

Bulletin

Ensure You Can Insure!

You may have read some of the recent stories about businesses that didn't realise the implications of offering insurance related products through their business. Some of the products involved seem innocuous on first glance but nevertheless do now fall under the oversight of the Financial Services Authority (FSA). If you offer any type of insurance related product through your business read our answers to the questions we've been asked the most, to find out whether you too could be affected.

Please note, these questions and answers relate to insurance mediation activities only and do not relate to providers of general insurance.

Q. Who are the 'FSA'?

A. The FSA is the organisation that regulates the financial services industry in the UK. One of the FSA's main aims is to help the public get a fair deal when it comes to financial products, hence they have rules that those involved with financial products must comply with.

Q. I've heard that suddenly lots of businesses could potentially be affected by some of the FSA's rules; what types of business could be affected?

A. Technically speaking, all businesses that are involved in 'regulated insurance mediation activities' ('insurance business') are affected. This is a wide definition and the simplest way to explain is by example. The table below highlights some of the businesses affected through certain insurance related products that they offer.

As you can see, this covers far more than just traditional insurance brokers.

Type of business	Example insurance related products on offer
Garage	Car insurance and extended warranties
Vets	Pet insurance
Private dentists	Dental health care insurance
Freight forwarders	Insurance of items in transit
Double glazing companies	Sale of extended warranties over five years or costing more than £500 p.a
Vehicle hire companies	Insurance against accident or damage
Accountants	Tax enquiry protection insurance

Q. It's possible that part of my business might be caught. Exactly what types of insurance business activities are regulated?

- **Arranging the purchase of insurance policies.** This includes such activities as introducing a customer to an insurer or insurance broker or helping a customer fill in an application form for insurance, then sending the form to the insurer or insurance broker.
- **Advising on insurance policies.** This includes recommending a specific insurance policy to a customer.
- **Dealing as agent.** This includes entering into a contract of insurance with a customer on behalf of the insurer, for example, issuing a cover note.
- **Assisting in the administration and performance of insurance policies.** This includes notifying an insurance claim to the insurance company and negotiating a

settlement on behalf of the customer. However, handling claims on behalf of the insurer and not the customer is not a regulated activity and neither is simply providing information to a claimant or insurer in connection with the assessment of a claim, as for example, a garage

might do when assessing the cost of rectifying damage to a car.

Q. Is any 'insurance business' allowed without regulation?

A. Yes. There are certain exceptions for retailers, the most common example being extended warranties provided by electrical retailers and also for travel agents. If you think these may be relevant to you, we would be pleased to discuss the exemption conditions in more detail with you.

Exemptions for certain trades and specific types of policy

Other trades and certain specific policies may also be exempt and it is worth checking to see if your trade or insurance provider does have a specific exemption.

For example, following an application for a judicial review by the National House-Building Council (NHBC), the FSA reached the view that builders registered with NHBC and participating in the Buildmark scheme do not carry out regulated activities in respect of insurance mediation and therefore do not require FSA authorisation.

Provision of information

As previously noted, introducing a customer to an insurer or insurance broker is a regulated activity. However, simply making a leaflet available for an insurance policy (for example, on your premises), **without** giving any advice and **without** contacting the insurer or broker on behalf of the customer is classified as the 'provision of information'.



This is not a regulated activity, provided it is incidental to your business's main activities. Therefore, for example, a vet may give a leaflet about pet insurance to a customer or provide information about making a claim to a customer who has a pet insurance policy.

In this example, information about pet insurance is incidental to the vet's main business of treating sick animals.

However, the 'provision of information' exclusion may not be available if a business:

- recommends a particular insurance product to its customers
- helps a customer fill in an application or proposal form for insurance
- checks completed application forms and sends them to an insurer or broker for the customer or
- agrees to arrange an insurance policy for the customer.

If you believe you may be able to rely on this exception, you must ensure that your staff are aware of what they can and cannot do in respect of the information your business provides to customers.

The business is the insurance policyholder

Another option is for your business to be the insured party. Here the insurance policy that is offered to customers is one in which they themselves cannot make claims on the insurer. Instead, customers can only request that the business makes claims on their behalf. In these circumstances a business is not 'arranging' an insurance transaction.

For such an arrangement to work the business would need to have an 'insurable interest' in order to become a policyholder in the first place. An example would be the type of fee protection insurance that accountants could offer against fees that might be encountered during a tax investigation. Here it would be the accountants that would make any claim on a client's behalf for the fees involved. Such a policy might also be an option for businesses such as freight forwarders for goods in transit.

Businesses do need to be careful if using this option as there are other factors to consider. We would be pleased to discuss these with you and would strongly recommend that you consider seeking professional legal advice if you are considering relying on this type of scheme.

Q. What would FSA-regulation mean for my business?

A. Your business would have to comply with certain FSA rules - remember the FSA is there to regulate the selling of financial products. If you are authorised directly by the FSA, you will in particular have to:

- comply with the requirements of the FSA Handbook, including the financial resources requirements
- obtain professional indemnity insurance
- submit certain forms to the FSA, the main one being the Retail Mediation Activities Return (RMAR) and
- if you hold client money, the FSA require an audit of the client accounts if the money is held in a non-statutory trust or if more than £30,000 is held in a statutory trust.

Q. What are the financial effects of FSA-regulation?

A. Your business would have to meet certain capital resources requirements, the level of which depends on whether or not you actually hold your customers' money when they buy an insurance related product through you. In simple terms, the capital resources of a company are the net assets as shown in the balance sheet, plus any subordinated loans, though there may be certain adjustments to make to this figure to meet the FSA definition.

You will also need professional indemnity insurance cover.

Q. If my business is caught by the rules, are there any alternatives to direct regulation by the FSA?

A. Yes. An alternative to being regulated direct by the FSA is to be an 'Appointed Representative' (AR) of a firm that is itself directly authorised by the FSA. An example would be one of insurance companies whose insurance products your business sells. Such a firm is known as a 'principal'. There must be an agreement in place with the principal and the principal takes responsibility for the actions of its ARs.

There are no regulatory requirements for being an AR, although the principal firm will almost certainly have a set of rules that an AR must comply with.

There is also a second, more restricted type of AR, known as an 'Introducer Appointed Representative'. As implied by the title, this is an AR whose scope of appointment is limited to:

- effecting introductions and
- distributing non-real time financial promotions (eg brochures).

If you are interested in this type of arrangement, you should contact the firms whose insurance related products you sell to see whether they offer this and on what terms.

Q. I think that part of what I do is caught by the rules - what should I do now?

A. Once you have confirmed that you are caught by the rules and would like to carry on selling insurance related products, decide whether you want your business to be regulated direct by the FSA or to be an AR. To be an AR is relatively simple, providing you can find an authorised firm that is willing to take your business on this basis. Remember to ask about what terms and conditions will apply to this type of arrangement.

To become directly authorised, you need to apply to the FSA. It is unlikely that many small and medium sized businesses will decide to go down this route. If you do, in the first instance further information can be found on the FSA's website www.fsa.gov.uk

Q. What happens if I don't comply with the FSA's rules in this area?

A. It is illegal for a business to carry on a regulated activity in the UK unless it is authorised by the FSA, is an AR or has some other exemption. Failure to comply is a criminal offence, with a potential penalty of a maximum of two years imprisonment and an unlimited fine.

How we can help

The regulations in this area can appear complicated and we would be pleased to discuss them in more detail with you. There are certain formal implications of holding your customers' money which may mean your business requires a 'client money' audit. As well as helping to ensure that your client money systems are compliant we are also able to perform any necessary audit and advise you on completing any FSA returns.