

# Recent Laws & Renewed Warnings from the Regulator: identifying, avoiding and managing conflicts of interest

by

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# Learning objectives

By the end of the session, participants will be able to:

- identify scenarios that may give rise to conflicts of interest.
- recognise how to avoid and manage conflicts of interest.
- implement policies and procedures to stay on the right side of the law and the regulator.



# Fiduciary duty

- Imposed by the common law and underpins our legal and ethical relationships of trust.
- An overriding duty to act in the best of interests of the principal.
- A high standard of honesty and full disclosure.



# ICOBBS

“Must take all reasonable steps to identify conflicts of interest, and maintain and operate effective organisational and administrative arrangements to prevent conflicts of interest from constituting or giving rise to a material risk of damage to its clients.”



# Duty of agents

- It is well-established that the broker is generally the agent of the policyholder.
- *Mothew v Bristol & West Building Society*
- Lord Justice Millett has said that the agent owes a “single-minded loyalty” towards their principal.
- Terms of business are also relevant but the law imposes minimum standards of care.



# FCA's Principles of Business

- In September 2019 the FCA re-stated 11 principles that firms must keep at the core of their business practices. These include:
  - *Integrity* – a firm must conduct its business with integrity.
  - *Management and control* – a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
  - *Customer interests* - a firm must pay due regard to the interests of its customers and treat them fairly.
  - *Conflicts of interest* – a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.



# FCA Handbook & IDD

- Conflicts arise when the firm:
  - is likely to make a financial gain, or avoid a financial loss, at the expense of the client.
  - has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from their client's interest in that outcome.
  - has a financial or other incentive to favour the interest of another client or group of clients over the interests of the client.
  - receives or will receive from a person other than a client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission for that service.



- With regards to insurance distribution you must always consider whether the firm has an interest which:
  - is distinct from A 's interest in the outcome of the distribution activity.
  - has the potential to influence the outcome of the activities to the detriment of the client.



# Typical conflicts & how to manage

- Claims handling (where two customers are involved)
  - Segregate with two claims handlers. Two separate report lines and put in place a Chinese wall.
  - Being very careful not to show any evidence of favouring a larger policyholder.
  - Where a client would accept a lower offer for quick settlement but you are aware the insurer will make a higher offer, you must consider removing yourself.



## ➤ Commission

- If an insurer offers a higher commission but service is not as good. Document reasons why that insurer was chosen and genuinely choose!
- Enhanced commission for volume of business. Close to end of year and not quite met target. Not allowing insurers to negotiate by not disclosing terms. Manage so that account execs do not know about such deals. Manage these at board level.



- Corporate hospitality
  - Networking does serve customers well because the relationship between broker and insurer is enhanced.
  - Clear guidelines. Hospitality log showing a spread of events with different people and compare to renewals logs and new business logs.
  - Red flag – exec is moving business and nobody else is and their entries in the hospitality log show a lot of “hospitality”.
  - There is no rule against hospitality but you must declare.
  
- Don't be paranoid to trade. That in the end does disadvantage the customer. The entire industry and the customer relies on trust and relationships.



# Policies and procedures

- Conflicts should be identified in a comprehensive conflicts of interest policy.
- Disclosure of a conflict should be a *last resort*.
- Must list specific activities and services which may give rise to a conflict and procedures to be followed.
- A gifts and benefits policy must be put in place. It should state what can be accepted or granted and steps to be taken when giving or receiving.
- Must be reviewed regularly and at the very least on an annual basis.



# Thematic Review - Distribution Chains

- July 2019.
- Distribution chains have become long and complex.
- Multiple parties involved in manufacture, distribution and delivery of services.
- Influence from non-regulated entities.



## The complexity of the chain and number of parties involved:

- increases the price of products.
- negatively affects the delivery of services and customer experience (pre and post sale).
- The more parties involved in the chain, the greater the risk.



- Distribution processes and their links to customer harm are now a key focus.
- The FCA will not hesitate to use the full range of “regulatory tools” where harm is identified.
- The FCA will now be benchmarking firms against the IDD and the senior managers of those firms against the SMCR.
- A “Dear CEO” letter is on its way ...



# Summary /restatement of learning objectives

During this session, we have looked at:

- scenarios that may give rise to conflicts of interest.
- how to avoid and manage conflicts of interest.
- policies and procedures that will help you to stay on the right side of the law and the regulator.



***Any questions?***



# Thank you and please stay in touch



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