

# IAIS Consultations

Print view of your comments on "Consultation on ICP 19: Conduct of Business" - Date: 29.08.2017, Time: 17:37

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|--|---|
| <b>Organisation</b>                      | Global Federation of Insurance Associations |
| <b>Jurisdiction</b>                      | Global                                      |
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| <b>Treat my comments as confidential</b> | No  |

| Question      |  |
|---------------|--|
|               | Q1 Comment on ICP 19   |
| <b>Answer</b> | <p>The draft changes clarify the responsibilities of insurers and intermediaries more so than the current version of ICP 19. The current version focuses on the responsibilities of insurers. GFIA notes that this ICP now explicitly includes both insurers and intermediaries, which is positive. However, GFIA would note that some of the activities that are associated with intermediaries throughout this ICP (e.g., product development, claims handling, complaint handling, etc.) fall outside of the activities that are typically associated with insurance intermediation in life and health insurance. In some cases, oversight of such activities may not be within the supervisor's purview. For example, regulators may not have direct authority over the businesses and activities of managing general agents, third party administrators, or businesses that the insurer outsources certain activities to. As such, GFIA would suggest that the activities associated with insurance intermediation in this ICP be limited to distribution activities.</p> |
|               | Q2 Comment on Introductory Guidance 19.0.1   |
| <b>Answer</b> |  |
|               | Q3 Comment on Introductory Guidance 19.0.2   |
| <b>Answer</b> | <p>ICP 19 mostly uses the word "customer". However, sometimes the word "consumer" is employed. This is the case for example in § 19.0.2; §19.4; §19.4.5; § 19.6.19, §19.6.12 etc... A clear definition of each word would be helpful to understand the scope of each provision of the ICP. GFIA notes that both "consumer" and "customer" are defined in the IAIS glossary, but finds it difficult to understand the distinction between the two definitions, and both terms seem to be used interchangeably in the ICPs.</p>  |
|               | Q4 Comment on Introductory Guidance 19.0.3   |
| <b>Answer</b> |  |
|               | Q5 Comment on Introductory Guidance 19.0.4   |
| <b>Answer</b> |  |
|               | Q6 Comment on Introductory Guidance 19.0.5   |
| <b>Answer</b> |  |

Q7 Comment on Introductory Guidance 19.0.6

**Answer**

Consider revising this paragraph along the lines below to accommodate for situations in which the industry adopts best practices or standards. Supervisors may wish to issue guidelines on their expectations, or support industry guidelines or best practices, to help insurers and intermediaries achieve fair treatment of customers.

Q8 Comment on Introductory Guidance 19.0.7

**Answer**

This Guidance cross references ICP 13, but ICP 13 does not refer to such a duty on insurers and reinsurers to provide each other with complete and accurate information.

Q9 Comment on Guidance 19.0.8

**Answer**

For paragraphs 19.0.8 to 19.0.10, see the general comment above (Q1).

Q10 Comment on Guidance 19.0.9

**Answer**

Q11 Comment on Guidance 19.0.10

**Answer**

Q12 Comment on Guidance 19.0.11

**Answer**

Q13 Comment on Guidance 19.0.12

**Answer**

Q14 Comment on Guidance 19.0.13

**Answer**

GFIA does not think it appropriate or proportional that an international insurance company is disadvantaged by being required to meet a standard higher than a local insurance company. It would create an uneven playing field in markets. In addition, GFIA underlines that the existing paragraph 19.0.13 appears to conflict with paragraph 19.0.3 that provides for considering local tradition, culture, legal regime and the degree of development of the insurance sector in establishing an approach and implementing the principles.

Suggestions for re-drafting of the paragraph for clarification purposes are as follows:

Where insurance legal entities are part of an insurance group, the application of appropriate policies and procedures on conduct of business across the group should result in the fair treatment of customers on a group-wide basis, recognising local specificities to avoid regulatory arbitrage and market asymmetries.

Q15 Comment on Guidance 19.0.14

**Answer**

Q16 Comment on Guidance 19.0.15

**Answer**

ICP 25 on supervisory cooperation and coordination, and ICP 3 on confidentiality, should be referenced here.

Q17 Comment on Guidance 19.0.16

**Answer**

It is not clear what is meant by cross-border business. Does this refer to multiple jurisdictions within the same country or something else?

Q18 Comment on Standard 19.1

**Answer**

Q19 Comment on Guidance 19.1.1

**Answer**

Q20 Comment on Standard 19.2

**Answer**

Q21 Comment on Guidance 19.2.1

**Answer**

Q22 Comment on Guidance 19.2.2

**Answer**

Q23 Comment on Guidance 19.2.3

**Answer**

Q24 Comment on Guidance 19.2.4

**Answer**

The principle of proportionality should be more evident in the text (notably with regard to the requirement on implementation and monitoring procedures to be always evaluated by Senior Management). Excessively detailed procedures (assessment, review and recording) will be too heavy to implement and are not suitable for small businesses.

Q25 Comment on Guidance 19.2.5

**Answer**

Q26 Comment on Standard 19.3

**Answer**

Insurers should not be responsible for verifying if an intermediary is "in breach of its regulatory requirements". This is the role of supervisors. As they are regulated, intermediaries should assume their own responsibilities for their distribution activities.

There should not be any shift of responsibility to be defined by the IAIS by placing greater responsibility on insurers for ensuring fair treatment of customers by intermediaries – especially where distribution is through brokers.

Q27 Comment on Guidance 19.3.1

**Answer**

This paragraph requests insurers to verify that intermediaries have the appropriate knowledge and ability with which to conduct such business. This provision goes too far especially when dealing with brokers. An insurer cannot verify the knowledge and ability of the brokers' employees. Such a requirement would be impossible to achieve in practice. It blurs the responsibilities of insurers and independent intermediaries who will each be separately licensed under the regulatory system and accountable under that system for their activities. Therefore, the responsibility for the arrangements, knowledge and ability of intermediaries to conduct business rests with the intermediary and the regulatory authority

that grants its licence, and should not be the responsibility of insurers – insurers should be entitled to rely on the diligence of regulatory authorities in granting licences and their supervisory oversight thereafter.

GFIA therefore recommends that the second part of the sentence is deleted so that it reads “The supervisor should require insurers to conduct business only with intermediaries that are licensed”.

Q28 Comment on Guidance 19.3.2

**Answer**

Although the draft changes clarify the responsibilities of these parties, a few of the changes indicate that supervisors may expect insurers to regulate or at least have a role in regulating their intermediaries. One example is paragraph 19.3.2 on documenting consumer complaints about intermediaries. Specifically, the IAIS states that “documentation on this will enable insurers to report recurring issues to the supervisor where matters identified may be relevant to the supervisor’s assessment of the intermediaries concerned”.

In some jurisdictions, insurance brokers are considered independent consumer representatives and are governed by different legislation than insurers. A different governing body than the insurance supervisor licenses and regulates brokers. Placing expectations on insurers to supervise or at least have a role in supervising intermediaries is not within the spirit of independence and the nature of the insurer-intermediary business relationship.

The market conduct risk associated with traditional intermediaries and alternative distribution arrangements is different. Accordingly, a one-size-fits-all regulatory approach may not be appropriate. Supervisors’ approach to regulation should reflect any differences.

Q29 Comment on Guidance 19.3.3

**Answer**

This paragraph sets out that supervisory measures may be taken against the insurer when it cooperates with an intermediary that is in breach of its regulatory requirements. GFIA is of the view that supervisory measures should primarily be taken against the intermediary itself and not against the insurer, who may also suffer from the lack of diligence of the intermediary.

Q30 Comment on Guidance 19.3.4

**Answer**

This paragraph requires written agreements between insurers and intermediaries to clarify their respective roles and promote the fair treatment of customers. In this respect, the reference to “other matters related to the relationship with customers” is too broad and vague and should be deleted.

Further, the bulleted list appears to mingle activities that are typically associated with intermediation (e.g., point of sale activities, policy servicing, product promotion) with activities that are typically considered insurance functions (e.g., product development, claims handling, complaint handling) in life and health insurance. While it is possible that insurers may outsource certain functions to third parties, these arrangements may not be considered intermediary relationships by the insurer or the outsourced.

Q31 Comment on Standard 19.4

**Answer**

Q32 Comment on Guidance 19.4.1

**Answer**

Q33 Comment on Guidance 19.4.2

**Answer**

Q34 Comment on Guidance 19.4.3

Answer

Q35 Comment on Guidance 19.4.4

Answer

Q36 Comment on Guidance 19.4.5

Answer

Q37 Comment on Guidance 19.4.6

Answer

Paragraph 19.4.6 about insurers submitting information that pertains to product development and paragraph 19.13.5 about insurers submitting for public disclosure information on their business activities, performance and financial position could create an expectation on supervisors to collect and disclose commercially-sensitive and proprietary information.

Requirements for insurers to submit commercially-sensitive and proprietary information should have protections against public disclosure and access, and be subject to confidentiality requirements.

GFIA would caution that this paragraph may not be as applicable in situations where the insurance is not mandatory. Suggestions for re-drafting of the paragraph are as follows:

“As applicable, supervisors may require insurers to submit specific information relating to the manner in which the development of insurance products complies with the legislated principles at any time, including prior to the launch of the product (pre-notification), for ongoing supervisory review purposes.”

Q38 Comment on Standard 19.5

Answer

Q39 Comment on Guidance 19.5.1

Answer

Q40 Comment on Guidance 19.5.2

Answer

Q41 Comment on Guidance 19.5.3

Answer

Q42 Comment on Guidance 19.5.4

Answer

Q43 Comment on Guidance 19.5.5

Answer

Q44 Comment on Standard 19.6

Answer

Q45 Comment on Guidance 19.6.1

Answer

Q46 Comment on Guidance 19.6.2

**Answer**

In this paragraph, the IAIS requests insurers to be satisfied that the policies and procedures of the intermediaries involved are sufficiently robust. Once again, GFIA underlines that insurers cannot control brokers' procedures and policies.

This Guidance appears to place an obligation on insurers to perform oversight of independently licensed intermediaries' internal policies and procedures. The responsibility for assessing the adequacy of an independently licensed intermediary's internal systems and controls should rest with the intermediary, with oversight from the regulatory authority granting its license. Insurers should be able to rely on regulatory authorities in ensuring appropriate standards are in place in the firms that they grant licenses to, and should not be required to 'supervise' other firms under the regulatory system

Q47 Comment on Guidance 19.6.3

**Answer**

Q48 Comment on Guidance 19.6.4

**Answer**

Q49 Comment on Guidance 19.6.5

**Answer**

Q50 Comment on Guidance 19.6.6

**Answer**

Q51 Comment on Guidance 19.6.7

**Answer**

Q52 Comment on Guidance 19.6.8

**Answer**

Q53 Comment on Guidance 19.6.9

**Answer**

Q54 Comment on Guidance 19.6.10

**Answer**

Q55 Comment on Guidance 19.6.11

**Answer**

Q56 Comment on Guidance 19.6.12

**Answer**

The key features will depend on the nature of the product. Suggestions for re-drafting of the first sentence are as follows:

"While the level of product information required may vary, it should include information on key features that are relevant to the nature of the product, which may include features such as"

Q57 Comment on Guidance 19.6.13

|               |  |
|---------------|--|
| <b>Answer</b> | <input type="text"/>   |
|               | Q58 Comment on Guidance 19.6.14  |
| <b>Answer</b> | <input type="text"/>   |
|               | Q59 Comment on Guidance 19.6.15  |
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|               | Q60 Comment on Guidance 19.6.16  |
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|               | Q61 Comment on Guidance 19.6.17  |
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|               | Q62 Comment on Guidance 19.6.18  |
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|               | Q63 Comment on Guidance 19.6.19  |
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|               | Q64 Comment on Guidance 19.6.20  |
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|               | Q65 Comment on Guidance 19.6.21  |
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|               | Q66 Comment on Guidance 19.6.22  |
| <b>Answer</b> | <input type="text"/>   |
|               | Q67 Comment on Standard 19.7   |
| <b>Answer</b> | <input type="text"/>   |
|               | Q68 Comment on Guidance 19.7.1   |
| <b>Answer</b> | <input type="text"/>   |
|               | Q69 Comment on Guidance 19.7.2   |
| <b>Answer</b> | <input type="text"/>   |
|               | Q70 Comment on Guidance 19.7.3   |
| <b>Answer</b> | In many jurisdictions, advice is not mandatory. It is up to the consumers to decide whether he/she would like to receive advice or not. Where a consumer chooses not to receive advice (execution only or sales without advice) an appropriateness test may be required by some jurisdictions. Also in some jurisdictions sales without advice and without an appropriateness test is possible, however only for non-complex products. GFIA proposes to make this clearer in 19.7.3. |

Q71 Comment on Guidance 19.7.4

**Answer**

GFIA questions the addition of the following sentence:

“Even if no advice is given the supervisor may require the product to take into account the nature of the product and the customer’s disclosed circumstances and demands and needs.”

If no advice is given, then GFIA is of the view that a customer needs analysis will not be conducted. Suggestions for re-drafting of the paragraph for clarification purposes are as follows:

“Even if no advice is given the supervisor may require the product to take into account the need that the product is intended to address.”

“The supervisor may also wish to specify particular types of policies or customers for which advice is not required to be given.” The converse of this statement, and by implication, the supervisor may specify particular types of policies or customers for which advice is required to be given. This is problematic in that it disallows customers the choice of whether or not to receive advice. There are knowledgeable clients for whom advice would be unnecessary. If this scenario is what is contemplated in 19.7.3, then GFIA are comfortable.

Q72 Comment on Guidance 19.7.5

**Answer**

Q73 Comment on Guidance 19.7.6

**Answer**

In some jurisdictions, the insurer does not have to document the advice, if a broker is involved. In these cases, the broker is obliged to retain sufficient documentation. With regard to national jurisdictions, this sentence should be rephrased “The insurer or intermediary should retain sufficient documentation”.

Guidance 19.7.6 is phrased as requiring both the insurer and intermediary to retain sufficient documentation that advice provided was appropriate

This blurs the responsibilities between providers and distributors. Authorised intermediaries are accountable under their regulatory regime for the advice they provide, and should maintain appropriate records and controls in accordance with that regime. Therefore, it should not be necessary for insurers to maintain duplicate copies of their records

It is also likely that an intermediary would regard such information as proprietary and therefore may not be willing to share it in any case.

Q74 Comment on Guidance 19.7.7

**Answer**

This guidance requires that insurers review their agents’ client files in order to check the quality of advice. This requirement is too far reaching and may be counterproductive – even if they act on behalf of insurers, agents should not be led to remove their responsibilities towards clients.

In addition, the insurer should, subject to appropriate confidentiality and privacy considerations review its agents’ “client files” to exercise independent control after the fact on the quality of the advice given by its agents, take any necessary remedial measures with respect to the delivery of advice and, if applicable, be in a position to examine fairly any complaints submitted to it.

GFIA consider it a problem where an agent may have dealings with more than one insurance company, and the file might include information which should not be divulged to another insurer.

Q75 Comment on Guidance 19.7.8

**Answer**

Q76 Comment on Standard 19.8



|               |   |
|---------------|---|
| <b>Answer</b> |   |
|               | Q77 Comment on Guidance 19.8.1  |
| <b>Answer</b> |   |
|               | Q78 Comment on Guidance 19.8.2  |
| <b>Answer</b> | Where compensation structures do not align the interests of the insurer and intermediary, including a) those of the individuals carrying out intermediation activity; and b) the contract structure, with the interests of the customer, they can encourage behaviour that results in unsuitable sales or other breach of the insurer's or intermediary's duty of care towards the customer.  |
|               | Q79 Comment on Guidance 19.8.3  |
| <b>Answer</b> |   |
|               | Q80 Comment on Guidance 19.8.4  |
| <b>Answer</b> |   |
|               | Q81 Comment on Guidance 19.8.5  |
| <b>Answer</b> |   |
|               | Q82 Comment on Guidance 19.8.6  |
| <b>Answer</b> | <p>Remuneration methods alone do not automatically justify any conclusions regarding potential conflicts with a risk of damage to the interests of the customer. The simple existence of different party interests in business is normal, no matter if the business relation is conducted by two parties (fee-based advice) or three parties (commission-based distribution). Different interests are not synonymous with damage to the customer's interest. All remuneration models should be addressed – or not addressed – in the same way.</p> <p>The one-sided focus on remuneration paid by a third party is too narrow in terms of consumer protection. Commission-based distribution should not be explicitly singled out.</p> <p>GFIA invites the IAIS to redraft this sentence by deleting the word “generally”, or in a way allowing for a “level playing field” between commission-based distribution and fee-based advice.</p> |
|               | Q83 Comment on Guidance 19.8.7  |
| <b>Answer</b> |   |
|               | Q84 Comment on Guidance 19.8.8  |
| <b>Answer</b> |   |
|               | Q85 Comment on Guidance 19.8.9  |
| <b>Answer</b> | Paragraph 19.8.9 about conflicts of interests states that “managing conflicts of interest through disclosure or obtaining informed consent from customers have limitations, and could be seen to place unreasonable onus on the customer”. Disclosure and obtaining informed consent are two of the best ways of informing consumers of a perceived potential conflict.   |
|               | Q86 Comment on Guidance 19.8.10   |

**Answer**

GFIA would question whether supervisors have the power to require measures such as those listed, where there is no legal basis nor judicial control. Therefore, GFIA proposes that the text reads as follows:

“Where conflicts of interest cannot be managed satisfactorily, this should result in the insurer or intermediary declining to act. In cases where the supervisor may have concerns about the ability of insurers and intermediaries to manage conflicts of interest adequately, the supervisor may consider requiring other measures, in compliance with the applicable regulatory framework. Examples from some jurisdictions include:

- prohibitions on certain types of financial interest; and
- structural changes to the retail distribution model, such as by prohibiting the payment or receipt of commission on investment products in favour of a fee-based approach.”

Q87 Comment on Standard 19.9

**Answer**

Q88 Comment on Guidance 19.9.1

**Answer**

Q89 Comment on Guidance 19.9.2

**Answer**

Q90 Comment on Guidance 19.9.3

**Answer**

Q91 Comment on Guidance 19.9.4

**Answer**

Q92 Comment on Guidance 19.9.5

**Answer**

GFIA is of the view that it should be a regulatory requirement that the identity of the insurer is clearly and prominently disclosed in all client-facing documentation and marketing and advertising material. When trade names are used, the actual identity of the insurer is not always clear.

Q93 Comment on Guidance 19.9.6

**Answer**

Q94 Comment on Guidance 19.9.7

**Answer**

Q95 Comment on Guidance 19.9.8

**Answer**

Q96 Comment on Guidance 19.9.9

**Answer**

Q97 Comment on Standard 19.10

**Answer**

Q98 Comment on Guidance 19.10.1

**Answer**

It is unclear how claims handling might result in a conflict of interest. GFIA respectfully request further clarification on the inclusion of this concept in this paragraph.

Q99 Comment on Guidance 19.10.2

**Answer**

Q100 Comment on Guidance 19.10.3

**Answer**

Q101 Comment on Guidance 19.10.4

**Answer**

Q102 Comment on Guidance 19.10.5

**Answer**

Q103 Comment on Guidance 19.10.6

**Answer**

Q104 Comment on Guidance 19.10.7

**Answer**

Q105 Comment on Guidance 19.10.8

**Answer**

Q106 Comment on Guidance 19.10.9

**Answer**

Q107 Comment on Guidance 19.10.10

**Answer**

Q108 Comment on Guidance 19.10.11

**Answer**

Q109 Comment on Guidance 19.10.12

**Answer**

Q110 Comment on Standard 19.11

**Answer**

Q111 Comment on Guidance 19.11.1

**Answer**

Q112 Comment on Guidance 19.11.2

|               |  |
|---------------|--|
| <b>Answer</b> |  |
|               | Q113 Comment on Guidance 19.11.3   |
| <b>Answer</b> |  |
|               | Q114 Comment on Guidance 19.11.4   |
| <b>Answer</b> |  |
|               | Q115 Comment on Guidance 19.11.5   |
| <b>Answer</b> |  |
|               | Q116 Comment on Guidance 19.11.6   |
| <b>Answer</b> |  |
|               | Q117 Comment on Guidance 19.11.7   |
| <b>Answer</b> |  |
|               | Q118 Comment on Guidance 19.11.8   |
| <b>Answer</b> |  |
|               | Q119 Comment on Guidance 19.11.9   |
| <b>Answer</b> |  |
|               | Q120 Comment on Guidance 19.11.10  |
| <b>Answer</b> |  |
|               | Q121 Comment on Guidance 19.11.11  |
| <b>Answer</b> |  |
|               | Q122 Comment on Standard 19.12   |
| <b>Answer</b> | <p>The issue of protection and use of nonpublic personal information on customers is not specifically related to insurance activities. In most countries, this issue is dealt with through legislation dedicated to personal data protection under the supervision of a specific authority. GFIA would caution the IAIS that there is a risk of inconsistencies and legal uncertainties resulting from a dual regime of supervision. Inconsistency across jurisdictions is further enhanced by the vague terms used in these principles that can be interpreted in many ways by different jurisdictions. For example, what is “appropriate technology” or “aggressive marketing practices”? GFIA recommends using the phrase “nonpublic personal information” throughout the standard rather than the overly general phrases “customer information” or “other information”.</p> <p>In some jurisdictions, insurers are subject to federal and provincial privacy legislation governed by privacy commissioners. Placing expectations on insurance supervisors to regulate nonpublic personal information protection and privacy matters could add an additional, and at times conflicting, level regulation that adds little, if any, value to insurance consumers and may put an insurer in a difficult position of violating one rule to comply with another. In addition, some of the principles suggest actions that may be practically impossible to achieve.</p> |
|               | Q123 Comment on Guidance 19.12.1   |
| <b>Answer</b> |  |

Q124 Comment on Guidance 19.12.2

Answer

Q125 Comment on Guidance 19.12.3

Answer

Q126 Comment on Guidance 19.12.4

Answer

Q127 Comment on Guidance 19.12.5

Answer

Q128 Comment on Guidance 19.12.6

Answer

Q129 Comment on Guidance 19.12.7

Answer

The paragraphs on the management and use of customer information, are generally reasonable, although GFIA respectfully recommend a few minor changes to facilitate incorporating this principle into existing frameworks for consumer protections in as many jurisdictions as possible. GFIA suggests two edits. First, bullet two of 19.12.7 says that the supervisor should expect insurers to implement “policies and procedures relating to the use of data, ensuring that the data collected is used in a fair manner including when processed through algorithms or other technologies.” GFIA suggests modifying the language so it tracks the main provision in 19.12.7, which requires that insurers do not use the customer information...in a manner that results in unfair treatment.

The revised bullet would read: “...implementing policies and procedures relating to the use of data, ensuring that the data collected is not used in an unfair manner, including when processed through algorithms or other technologies;...” This modification will also improve the connection between the principle, which refers to unfair treatment, and the recommended actions in the bullet point. It will also align better with existing consumer protection frameworks that are designed to prevent “unfair” treatment.

Second, GFIA recommends a similar change for the third bullet point that requires insurers to ensure “...that such policies and procedures provide that customer data will not be abused to circumvent rules on prohibitions on aggressive marketing practices or discrimination”.

The intent behind this statement seems reasonable, however, replacing “discrimination” with “unfair treatment” will better align the principle with legislative and regulatory frameworks in more jurisdictions. It is also more consistent with the overarching principle to avoid using customer data in a way that results in unfair treatment. It will also improve the clarity of the ICP, which elsewhere refers to “unfair treatment,” not discrimination. The revision would read: “...that such policies and procedures provide that customer data will not be abused to circumvent rules on prohibitions on aggressive marketing practices or unfair treatment”.

Q130 Comment on Guidance 19.12.8

Answer

Q131 Comment on Guidance 19.12.9

Answer

Q132 Comment on Standard 19.13

Answer

Q133 Comment on Guidance 19.13.1

**Answer**

Q134 Comment on Guidance 19.13.2

**Answer**

Q135 Comment on Guidance 19.13.3

**Answer**

Q136 Comment on Guidance 19.13.4

**Answer**

Q137 Comment on Guidance 19.13.5

**Answer**