

SENNOCKE Client update

Motortrade - Financial Services Authority Regulation

20.05.04

This information sheet is intended as a guide only to Motor Traders considering their position with the forthcoming regulation of the selling of General Insurance Products by the Financial Services Authority.

If you have any doubts or require further clarification you should contact the FSA directly on 0845 605525 or visit their dedicated website at www.fsa.gov.uk/mgi

From 15th January 2005 the Financial Services Authority will regulate the sale of General Insurance Products. Selling such products after this date without FSA authorisation will be an offence.

In deciding your position you should consider the following 3 steps: -

STEP 1 "Am I carrying on a regulated activity in the UK?"

You may need to be authorised by the FSA if you are located in the UK and your business includes carrying on one of the following regulated activities:

1. Arranging the purchase of insurance policies: This covers a range of activities including, introducing, a customer to an insurer or insurance broker, helping someone fill in an application form and sending a customer's application form to an insurer.

2. Advising on insurance policies: This includes recommending a specific insurance policy to a customer.

3. Dealing as an agent: This includes entering into a contract of insurance with a customer on behalf of the insurer (for example, if you issue cover notes) or vice versa.

4. Assisting in the administration and performance of insurance policies: This includes notifying an insurance claim to the insurer and negotiating settlement of the claim on behalf of the customer.

If you do any of these things you should consider whether you might need to apply to become Authorised or become an appointed representative of an authorised firm, even if these activities are secondary to your main business

STEP 2 "Am I carrying on a regulated activity by way of business?"

1. In deciding whether you carry on insurance selling or administration by way of business, you should consider whether or not these activities provide a direct financial benefit to your business.

2. You should be aware, however, that financial benefit need not be in the form of money or include a profit element. In some cases insurance policies are advertised as being 'free' to customers, for example, because customers who buy a product also get insurance for that product for no extra charge. If you offer insurance of this kind to customers you still need to consider whether you are carrying on regulated activities by way of business since your business will often receive a financial benefit from selling insurance in this way.

STEP 3 "Are the regulated activities that I am carrying on excluded?"

If the answers to questions 1 and 2 are yes, you should next consider whether you might be able to rely on an exclusion so that you will not need to be authorised.

The short answer here is probably **NO**.
There are two key exclusions:

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1. Providing information to customers on an incidental basis.

The first exclusion will allow you to avoid the need to be authorised or an appointed representative if:
"Your insurance selling or administration activities are limited to providing information to a policyholder or potential policyholder; and providing this information is incidental to your main profession or business."

- If you do no more than introduce your customers to insurers or brokers, you may be excluded from regulation. For example, a vet would be able to rely on this exclusion to provide information about a specific kind of pet insurance to his customers or give his customers the contact details of providers of pet insurance without needing to become authorised. You can rely on this exclusion even if you receive a commission from insurers for introducing your customers to them.

This exclusion does not apply to advice in the form of a recommendation to buy a specific policy; filling out an application form on behalf of a customer; or information provided to the insurer.

Introducing is limited to providing the Insurer or Brokers name and address or handing out a leaflet - no more.

2. Connected contracts of insurance

If you are a retailer of goods (**other than motor vehicles**) or a travel agent selling insurance policies or helping customers make claims under them, there is a second exclusion that is potentially relevant to your activities.

Retailers will be excluded from regulation where their activities are limited to general insurance policies for non-motor goods

- are for five years or less (including renewals);
- have an annual premium of 500 Euros or less;
- cover the risk of breakdown, loss of or damage to the retailers goods
- do not cover liability risks (ie. liability of the insured to third parties); are complimentary to the goods supplied by the retailer; and are in standard form.

If your answers in step 1 and 2 are YES, but you believe you can rely on either of the exclusions above you should still clarify your position with the FSA.

STEP 4 "What options do I have?"

1. Make your application to the FSA to become fully authorised.
 - a. Closing date is 13th July 2004 to ensure Authorisation is granted for 14th January 2005.
 - b. You will need to apply for Professional Indemnity Insurance. The minimum Limit of Indemnity required is 1,500,000 Euros in the aggregate. Individual claim limit is 1,000,000 Euros
2. One or more FSA authorised insurers or insurance intermediaries may be willing to appoint you as their appointed representative and act as your Principal. As an appointed representative, you would not be directly regulated by the FSA. Instead, your Principal would take regulatory responsibility for your activities as an appointed representative.
3. Stop selling regulated General Insurance products.

— SENNOCKE —

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