying root causes of the above issues appear to arise from insufficient awareness of the importance of these areas, weaknesses in governance, inadequate oversight and poor or incomplete record keeping in relation to TOBAs.

TOBA RISK ASSESSMENT, CONTROL AND GOVERNANCE

Risk Assessment

ICAEW Financial Services Faculty's Helpsheet about CASS Governance for Insurance Intermediaries provides detailed guidance about Risk and Control Matrix. It states that identification and control of CASS risks is an important starting point for first line activities of a firm and that applies to TOBAs as well.

TOBA-related risks should be fully integrated into the firm's overall CASS Risk and Control Assessment, rather than being considered a standalone contractual exercise. Appropriate risk identification and ownership should be established across the end-to-end TOBA lifecycle.

Firms should consider the following:

- **Risk identification** - A Good practice involves identifying the specific points within the end-to-end TOBA lifecycle where failures could occur and documenting the associated regulatory and operational risks.
- **Risk assessment and rating** - Following identification, firms should evaluate each risk using an appropriate methodology that reflects both the likelihood of occurrence and the potential regulatory or operational impact.
- **Risk ownership; and** - Clearly defined ownership promotes accountability, facilitates timely issue resolution and ensures that control enhancements are implemented by those best placed to influence operational outcomes.
- **Risk documentation** - The firm's risk assessment should be comprehensively documented and maintained as a living document, reflecting changes in business activities, insurer relationships and regulatory expectations.

Training and Awareness

One of the most common root causes of TOBA-related weaknesses is a lack of awareness regarding both the regulatory significance and practical application of TOBAs.

Although TOBAs are widely used across insurance businesses, employees involved in negotiating, administering or operating these agreements may not fully appreciate their importance from a CASS 5 perspective. Consequently, regulatory obligations relating to client money can sometimes receive insufficient consideration during routine business activities.

Certain contractual concepts - including risk transfer arrangements, statutory and non-statutory trusts, client money segregation and co-mingling—are often technically complex and may not be fully understood outside specialist compliance or client money functions.

Accordingly, firms should establish structured and ongoing training programmes for all relevant staff involved in insurer relationships, client money processes, legal review, operational management and governance.

A comprehensive TOBA training programme should typically include:

- the purpose and legal significance of TOBAs;
- the FCA's regulatory expectations;
- relevant CASS 5 requirements;
- recognised industry practice;
- the relationship between contractual provisions and client money arrangements;
- risk transfer, co-mingling and representative structures;
- governance responsibilities;

- business change considerations; and
- lessons learned from internal reviews, regulatory findings and previous audit observations.

Training should be supplemented by periodic refresher sessions to ensure that staff remain aware of evolving regulatory expectations and emerging market practice.

Governance and oversight

Firms should implement an appropriate governance and oversight framework that is proportionate to the size, complexity and regulatory profile of the business. In the context of TOBAs, it is essential that the governance structure receives appropriate and timely information covering matters such as:

- The number and nature of insurer or other market counterparty (e.g. intermediate broker) relationships.
- New insurer appointments and terminated relationships.
- Material amendments to existing TOBAs.
- Non-standard contractual provisions and associated risks.
- Emerging regulatory developments and changes in market practice.
- CASS breaches, incidents and control deficiencies.
- Results of internal reviews and monitoring activities.

Second and Third Line of Defence Review

Independent review represents an important component of a robust TOBA governance framework.

To maximise the effectiveness of these independent reviews, firms should adopt a risk-based review programme aligned to the overall CASS Risk Assessment. Particular attention should be given to higher-risk arrangements, including:

- Non-standard contractual provisions.
- Complex risk transfer arrangements.
- Multi-party contractual relationships.
- Appointed Representative structures.
- Significant business volumes or material client money balances.

Change Management

Many TOBA-related deficiencies arise not from the original agreement itself, but from subsequent business changes that are either not identified or are implemented without appropriate governance.

Examples include:

- Engaging with new insurers or other insurance intermediaries.
- Changes to insurer or other insurance intermediary ownership.
- New products or distribution channels.
- Amendments to premium collection arrangements.
- Changes to commission structures.
- Introduction of new representatives or delegated authority arrangements.
- Business acquisitions or disposals.
- Regulatory developments affecting client money arrangements.

In many cases, the underlying root cause is not the change itself but weaknesses within the firm's change management framework. Consequently, firms should adopt a structured "ground-up" approach to change management, beginning with effective change identification. Unless changes are recognised promptly and assessed appropriately, subsequent risk assessment, contractual review and control implementation are unlikely to be effective.

Operational Controls

A robust governance framework should ultimately be supported by effective day-to-day operational controls.

Operational controls relating to TOBAs should therefore be embedded within normal business activities and supported by appropriate documentation and evidence. Such operational controls are expected to include:

- Maintaining a comprehensive and up-to-date TOBA register covering all insurer (and other market counterparty e.g. another insurance intermediary) relationships, contractual parties and relevant CASS provisions.
- Establishing documented review, approval and sign-off procedures for all new and amended TOBAs, for example through a TOBA checklist.
- Performing periodic reviews to confirm that contractual arrangements remain accurate, complete and consistent with current business activities.
- Reconciling transactions, client money arrangements and accounting records against the relevant TOBA provisions.
- Performing targeted reviews of arrangements involving Appointed Representatives, Introducer Appointed Representatives, delegated authority agreements and other representative structures.
- Periodically assessing whether the frequency of TOBA reviews remains appropriate having regard to the firm's risk assessment.
- Using documented review checklists, standardised assessment criteria or recognised industry templates to promote consistency.
- Maintaining appropriate evidence of reviews, approvals and management challenge.
- Producing regular governance reporting and management information covering key risks, control performance, outstanding actions and emerging issues.

Compliance with CASS 5 should not be viewed as an exercise undertaken solely in preparation for the annual audit. Rather, firms should be capable of demonstrating ongoing compliance at any point in time through well-designed operational processes, accurate records and effective monitoring.

CONCLUSION

Terms of Business Agreements represent far more than contractual documents governing commercial relationships between insurers (and other market counterparties) and intermediaries. They are a fundamental component of an insurance intermediary's client money framework and play a critical role in supporting compliance with CASS 5.

A well-designed TOBA governance framework should incorporate robust risk assessment, clearly defined ownership, effective operational controls, proportionate governance oversight and independent review. Equally important is the firm's ability to maintain TOBAs throughout their lifecycle, ensuring that contractual arrangements continue to reflect evolving business activities, regulatory expectations and market practice.

REFERENCE MATERIAL

FCA Handbook – CASS 5 (Client Money: Insurance Distribution Activity)

The principal FCA source governing client money arrangements. Many of the operational provisions within insurer TOBAs - particularly those concerning risk transfer, premium collection, trust accounts and reconciliation - are designed to allocate responsibilities under CASS 5.

FCA Handbook – SYSC

Provides governance, systems and controls requirements that support many TOBA provisions dealing with oversight, operational resilience, outsourcing and compliance.

FCA - Guide to Client Money for General Insurance Intermediaries

This guide helps authorised firms understand how to hold client money safely during insurance mediation in accordance with the CASS 5 Handbook. It acts as supplementary guidance and does not replace the official rules or constitute a comprehensive statement of a firm's obligations.

BIBA – Voluntary Insurer TOBA Template

BIBA developed a standardised voluntary TOBA template with input from insurers, brokers and legal advisers. The template standardises around 70% of the clauses commonly found in insurer TOBAs with the aim of reducing negotiation time, improving consistency and lowering administrative costs.

BIBA Good Practice Guide for Insurance Brokers

BIBA's Good Practice Guide contains practical guidance on insurer relationships, governance, market practice and operational controls. Although not solely dedicated to TOBAs, it provides useful expectations around managing insurer agreements, delegated authority and market relationships.

BIBA Guides Library

A collection of guidance documents covering broker governance, Consumer Duty, MGAs, commission disclosure and insurer relationships. Several publications provide useful context when reviewing or negotiating insurer TOBAs.

ICAEW Helpsheet - CASS GOVERNANCE FOR INSURANCE INTERMEDIARIES

This helpsheet considers areas that regulated firms and their CASS auditors may wish to consider when assessing the appropriateness of a firm's CASS governance framework. In particular, it considers CASS governance for insurance intermediaries with CASS 5 permissions.

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* includes parent companies. Source: ICAEW member data March 2025, Interbrand, Best Global Brands 2024

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