

Regulatory Arrangements - Specific



Acting as Insurance Intermediaries Code & Guidance

Introduction

The **CLC** is a Designated Professional Body under Part XX of **FSMA** and as such it must make arrangements to regulate **CLC** Bodies in the provision of **Regulated Activities** in relation to which the **General Prohibition** does not apply as a result of section 327 **FSMA**.

Acting as Insurance Intermediaries Code

In this Code 'you' refers to bodies regulated by the **CLC**; all bodies regulated by the **CLC** which act as insurance intermediaries must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code. These requirements do not apply to a person authorised by the Financial Services Authority in accordance with s.31 **FSMA**.

Outcomes-Focused

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- **Clients receive good quality and independent information, representation and advice (Outcome 1.1);**
- **Each Client's best interests are served (Outcome 3.1);**
- **Clients receive advice appropriate to their circumstances (Outcome 3.2);**
- **Clients have the information they need to make informed decisions (Outcome 3.3);**
- **Clients are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the CLC (Outcome 3.4);**
- **Clients are aware of any limitation or any condition resulting from your relationship with another party (Outcome 3.5);**

- **You act in accordance with regulatory responsibilities (*Outcome 5.1*).**

Demonstrating integrity and providing appropriate standards of work when acting as an Insurance Intermediary helps you deliver these **Outcomes** and requires you to act in a principled way:

1. **Act with independence and integrity. (*Overriding Principle 1*)**
2. **Maintain high standards of work. (*Overriding Principle 2*)**
3. **Act in the best interests of your *Clients*. (*Overriding Principle 3*)**
4. **Promote equality of access and service. (*Overriding Principle 6*)**
5. You act honestly, professionally and decently. (**CoC P1b**)
6. You do not give false or misleading information relating to the provision of **Regulated Services**. (**CoC P1e**)
7. You keep the interests of the **Client** paramount (except as required by the law or by the **CLC's regulatory arrangements**). (**CoC P3b**)
8. You only recommend a particular person, business or product when it is in the best interests of the **Client**. (**CoC P3f**)
9. You provide the **Client** with information which is accurate, useful and appropriate to the particular **client**. (**CoC 3h**)
10. You provide the **Client** with all relevant information relating to any fee arrangements or fee changes. (**CoC P3j**)
11. You advise **Clients** of the name and status of the person dealing with their matter and the name of the person responsible for overall supervision. (**CoC P3k**)
12. When providing services which are not regulated by the **CLC**, you advise your **Client** of this and inform them in writing that the activity is not covered by **CLC**-approved **professional indemnity insurance** or the **CLC**-administered **Compensation Fund**. (**CoC P3q**)
13. You co-operate with other regulators and ombudsmen. (**CoC P5h**)

You must also comply with the following **specific requirements**:

14. Subject to Requirement 16 and provided it complies with this Code you are only permitted to provide **Regulated Activities** as specified by the **CLC** by resolution and which are incidental to **Regulated Services** provided to a **Client**.

15. To effectively oversee **Regulated Activities** you appoint a **Manager** as the person who:-
 - 15.1 is responsible for ensuring the body has procedures and practices to enable it to comply with this Code;
 - 15.2 will supply to the **CLC** or its agents information as required by the **CLC**; and
 - 15.3 will notify the **CLC** immediately and in any event no later than seven days after each such appointment is made.
16. You advise the **CLC** if there is an order or direction of the Financial Services Authority under sections 328 or 329 **FSMA** in force in respect of the body. Where such order is in force the **CLC** may withdraw permission without notice.
17. The manner of the provision of any service in the course of **carrying on a Regulated Activity** is incidental to the provision by you of **Professional Services**.
18. The **Regulated Activities** you **carry on** are not of a description, or relate to an investment of a description, specified in an order made by HM Treasury under section 327(6) **FSMA**.
19. The **Regulated Activities** are the only **Regulated Activities** carried on by the body (other than **Regulated Activities** in relation to which it is an **FSMA Exempt Person**).
20. You do not **carry on**, nor hold the body out as **carrying on, a Regulated Service** other than one which is permitted by this Code or one in relation to which it is a **FSMA Exempt Person**.
21. You do not **carry on** any Insurance Mediation Activity unless the body is included in the **Insurance Intermediaries Register**.
22. The body and all of its **Managers** at all times comply with **FSMA**, secondary legislation made under **FSMA** and the **IMD**, so far as they apply to them.
23. The body and all of its **Managers** comply with the terms and provisions of the **CLC's** Acting as an Insurance Intermediary Code.

Acting as Insurance Intermediaries

Insurance Intermediaries Register

24. You only act as an insurance intermediary if you are registered on the Financial Services Authority's (FSA) **Insurance Intermediaries Register**. The **CLC** is responsible for supplying details of bodies to the FSA.
25. Unless trading as a Sole Practitioner, you nominate one of your **Managers** to be listed on the Register as the main contact, with all correspondence relating to Insurance Intermediary Activities is addressed to that individual.

26. You check that the body is listed on the **Insurance Intermediaries Register** before conducting any activity covered by paragraph 4 of the **Guidance**.
27. You inform us within 5 working days of any changes being made to your entry in the FSA's register.

Notifications provided to clients

28. You provide two types of notification on a **Durable Medium** (eg in writing, by fax or by email):
 - (i) at the outset of instructions (and in any event before the contract of insurance is concluded);
 - (ii) before a contract of insurance is concluded

Notes:

- a) Some of the provisions are unlikely to vary from one matter to another and can be provided in standard terms.
- b) A clear statement of the basis on which a particular product has been chosen must be made.
- c) The **CLC** understands there are relatively few providers of Title Indemnity Policies. It is unlikely therefore that any advice on products can be given on the basis of a fair analysis. It is much more likely they will be made from a limited number of insurance undertakings or a single insurance undertaking.

(iii) information may be provided orally if the **Client** requires it or if immediate cover is required. To comply with Distance Marketing Regulations that information must be provided on a **Durable Medium** as soon as possible.

Passporting

29. If you wish to establish a branch or provide **Insurance Mediation Activities** in another EC State you complete the **FSMA** passporting process (**FSMA**, paragraph 21, part IV, schedule 3).
30. You do not provide **Insurance Mediation Activities** in another EC state unless you have given the FSA the necessary notice of the body's intention to do so.

Terms & Information Provision

Providing Regulated Activities (including acting as an Insurance Intermediary)

31. All information under paragraphs 32 and 33 must be provided in a way which is fair, clear and not misleading, no less prominent than any other information provided to the **Client** at the same time and in English or in any other language agreed by the you and the **Client**.
32. Before providing **Regulated Activities**, you provide the following information on a **Durable Medium** to the **client**:-
- 32.1 your name, address, telephone and other contact details;
- 32.2 if not included in 32.1, the names of the **managers**;
- 32.3 the name of the individual having day-to-day conduct of the matter and where applicable the name of the individual responsible for its overall supervision;
- 32.4 if the matter is to be conducted by a team, the identity of that team and the name of its leader(s);
- 32.5 the name of the individual to whom any **complaint** should be made;
- 32.6 an explanation of the procedure to be adopted where the **Client** is dissatisfied with the services received or conduct delivered; this must include the name and address of the **CLC** and the **Legal Ombudsman** (see further information provided in the **CLC's Complaints Code and Guidance**).
- 32.7 the following wording:-
- “If you make a valid **claim** against us for a loss arising out of work for which we are legally responsible, and we are unable to meet our liability in full, you may be entitled to **claim** from the **Compensation Fund** administered by the Council for **Licensed Conveyancers** (from whom details can be obtained”).
- 32.8 the following wording:-
- “[this firm is/we are] not authorised by the Financial Services Authority. However, we are included in the register maintained by the Financial Services Authority so that we can **carry on Insurance Mediation Activities**, which is broadly advising on, selling and administration of insurance contracts. This part of our business, including arrangements for **complaints** or redress if something goes wrong, is regulated by the Council for **Licensed Conveyancers**.”

The register can be accessed via the Financial Services Authority website at <http://www.fsa.gov.uk/register/home.do>.

33. Before concluding any contract of insurance, or the renewal or the amendment of a contract of insurance, you provide the **Client** with the following information, if you have not already done so, on a **Durable Medium**:-
- 33.1 whether the body has any holding, direct or indirect, representing more than 10% of the voting rights or of the capital in an insurance undertaking;
 - 33.2 whether an insurance undertaking or parent of any insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the body;
 - 33.3 whether the body has given or will give advice:-
 - 33.3.1 on the basis of a fair analysis of the market; or
 - 33.3.2 from a limited number of insurance undertakings; or
 - 33.3.3 from a single insurance undertaking;
 - 33.4 if paragraph 33.3.2 or 33.3.3 applies you must disclose whether the body is contractually obliged to conduct Insurance Mediation Activity in this way;
 - 33.5 if the contract of insurance has not been selected on the basis of a fair analysis of the market that the **Client** can ask for a copy of the list of insurance undertakings from which the body selects or with which it deals in relation to the contract provided;
 - 33.6 based on the information provided by the **Client**, a statement, reflecting the complexity of the contract proposed:-
 - 33.7.1 sets out the **Client's** demands and needs;
 - 33.7.2 confirms whether or not advice on the contract has been given to the **Client**;
 - 33.7.3 explains the reasons for giving advice on the contract where such advice is given to the **Client**.
34. You may provide the information at paragraphs 32 and/or 33 orally only if:
- 34.1 the **Client** requests it; or
 - 34.2 the **Client** requires immediate cover;

but in both cases you must provide the information on a **Durable Medium** immediately after the conclusion of the contract.

35. When informing the **Client** that advice is given on the basis of a fair analysis, in accordance with paragraph 33.3.1, you must:
 - 35.1 give advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable it to make a recommendation, in accordance with professional criteria, as to which insurance contract would be adequate to meet the **Client's** needs; and
 - 35.2 explain to the **Client** that it has done so.

Accounting to the Client

36. You account to the **Client** for any pecuniary award or other advantage received by you from a person other than your **Client** arising out of you **carrying on** a Regulated Activity (s.327(3) FSMA).

Other

37. Where appropriate you refer, and if appropriate, take legal advice on the effect of IMD, **FSMA**, secondary legislation, and the **Guidance** (set out below).

Acting as Insurance Intermediaries Guidance

Legislative Background

1. The Insurance Mediation Directive (2002/92/EC) requires that arrangers or sellers of insurance products be regulated. Generally providers must be regulated by the FSA (known as **FSMA Authorised Persons**). There is a limited exception for professionals, whose regulatory body is a Designated Professional Body under Part XX of **FSMA**. This exemption regime is designed to exclude professional firms which are not carrying on mainstream financial services activities from the requirement to be authorised by the FSA.
2. Any body wishing to provide **Regulated Activities** (to include insurance services) other than as permitted by the **CLC** or, as appointed agent for an insurer, may only do so if regulated by the FSA.
3. The **CLC** is itself regulated by the FSA and must comply with directions it is given.
4. With the agreement of the FSA, the Council has resolved

“In accordance with requirement 14 of the ‘**CLC** Designated Professional Bodies Code’ each **CLC** Body is permitted to carry out all insurance activities incidental to **Regulated Services** provided by that body to any **Client** including (without limiting the generality of this Resolution) Abortive Costs Indemnity Insurance, Household and Estate Property Insurance, Term Policies for IHT, Missing Beneficiary insurance, Deposit Guarantee Insurance and Title Indemnity Policies relating in particular to Restrictive Covenants, Absence of Easements, Insolvency Acts, Registered Possessory Titles, Lost Title Deeds, Missing Particulars (Registered Titles), Good Leasehold, Absent Landlords, Missing Rent-charge Owners, Flat/Maisonette Indemnities, Flying Freeholds, Search Indemnities, Absence of Deeds of Postponement on Right to Buy Transactions, Defective Leases, Contingent Buildings Insurance, Forfeiture of Leases (Mortgagees only), Superior Leases, Lease Enlargements, Planning Permissions, Building Regulations and Endorsements, Chancel Liability and Contaminated Land.”

5. The term “arrange” is wide ranging and includes helping a **Client** to complete a proposal form.
6. This Code is drafted so that the range of products covered by the **CLC’s regulatory arrangements** may be extended by resolution of the **CLC** with the agreement of the FSA.

Incidental

7. The **Regulated Activities** you provide must be incidental in two senses:-
 - (i) In the provision of a particular **Regulated Activity** to a particular **Client**, you **carry on** only **Regulated Activities** which arise out of, or are complementary to, the provision by the body of that **Regulated Activity** to that **Client** (s.332(4) **FSMA** and requirement 14); and
 - (ii) Any service provided in the course of **carrying on a Regulated Activity** must be incidental to the **Professional Services** you provide (s.327(4) **FSMA** and requirement 17).
8. (a) The FSA considers that to satisfy the condition in s.327(4) **FSMA Regulated Activities** cannot be a major part of the body’s practice.
 - (b) The FSA also considers the following further factors to be relevant:
 - (1) the scale of **Regulated Activity** in proportion to other **Professional Services** provided;
 - (2) whether and to what extent services that are **Regulated Activities** are held out as separate services; and
 - (3) the impression the body gives, for example, through its advertising or other promotions of its services, as to how **Regulated Activities** are provided;

(c) In the FSA's opinion, one consequence of this is that a body cannot provide services which are **Regulated Activities** if they amount to a separate business conducted in isolation from the provision of **Professional Services**. This does not, however, preclude it from operating its professional business in a way which involves separate teams or departments, one of which handles the **Regulated Activities**.

(d) For the purpose of s.327(4), **Professional Services** are services which do not constitute **carrying on a Regulated Activity**, and the provision of which is supervised and regulated by a Designated Professional Body, such as the **CLC** (s.327(8) **FSMA** and Glossary of Terms)

Example: when acting for the buyer of a property you may arrange a missing landlord indemnity policy on behalf of that buyer. You may not arrange that same policy to a different **client** as a stand alone product.

Accounts to

9. The FSA considers that, in order for a **Client** to be accounted for for the purposes of s.327(3) **FSMA**, you must treat any commission or other pecuniary benefit received from third parties and which results from **Regulated Activities** carried on by the body, as held to the order of the **Client**. You will not be accounting to the **Client** simply by telling them that you receive commission. Unless the **client** agrees to you keeping it, the commission belongs to them and must be paid to them. There is no de minimis below which you may retain the sum. In the FSA's opinion, the condition would be satisfied if you pay over to the **Client** any third party payment received. Otherwise, it would be satisfied by informing the **Client** of the payment received and advising the **Client** that they have the right to require the body to pay them the sum concerned. This could then be used to offset fees due from the **Client** in respect of **Professional Services** provided or in recognition of other services provided. However, it does not permit retention of third party payments by seeking the **Client's** agreement through standard terms and conditions. Similarly, a mere notification to the **Client** that a particular sum has been received coupled with your request to retain it does not satisfy the condition.

Enforcement:

Restrictions

10. Where the FSA makes orders affecting individual bodies, the **CLC** may withdraw permission.

Disciplinary Steps

11. Where a body is in breach of the Code the **CLC**, may:-
- (i) impose a condition on a **licence**; or

- (ii) take disciplinary proceedings against the body and its **Manager** or **Head of Finance and Administration**;
- iii) withdraw its permission.