

Insurance/
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hfw 1. Regulation and legislation

UK: FCA alert – taking the rap for introducers

The Financial Conduct Authority (FCA) has expressed its concern about the potential for customers to receive inappropriate advice from unauthorised entities. In particular, the FCA is alarmed by situations where a customer is introduced to an authorised firm by an unauthorised entity and the latter has an undue influence on the advice given to the customer. In these circumstances, it is the authorised firm which is responsible for the advice given and therefore subject to regulatory scrutiny.

In the alert, the FCA raises several specific areas of concern:

1. Introducers claiming to act as an “administration office” for authorised firms leading to consumer policy information being passed to persons with no right to it and the authorised firm having no control over how that information is used.
2. Introducers presenting referrals where the introducer and customer have agreed a course of action without the authorised firm having an opportunity to advise (a fait accompli).
3. Authorised firms providing a simplified or limited advice process, often designed by the introducer, for customers referred to them to facilitate the customer’s desired outcome which has been agreed with the introducer in advance.
4. Customers being advised to enter into schemes outside of the



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Financial Services Compensation Scheme and Financial Ombudsman Service protection and therefore unsuitable for retail customers.

5. Customers being advised to enter into investments closely linked to or controlled by the introducers, which may be badly run, or at worst “outright scams”.

Whilst the FCA alert was aimed specifically at investment firms, it is not difficult to envisage similar situations arising between insurance brokers and those producing business to them.

For the full text of the alert, please see <https://www.fca.org.uk/news/news-stories/investment-advisers-responsibilities-accepting-business-unauthorised-introducers-lead-generators>.

For more information, please contact [Rupert Warren](#), Senior Associate, London, on +44 (0)20 7264 8478, or rupert.warren@hfw.com, or your usual contact at HFW.

UK: FSCP proposes clarification of firms’ duty of care

The Financial Services Consumer Panel (FSCP) has published a position paper proposing that the Financial Services and Markets Act 2000 (FSMA) should be amended to specify in more detail the duty of care required of financial services providers.

It has highlighted the failure of the current rules to require financial services providers to avoid conflicts of interests, giving rise to the mis-selling of products and services. It recommends that FSMA takes a leaf out the legal profession’s book and introduce a duty of care requiring financial services providers to avoid conflicts of interests and to act in their customers’ best interests.

The FSCP says the current “treat customers fairly” regime enshrined in the FCA handbook is inadequate and allows firms too much opportunity to circumvent the intended purpose of



the rule. It is also critical of the current principle that customers should take responsibility for their own decisions found in section 5 of FSMA.

The FSCP has invited the FCA to enter into a consultation process to consider the current lacuna in the rules and to redress the balance between consumers and financial services providers.

For the full text of the position paper, please see https://fs-cp.org.uk/sites/default/files/duty_of_care_briefing_-_jan_2017.pdf.

For more information, please contact [Rupert Warren](#), Senior Associate, London, on +44 (0)20 7264 8478, or rupert.warren@hfw.com, or your usual contact at HFW.

hfw 2. Market developments

UK: Lloyd's Brexit contingency planning focuses on Ireland and Benelux

In the light of the UK's vote last year to leave the EU, it is clear that Lloyd's is committed to making whatever changes are necessary to adapt to the post-Brexit landscape, notwithstanding the continuing uncertainty as to what that may look like.

A key issue in this regard, which should concern all UK market participants that carry out re/insurance related business in the EU, is the potential loss of the passporting rights that presently allow UK re/insurers to conduct cross-border business in the EU, without having to repeat regulatory authorisation procedures or to incur the additional expense of maintaining capital in the relevant EU member states.

If these passporting rights are lost, UK insurers and reinsurers can expect to find themselves in a race with their competitors to obtain the required regulatory approval so that they can continue business in the EU.



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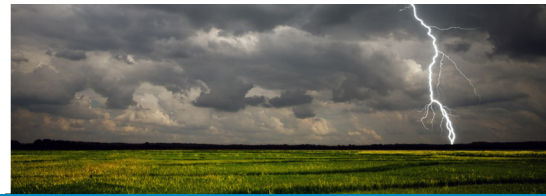
It is against this background that London's iconic re/insurance marketplace, Lloyd's of London, has been advancing its plans to deal with such contingencies. Participants in the Lloyd's marketplace have been waiting anxiously for further clarity as to what these plans will entail and in which geographic locations.

In this regard, Insurance Day reported recently that a Lloyd's spokesperson has confirmed that the contingency plan looks increasingly likely to take the form of a new insurance company or overseas branches, based in Belgium, Ireland, Luxembourg or the Netherlands.

It is suggested that the relevant EU regulators' response to the potential issues arising out of Brexit may prove a determining factor in Lloyd's and other UK market participants' choices as to how to minimise the disruption to their businesses in the wake of Brexit.

Lloyd's is expected to announce its preferred location in March 2017.

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hfw 3. HFW publications and events

Hong Kong: HFW give seminar to Hong Kong Institution of Engineers

On 11 February, Hong Kong Partners, Nick Longley and Martin Downey, and Consultant, Rosie Ng are giving a seminar to the Hong Kong Institution of Engineers. Nick is giving a dispute resolution update and speaking on “Delay and Liquidated damages”; Martin is speaking on adjudication; and Rosie is giving an overview of “The professional liability of engineers”.

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