



Guidance to the designated
professional body rules
2009

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Summary

Purpose of the guidance

1. The purpose of this guidance is to explain the background to the RICS Designated Professional Body (DPB) Rules 2009. The guidance provides information to assist Firms in complying with the regulatory requirements of being licensed through the RICS DPB scheme.
2. Firms will already be complying with many of the requirements outlined in this guidance, through RICS' existing Rules of Conduct. The DPB scheme places additional requirements on DPB Licensed Firms and, for ease of reference, these are in bold italic print in this guidance.

Legal disclaimer

3. The information in the guidance contains views expressed by RICS drawing on material published by the Financial Conduct Authority (the FCA) as to the meaning and interpretation of various statutory provisions. These views cannot bind a court of law.
4. This guidance may be updated from time to time. To ensure that you have the latest version please check the RICS website at: www.rics.org/dpb.

Part 1 – introduction

Who is the guidance aimed at?

5. From 10 February 2006 RICS has the power to grant DPB Licences to Firms to conduct general insurance mediation activities in the UK, subject to certain conditions. A Firm with a DPB Licence does not then need to be authorised by the FCA for insurance-related activities, where these are incidental to its surveying activities. This means that the general insurance mediation activity must arise out of, or be complementary to, professional services (i.e. activities which are not themselves Regulated Activities), the provision of which is supervised and regulated by RICS. So to be covered by the DPB Licence, the general insurance mediation activities must relate in some way to the provision of surveying services. For example:
 - an RICS member with a DPB Licence who also practises part time as a vet would not be able to sell pet insurance in that capacity under the ‘umbrella’ of the DPB Licence, because that selling of pet insurance would not be incidental to the member’s RICS regulated professional activities; but
 - an RICS member who arranges all the insurance requirements for an estate that they manage for a client (which might include insurance for animals kept on the estate) will be able to make the arrangements under the ‘umbrella’ of a DPB Licence, because arranging that insurance is incidental to the RICS regulated surveying services which the member provides to his Client.
6. RICS cannot grant a DPB Licence:
 - to firms that also carry on investment business or act as mortgage intermediaries, other than as appointed representatives of another FCA-authorized firm. Firms wishing to carry on these activities must be authorised by the FCA
 - to firms that are not regulated by RICS.
A Firm cannot conduct Regulated Activities under a DPB Licence if it receives from any person other than its Client “any pecuniary reward or other advantage” for which it does not account to its Client, arising out of those activities. Therefore any firm which receives commission from brokers or insurers will need to account for that commission to its Client, if it wishes to be licensed under the DPB arrangements rather than FCA authorised. The meaning of “account to” is explained in paragraph 39 below.
7. Regulation is by Firm. This guidance is, therefore, aimed at Firms regulated by RICS who undertake or wish to undertake insurance-related work which amounts to one or more of the Regulated Activities relating to general insurance mediation specified under the Financial Services and Markets Act 2000 (FSMA). These Regulated Activities are:
 - a. **dealing in insurance contracts as agent.** This may arise, for example, where a property manager concludes an insurance contract on a Client’s behalf, or where an agent or representative acting for an insurance company commits the insurance company to providing insurance for a prospective policyholder
 - b. **arranging (bringing about) deals in insurance contracts.** A person brings about a contract of insurance if his involvement in the chain of events leading to the contract is important enough that, without it, there would be no policy. Examples include negotiating the terms of the insurance contract on behalf of the customer, or assisting in the completion of a proposal form and sending it to the insurer
 - c. **making arrangements with a view to transactions in insurance contracts.** This activity contrasts with the above activity in that it is not limited to instances where your involvement actually results in a contract being concluded. It includes the activities of persons that help policy holders fill in or check applications or where a person introduces Clients to an intermediary for advice or assistance

d. assisting in the administration and performance of a contract of insurance.

This activity relates, in broad terms, to activities carried on after the conclusion of a contract of insurance, in particular in the event of a claim. For example, where a property managing agent takes on responsibility on behalf of the property owner for making the claim. This may include notifying a claim, providing evidence to the insurer in support of the claim and helping to negotiate its settlement on behalf of the policyholder. However, if the property managing agent is only providing information to the property owner to help the property owner make a claim, this is unlikely to amount to Regulated Activity. Advising insurers on the property owner's behalf of mid-term changes (such as the addition or removal of a property) to a policy may well amount to this Regulated Activity

e. advising on insurance contracts. This activity consists of advising on contracts of insurance. For advice to fall within this provision it must:

- i)** relate to a particular contract of insurance
- ii)** be given to a person in his capacity as an insured or potential insured
- iii)** be advice (and not just information); and
- iv)** relate to the merits of a person buying, selling, subscribing for or underwriting (or exercising any right to do so) a contract of insurance.

Points (i) and (iv) above are particularly important. Advising a client that he should insure his property, or advising him about rebuilding costs, or advising him about the particular risks that can be mitigated by insurance generally, is not a Regulated Activity.

f. agreeing to carry on any of the above activities. This activity includes the entering into a legally binding agreement to provide services which consist of Regulated Activities.

For further information on what constitutes a Regulated Activity in general insurance mediation work please refer to Part 2 and Appendix A.

Background to the legislation

- 8.** The Insurance Mediation Directive (IMD) was adopted in December 2002 and EU Member States were required to implement it by 14 January 2005. Implementation in the UK has been through regulations and FCA rules under FSMA. Since 14 January 2005 general insurance intermediaries have had to be authorised by the FCA. However, there is a limited exemption for professional firms, whose regulatory body has been designated as a DPB 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 FCA. Instead they can be licensed by their professional body. To carry on a Regulated Activity in the UK without the appropriate FCA authorisation or via an exemption, such as through the RICS DPB scheme, is a criminal offence under s19 of FSMA.
- 9.** RICS has been designated as a DPB and therefore can grant DPB licences to firms whose regulated activities fall within the scope of the exemption. This means that for a Firm to qualify for a DPB Licence, any general insurance work that it carries out must be incidental to the provision of surveying services to individual clients. RICS must regulate the firms which it licenses, in accordance with rules which have been approved by the FCA, and RICS, in turn, is accountable to and regulated by the FCA.

Territorial scope of the legislation

- 10.** FSMA only applies to activities carried on 'in the United Kingdom' and this regulatory regime is only available to Firms based in the UK carrying out general insurance activities there. FSMA does not apply to the Channel Islands or the Isle of Man. Firms based in other jurisdictions will need to comply with the relevant national rules in their country. See also paragraph 19 (Page 6) in relation to the procedure to be followed if insurance mediation services are to be provided into another EU Member State under the IMD's 'passporting' provisions.

Part 2 – Regulated Activities

What constitutes ‘Regulated Activities’ in general insurance mediation work?

11. In order to establish whether you are carrying on Regulated Activities you need to consider the following basic principles:
- is the activity being carried on by way of business? (For property managers who deal with insurance as part of an overall management service the answer is very likely to be yes)
 - is the activity remunerated? Even if insurance activity is not charged for specifically, but is covered only as part of a general fee for a package of services including insurance work, this is still likely to amount to remuneration. In the FCA’s view non-monetary, as well as monetary, rewards can constitute remuneration
 - one of the Regulated Activities is ‘assisting in the administration and performance of a contract of insurance’. Assisting in performance can be described as assisting the insured to perform a contractual obligation under the contract of insurance and on a more practical level
 - does the activity bring you into direct contact, as a representative of a policyholder, with insurers/ brokers/loss adjusters? If so, you are probably carrying on Regulated Activities and may find that insurers/brokers/loss adjusters will refuse to deal with you if you are not authorised or Licensed.

What does this mean in practice?

12. The following are examples of general insurance activities that Firms carry on and for which FCA authorisation or a DPB Licence is required:
- your Client asks you to arrange a contract of insurance they have chosen themselves. This is the Regulated Activity of ‘arranging’. You will need to ensure that your terms of engagement state the basis on which you provide the service – in particular that you are not providing advice. You should also remind your Client that they should disclose to the insurer anything that is relevant regarding the insurance contract
 - you make a recommendation on a particular insurance policy. This is the Regulated Activity of advising. You will need to consider the Client’s demands and needs, say whether the recommendation is based on a fair analysis of the market or not, and explain the reasons for recommending that particular policy. See paragraph 38 of this guidance for further information on ‘demands and needs’ and ‘fair analysis of the market’
 - you negotiate a claim on behalf of your Client. This is the Regulated Activity of ‘assisting in the administration and performance of a contract of insurance’. Although this activity requires authorisation or a DPB Licence, there are no special requirements about information you must give to your Client on such activities in your terms of engagement.

**For further detail see: Appendix A on Regulated Activities
Paragraph 34 on terms of engagement
Paragraphs 38-40 on demands and needs**

Who is a client?

13. For the purposes of the DPB Rules the term “Client” is given the extended meaning set out in s328(8) of FSMA. This definition includes: Clients in the traditional sense – that is persons who have used or are using your services, as well as persons who may be contemplating using your services – that is potential clients. However the definition also includes certain other people who may have an indirect interest in the insurance-related service you provide, specifically:
- a. persons who have rights or interests which derive from or are otherwise attributable to the use of your services by another person; or
 - b. persons who have rights or interests that may be adversely affected by the use of any services by persons acting on their behalf or in a fiduciary capacity in relation to them.

Activities not subject to regulation

14. There are a number of activities that surveyors undertake which may arise in connection with insurance, but which do not involve the Regulated Activities of advising on or arranging insurance contracts, or negotiation of claims. These are not Regulated Activities and do not require authorisation or a DPB Licence. These include:
- **provision of information.** You do not need a DPB Licence to provide factual information either to your Clients or to their brokers or insurers as long as you are not giving advice or recommendations on specific policies or sending your Client’s contact details to brokers or insurers with a view to the Client arranging insurance with them
 - **professional appraisal.** You do not need a DPB Licence to provide ‘professional appraisal’ to your Client. This would include, for example, valuations/estimates of rectification costs and generic advice on types and levels of insurance required. In other words, giving your Client the general information he needs to make his own insurance arrangements or negotiate his own claim is not a Regulated Activity
 - **dealing with incidents which involve or may involve a claim.** You do not need a DPB Licence to arrange emergency repairs, reinstatement works etc following an incident which gives rise to a claim on a policy. Claims-related activities require a DPB Licence only when you deal with the insurer on behalf of the Client in relation to the insurance claim as such – eg notifying the claim or negotiating with the insurer over its settlement.

See Appendix A for more detail.

Part 3 – scheme benefits and transitional provisions

Transitional arrangements

15. Prior to RICS gaining DPB status, Firms wishing to carry on general insurance activities in connection with their surveying business had two choices:
- the Firm could apply to the FCA for authorisation to carry on general insurance mediation activities; or
 - as an alternative to direct authorisation by the FCA, the Firm could become an Appointed Representative of an Authorised Firm (broker or insurer). Under this arrangement the Authorised Firm takes responsibility for the Appointed Representative's compliance with FCA requirements.

Benefits of moving to the RICS DPB Scheme

16. The FCA's rules and requirements for general insurance intermediaries have to cover the whole range of intermediation business, from large insurance brokers and smaller intermediaries whose main business is in financial services through to motor dealers, vets, removal firms, sports clubs and indeed property managers. With the best will in the world, it is impossible to tailor this regime to the particular requirements of each sector.
17. By contrast, the RICS DPB Scheme is specifically limited to one sector and can be tailored to its needs. In addition, a DPB Licence can only be granted to a Firm where any general insurance mediation work it carries out is incidental to the provision of surveying services to individual Clients. Because of this restriction to incidental services (which is imposed by FSMA itself) the regime can be kept light touch and rely to a large extent on existing RICS professional requirements in place of the specific rules (for example on competence and "approved persons") which the FCA applies to persons which it authorises. The RICS DPB Scheme is therefore able to be both less costly in terms of fees and compliance costs and lighter in terms of rules and requirements.

Firms currently authorised by the FCA

18. If you are currently authorised by the FCA and wish to transfer to the RICS DPB Scheme then in addition to making an application to RICS you will need to complete the appropriate FCA cancellation form.

Passporting for insurance mediation activities in other EU Member States

19. If you plan to carry on general insurance mediation activities in another EU Member State then your Firm must give notice of this to the FCA. You must follow the relevant procedure, as set out in the FCA's Supervision Manual, chapter 13, "Exercise of passport rights by UK firms". Your Firm must also ensure that professional indemnity insurance (PII) is extended to the territories where work is done. In addition any DPB Licensed Firm doing business under a passport will need to comply with the RICS rules of conduct for firms in relation to that business. Firms will also need to consider whether there are any local rules to be observed in the jurisdiction concerned.

Part 4 – duties and powers of RICS

RICS conduct committee

- 20.** RICS DPB Scheme will be administered by RICS Conduct Committee (or its Nominated Representative), a committee of RICS members and lay members, which will have responsibility for:
- a.** processing applications including undertaking checks to ensure that the Firm is compliant with the requirements of the Scheme
 - b.** carrying out monitoring and enforcement activities
 - c.** notifying the name and contact details of all DPB Licensed Firms and their Contact Officer to the FCA or inclusion in the FCA's Register of Exempt Professional Firms
 - d.** being accountable to the FCA for the RICS DPB Scheme, including providing them with details of its licensing, monitoring and enforcement activities.

Routine monitoring and investigation

- 21.** The DPB Rules give the Committee the power to monitor and investigate DPB Licensed Firms and to take any necessary enforcement action in cases of default or non-compliance with the Rules. Routine monitoring of your Firm's compliance with the Rules will normally be in the form of an annual return on the Firm's general insurance activities and general matters such as compliance with PII and complaints handling procedures. All DPB Licensed Firms will be liable to occasional visits from RICS representatives (described in the Rules as the Committee's 'Nominated Representative').

Non-routine monitoring and investigation

- 22.** In cases of suspected default or potentially serious non-compliance, the Committee has the power to appoint a person (its Nominated Representative) to investigate by visiting your premises either with or without notice. Such powers are likely to be used only rarely.

Part 5 – duties and rights of a Firm

Applying for and holding a DPB licence

- 23.** To apply for a DPB Licence your Firm must complete the general insurance mediation work section of your Firm's annual return **and** pay the appropriate initial application fee at: www.rics.org/dpb (if you require any assistance with this then please call the RICS Regulation helpline: **0207 695 1670** or e-mail RICS Regulation at: regulation@rics.org).

To qualify to hold a DPB Licence your Firm must, on a continuing basis:

- a.** comply with the basic conditions set out in the RICS DPB Rules. These are reproduced in the annual return
- b.** comply with the ongoing obligations as set out in the RICS DPB Rules. These are reproduced in the annual return
- c.** comply with RICS Rules of Conduct, DPB Rules and Schedule 1: General Insurance Conduct of Business Rules. See paragraphs 24-40 for more detail; and
- d.** provide any information reasonably requested by the Conduct Committee, or its Nominated Representative, to enable RICS to fulfil its responsibilities as a DPB. This information might be requested through paper based monitoring exercises or during visits to your Firm. (see paragraphs 21-22).

Your Firm must also pay subsequent annual subscription fee and any other fees, costs or fines levied by the Committee under the Rules.

Compliance with rules

- 24.** HM Treasury and the FCA's approval of RICS' application to be a DPB (allowing the possibility of RICS members being exempt from FCA authorisation for insurance activities in certain circumstances) relies on two things in particular. First, RICS has Rules of Conduct, which apply to all members and Firms, that already satisfy a number of the requirements of the IMD, particularly those relating to propriety. Second, RICS has introduced specific DPB Rules to meet those requirements of the IMD which are not already satisfied by the Rules of Conduct. These DPB Rules apply only to Firms who hold (or are applying for) a DPB Licence.
- 25.** The principal Rules affecting DPB Licensed Firms' general insurance activities are set out below. IMD additions are in bold italics. DPB Licensed Firms which fail to comply with any of these Rules will cease to be eligible for a DPB Licence and may have their DPB Licence withdrawn. They will then be unable to undertake any Regulated Activities. Withdrawal of your DPB Licence by the Conduct Committee may result in referral to RICS' disciplinary process.

RICS rules of conduct

- 26. General 'fit and proper' requirement.** RICS Rules of Conduct require both members and Firms to act with integrity at all times. Maintaining ethical standards, RICS' twelve ethical principles underpin the reputation of RICS and its members.
- 27. Clients' money.** Rules of Conduct for Firms, Rule 8, require Firms to preserve the security of Clients' money entrusted to its care in the course of its practice or business. In summary, Firms are required to:
- a.** keep Clients' money in a Client account
 - b.** ensure that the money is clearly identifiable; and
 - c.** ensure that the money that belongs to Clients is available to them at all times.

- 28. Training and competence.** Rules of Conduct for Members, Rule 6, require members to undertake and record appropriate learning. In the case of those undertaking insurance mediation work, members should ensure that learning is undertaken relating to this area. In addition, Rules of Conduct for Firms, Rule 6 requires that Firms have procedures in place to ensure that staff are properly trained and competent to do their work. ***The IMD requires DPB Licensed Firms to ensure that their Principals and staff undertaking general insurance work have the appropriate knowledge and ability to do so, and where necessary, provide appropriate training. In practice this means that those members in DPB Licensed Firms who are responsible for general insurance work must allocate sufficient of their annual lifelong learning to general insurance to ensure that they continue to meet the requirements of the RICS DPB Scheme, and Firms must ensure that staff who are not members remain adequately trained. You must also ensure that a sufficient number of your principals and staff are fit and proper persons to carry out general insurance work: in practice this means all staff directly engaged in insurance activity and a reasonable proportion of management staff. Any person who is involved in insurance mediation activities must not have been adjudged bankrupt, unless discharged, or convicted of a serious financial crime.***
- 29. Professional indemnity insurance.** Rules of Conduct for Firms, Rule 9, require all Firms to ensure all previous and current professional work is covered by adequate and appropriate PII cover on the following terms:
- a. full civil liability
 - b. legal defence costs; and
 - c. awards by the Surveyors Ombudsman or any other approved alternative dispute resolution scheme.

Note: these requirements are met by RICS' minimum PII policy wording.

- 30. Under the IMD, the minimum required limits of indemnity are:**
- a. for each and every claim, €1,120,200; and
 - b. in the annual aggregate, €1,680,300 (or if higher, 10% of annual income from insurance activities).

This is in line with the requirements of the IMD and the cover may be subject to further adjustments in the future to be determined by the European Commission. The cover requirement only applies when the policy is taken out, renewed or extended. These requirements exceed RICS' minimum requirements and some Firms applying for a DPB Licence will therefore need to increase their limit of indemnity to meet them.

- 31.** You should contact your insurers to ensure you have the correct level and terms of cover.
- 32. Complaints handling.** Rules of Conduct for Firms, Rule 7, require Firms to have in place a complaints handling procedure that provides access to an independent redress mechanism. The complaints handling procedure must be made available to Clients and anyone else to whom a duty of care is owed.
- 33. In addition to RICS' existing complaints handling requirements, the IMD requires, for the purposes of general insurance mediation work, that all complaints, from whatever source, must be registered in a complaints log and responded to by the Firm.**

34. Terms of engagement. RICS' maintaining ethical standards requires all members to be open and transparent in all their dealings. This requires sharing the full facts with clients and making things as plain and intelligible as possible. **For IMD purposes, this must be in a durable medium and be either in English or a language agreed with your Client. The detail provided must include:**

- a. **contact information**
- b. **information about the nature of the service to be provided**
- c. **information about your Firm's regulatory status (see below)**
- d. **information about any connections (in terms of ownership or voting rights) with insurers; and**
- e. **information about your complaints and compensation arrangements.**

The disclosure of regulatory status (item c above) must be in the following words: "This Firm is not authorised by the Financial Conduct Authority. However, we are included on the Register maintained by the Financial Conduct Authority so that we can carry out insurance mediation activity 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 Royal Institution of Chartered Surveyors (RICS). The Register can be accessed via the Financial Conduct Authority website www.fsa.gov.uk/register."

Record keeping

35. Firms must keep accurate records of their handling of Clients' money. **In addition, the DPB Rules require you to keep records of all your dealings with Clients for general insurance services. These must be made available to RICS on request.**

Redress

36. RICS complaints handling procedure requires unresolved complaints to be decided by an approved third party arbitrator or ombudsman. Currently, for unresolved consumer complaints on general insurance activities that will be the Surveyors Ombudsman Service. (This means that if you have a consumer complaint, regarding your general insurance mediation work, which cannot be resolved through your complaints handling procedure and the Client wishes to refer it to a third party resolution, it must be referred to the Surveyors Ombudsman Service. The Surveyors Ombudsman Service can be contacted at: PO Box 1021, Warrington, WA4 9FE, Tel: **0845 050 8181** or **01925 530 270**, e-mail: **enquiries@surveyors-ombudsman.org.uk**, website: **www.surveyors-ombudsman.org.uk**) Where the unresolved complaint is from a business Client then the DPB Licensed Firm must use their business to business approved redress mechanism for that purpose.

RICS rules on conduct of general insurance business

37. In addition to following RICS Rules of Conduct you must also comply with the General Insurance Conduct of Business Rules set out in Schedule 1 to the DPB Rules, as discussed further below. These deal with areas required by the IMD and not already covered by RICS Rules.

38. Demands and needs statement. If you are arranging, but not advising on or making a recommendation about, a particular contract of insurance you must provide your Client with a statement of their demands and needs which:

- **sets out their insurance requirements (as disclosed to you by your Client); and**
- **states that you have not provided your Client with advice or a recommendation on the contract.**

If you are arranging a particular contract of insurance on which you are providing advice and a recommendation you must:

- *establish your Client's insurance requirements in sufficient detail to enable you to select an appropriate contract for his needs. In doing this you need to ensure you have an appropriate understanding of the Client's circumstances, and take into account the Client's existing insurance arrangements and any other relevant information you may be aware of*
- *select an appropriate policy to meet the Client's insurance requirements. This selection must either be based on a "fair analysis" across the market, or may be limited to a selection from a single insurer or a limited number of insurers with whom you habitually deal. If the latter, you must tell the client (in writing) that your recommendation is based on a restricted range of potential suppliers, and that they have a right to see a list of the insurers with whom you do business from which the selection is made*
- *provide your Client with a written statement which:*
 - *sets out their demands and needs based on the information discussed in the first point above*
 - *confirms that you are recommending a particular contract*
 - *explains the reasons for the recommendation – i.e. why you are recommending that particular contract as the most appropriate from those on offer to meet the Client's demands and needs and why that insurer rather than any other has been recommended. If you are recommending a contract which does not fully meet the Client's demands and needs (perhaps because there is no suitable contract available) you must make this clear and explain which demands and needs are not met and why.*

[Note – a "fair analysis" requires consideration of a sufficiently large number of contracts available on the market to enable an informed recommendation to be made on which contract would be adequate to meet the Client's needs.]

39. *A key requirement of the professional Firms exemption regime is that professional Firms account to their Clients for all commission and other benefits received for placing general insurance contracts. This means that the sum of all commissions and other monetary or non-monetary benefits received from the insurer or broker must be disclosed to the Client in writing and remitted to the Client unless the Client has specifically agreed with you in writing that you may retain the amount yourself. The Client's agreement to these arrangements must be with informed consent. In other words, it is not sufficient to cover this issue generally in your terms and conditions of engagement. This is not a requirement imposed by RICS, but a basic requirement of exemption, without which Firms cannot operate under the DPB Scheme.*
40. *Assisting in the administration and performance of a contract of insurance: there is no requirement to issue a demands and needs statement to a Client when you are not arranging or advising, but are only carrying out activities after the contract is in place, for example advising of mid-term changes or negotiating in the event of a claim. The fact that you did not arrange or advise on the insurance does not preclude you from negotiating a claim on behalf of the Client. In doing so you are under a general duty to perform the work to a high standard but there are no specific rules on how you must carry on this type of work. Note however that any Client for whom you undertake any such work must have received the status and other disclosures mentioned in paragraph 34 above.*

Note that the renewal of an insurance policy legally constitutes the conclusion of a new contract. Paragraphs 37-40 above therefore apply each time a policy is renewed, as well as when a policy is arranged for the first time.

Part 6 – licensing

Terms and conditions of a DPB licence

41. Your DPB Licence will state the categories of business you are permitted to carry out. Unless the Conduct Committee has placed conditions on the DPB Licence, it will cover all categories of general insurance mediation business listed at paragraph 7. The obligations of your Firm are jointly the obligations of the principals of that Firm, but you must appoint one principal to take ultimate responsibility for DPB activities – **the Contact Officer**.

The DPB licence

42. The DPB Licence will **certify** that the Firm is a DPB Licensed Firm and will include the following information:
- the period of time covered by the DPB Licence. Generally, the Licence will remain in force unless and until the Conduct Committee withdraws or suspends it or you surrender it
 - the scope of the DPB Regulated Activities that the Firm can carry out
 - if relevant, any conditions that may be attached to the DPB Licence restricting the Firm in carrying out DPB Regulated Activities.

Note – the DPB Licence takes the form of a letter issued by RICS Regulation.

Right of review and appeal

43. A Firm may apply to the Conduct Committee for a review of a decision of the Committee if:
- the Committee decides the applicant firm does not qualify for a DPB Licence
 - the Committee decides to make or amend conditions on the Firm's DPB Licence
 - the Committee decides to suspend or withdraw a Firm's DPB Licence if the Firm no longer qualifies for a DPB Licence
 - the Committee decides that the applicant firm (which is applying for the reinstatement of a DPB Licence) does not qualify for a DPB Licence.
44. An applicant firm or a DPB Licensed Firm may, as a final form of appeal against a decision of the Conduct Committee, make an appeal to the RICS Appeal Panel. The applicant firm or DPB Licensed Firm will need to lodge an appeal within 21 days from receiving the Conduct Committee decision.

Costs

45. RICS' fees for a DPB Licence are based on a scale according to the size of the Firm. There will be an initial application fee and an annual renewal fee to cover standard monitoring of your compliance with the DPB Rules. Other fees can include:
- the costs of ad hoc monitoring and investigation activity by the Committee in the event that your Firm is the subject of a complaint or the standard monitoring process reveals deficiencies in your compliance with the Rules which the Committee wishes to investigate further
 - finances for late payment of annual renewal fees and late submission of monitoring returns.
46. A fee scale will be published annually.

Further information

47. RICS website will be the main source of further and future information (www.rics.org/dpb). If you can't find the answer you want on the website then you can ask about specific points by e-mail (regulation@rics.org) or by calling the RICS Regulation helpline **0207 695 1670** Monday to Friday, 9am – 5pm, excluding Bank Holidays.

Appendix A

Guidance on insurance mediation activities

The following are examples of activities which a Firm may be involved in which could amount to Regulated Activities. This table is not exhaustive and is simplified to demonstrate some common situations.

	Activity	Is this regulated?	Who can undertake this work?
1	Discussing with <i>Client</i> about need for insurance generally.	No. Generic advice.	Any Firm.
2	Discussing with <i>Client</i> about need to take out a particular type of insurance.	No. Generic advice.	Any Firm.
3	Discussing with <i>Client</i> about which particular broker/insurer to use (but not the particular insurance contract).	No. Generic advice.	Any Firm.
4	Handing over an insurance broker's/ insurer's leaflets in the office. The leaflet may contain a proposal form and the <i>Firm's</i> details. The <i>Firm</i> may receive commission from the insurance broker/ insurer. (The insurance in question must be incidental ¹ to the <i>Firm's</i> business.) The <i>Firm</i> does not recommend a particular policy.	No. If this amounts to a 'passive display of literature'.	Any Firm.
5	Introducing a <i>Client</i> to a broker/ insurer, where the <i>Firm</i> contact the broker/insurer.	Yes, introducing if it is conducted "by way of business". No, if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The Regulated Activity can be undertaken by a DPB Licensed Firm or an FCA Authorised Firm.
6	Introducing a <i>Client</i> to a broker/ insurer for insurance advice where the <i>Firm</i> contacts the broker/insurer. Commission or remuneration for the introduction is received.	Yes. Introducing.	A DPB Licensed Firm or an FCA Authorised Firm.
7	Advising a <i>Client</i> on the selection of a particular policy.	Yes. Advising.	A DPB Licensed Firm or an FCA Authorised Firm.
8	Advising on the level of cover needed.	No. Professional services.	Any Firm.
9	Explaining the terms of a contract recommended by a broker or insurer.	No. Professional services.	Any Firm.
10	Completing a proposal form for a <i>Client</i> .	Yes, arranging if it is conducted "by way of business". No if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The Regulated Activity can be undertaken by a DPB Licensed Firm or an FCA Authorised Firm.

	Activity	Is this regulated?	Who can undertake this work?
11	Providing information to the <i>Client</i> who fills in the proposal form	No. Professional services.	Any Firm.
12	Sending the proposal form to an insurance broker/insurer.	Yes, arranging if it is conducted "by way of business". No if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The Regulated Activity can be undertaken by a DPB Licensed Firm or an FCA Authorised Firm.
13	Paying the initial premium on behalf of the <i>Client</i> (regardless of whether this is dealt with through the <i>Firm's</i> own bank account or where the <i>Client's</i> cheque is forwarded to the insurer/ broker directly ²).	Yes, arranging if it is conducted "by way of business". No if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The Regulated Activity can be undertaken by a DPB Licensed Firm or an FCA Authorised Firm.
14	Acting as a post-box for the receipt of policy documentation for passing on to the <i>Client</i> .	No. Professional services.	Any Firm.
15	Acting as a post-box for premium monies.	No, collecting premium money as part of rent and service charges is not, without more, a Regulated Activity.	Any Firm.
16	Assisting the <i>Client</i> with claims by notifying the claim to the insurer.	Yes, performance and administration if it is conducted "by way of business". No if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The Regulated Activity can be undertaken by a DPB Licensed Firm or an FCA Authorised Firm.
17	Assisting the <i>Client</i> with claims by completing claim form.	Yes, performance and administration if it is conducted "by way of business". No if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The Regulated Activity can be undertaken by a DPB Licensed Firm or an FCA Authorised Firm.
18	Providing information for the <i>Client</i> to complete a claim form.	No. Professional services.	Any Firm.
19	Negotiating the settlement of a claim with the insurer on behalf of the <i>Client</i> .	Yes, performance and administration if it is conducted "by way of business". No if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The Regulated Activity can be undertaken by a DPB Licensed Firm or an FCA Authorised Firm.
20	Assisting the <i>Client</i> with supporting arguments over a claim.	No. Professional services.	Any Firm.
21	Acting as an expert witness for a <i>Client</i> or insurer, but not providing any other service which may amount to the performance and administration of a <i>contract of insurance</i> .	No. Professional services.	Any Firm.

1 i.e. connected in some way. Property insurance is likely to be incidental to RICS members' business. However dental insurance (for example) is unlikely to qualify as "incidental".

2 This will be the case where the member is involved in other aspects of arranging the insurance. A Firm that has signing rights on the Client's bank account and is simply passed a broker's invoice for payment in the same way as any other bill is probably not thereby performing a Regulated Activity if it has not otherwise been involved in arranging the insurance contracts concerned.

Appendix B – additional guidance to firms holding a Designated Professional Body (DPB) Licence on the purpose of the demands and needs statement

Introduction

Schedule 1 to the DPB Rules (page 10, part 3(10a)) and DPB Guidance (page 9, paragraph 38) set out the requirement on DPB licensed firms to provide their Clients with information on the service or product in a Durable Medium.

This help sheet deals with the information to be provided at the time of each individual insurance transaction. Please see the separate help sheet on Status disclosure and Terms of Engagement for guidance on information to be provided before a firm conducts any general insurance mediation work for a client.

Practical guidance

It is essential to provide your general insurance clients with simple, clear and understandable information about the basis on which an insurance product is offered and how it relates to their demands and needs. Firms can achieve this by using a Demands and Needs Statement.

The content of a Demands and Needs Statement, and the process for its production, differ somewhat according to whether you are:

- a. only arranging for the client to enter into the general insurance contract in question, without providing advice or a recommendation on the choice of the contract; or
- b. providing advice and a recommendation on the general insurance contract in question.
 - a.** if you are only arranging the general insurance contract in question (i.e. no personal recommendation is made to the client) the statement must:
 - *set out the client's insurance requirements as the client has disclosed them to you i.e. set out what the customer wants from the product (for most requirements this will be a fairly brief high-level summary); and*
 - *state that you have not provided your client with advice or recommendation on the contract.*
 - b.** if you are providing advice and a recommendation on the insurance contract in question then you must:
 - *establish your client's insurance requirements in sufficient detail to enable you to select an appropriate insurance contract. In doing so you need to ensure you have an appropriate understanding of the client's circumstances, and take into account their existing insurance arrangements and any other relevant information you may be aware of;*
 - *select an appropriate policy to meet the client's insurance requirements. This selection must be based on the scope of service set out in your status disclosure/terms of business previously given to the client (i.e. a fair analysis across the market, or limited to a selection from a single insurer or a limited number of insurers with whom you habitually deal – see Status disclosure and Terms of Engagement help sheet for further discussion on "fair analysis").*

You should then provide your client with a written statement which:

- *sets out their demands and needs based on the information discussed under the first bullet point above (this might take the form of a summary note of the discussion, or a suitable completed checklist)*
- *confirms that you are recommending a particular contract*
- *explains the reasons for the recommendation i.e. why you are recommending that particular contract as the most appropriate from those on offer to meet the client's demands and needs and why that insurer rather than any other has been recommended. If you are recommending a contract which does not fully meet the client's demands and needs (perhaps because there is no suitable contract available) you must make this clear and explain which demands and needs are not met and why.*

Questions and answers:

Q. In your introduction you mention Durable Medium, what is this?

A. Please see the DPB Rules 2009 for the full description but it basically means information stored on paper but could also include a floppy disk, CD ROMs, DVDs or an email stored on the hard drive of the recipient's computer.

Q. What is the essence of a Demands and Needs Statement?

A. An uncomplicated statement which is user friendly and which clearly sets out for the client:

- a record of their requirements which the insurance product is intended to meet
- the type of product which is being purchased
- whether they have or have not received advice and a recommendation on the product
- where they have received advice and a recommendation, the reasons why the particular contract has been recommended.

Q. What may amount to providing advice to a client?

A. You must be clear to the customer which service you are offering. If you are arranging general insurance contracts only you are in effect taking the client's orders and effecting the insurance contract chosen by them in line with their wishes. In this scenario, while you can provide information (e.g. on the range of contracts available) you should be careful not to provide advice unintentionally. This could occur if the client asks "what do you think?" "which would you go for?" In this case, if the client asks such questions they should be reminded that you are offering an arranging service, not advice. It is their decision as to which contract is purchased. Please note that there is scope under the RICS DPB Scheme to offer either or both types of general insurance service to your clients. The scope of the service you can offer will have been set out in your terms of engagement. However, you must make it clear in the demands and needs statement which service (i.e. arranging only, or advice and a recommendation) you are providing in relation to the contract in question.

Certain surveying services related to insurance fall outside of the scope of regulated activities. More detail on this can be found in the help sheet for Property Managers.

Q. When should I issue a Demands and Needs Statement?

A. The Demands and Needs Statement must be given before the contract is concluded. In principle this must be in writing (in a "Durable Medium"). However if a client so requests, or requires immediate insurance cover, the information may initially be provided orally. You must nevertheless follow-up with written documentation immediately after the conclusion of the contract.

A Demands and Needs Statement must also be given at each contract renewal. However, there is no need to provide a revised statement in relation to mid term changes (unless the change involves taking out a wholly new contract).

Q. When offering advice and recommendation what sort of things should I consider in order to establish my client's insurance requirements?

A. You may wish to consider (this list is not exhaustive):

- the property and risks to be insured
- why the insurance is required – e.g. statutory obligations, mitigate specific risks
- your client's personal and business circumstances
- affordability both now and in the future – consider excess levels for example
- your client's existing insurance arrangements and insurance history.

Q. What is the difference between the Terms of Engagement and a Demands and Needs statement?

A. There is a requirement under the DPB Scheme Rules (Schedule 1 to the DPB Rules page 9, part 2) to provide your general insurance client's with terms of engagement (TOE). A difference between the terms of engagement and the demands and needs statement (DNS) is that the TOE are issued before any insurance services are undertaken, and the DNS is issued before each specific contract has been concluded. Terms of engagement are more generalised, whereas the demands and needs statement is specific to a particular transaction. They provide a factual account of what was discussed/considered, whether a recommendation was made, and if so the basis for it.

Appendix C – additional guidance to firms on the meaning of ‘incidental to’ requirement in qualifying for a RICS Designated Professional Body (DPB) Licence

Introduction

The DPB Rules (page 5, paragraph 11(b)) and DPB Guidance (page 4, paragraph 9) sets out that one of the basic eligibility requirements for firms to qualify for a DPB license is that ‘[the firm’s] main business is surveying and any DPB Regulated Activities it carries on are incidental to the provision of surveying services to the Client.’

Interpreting ‘incidental to’

The Financial Services and Markets Act (FSMA) 2000 provides some assistance in interpreting what is meant by ‘incidental to’. There are two particularly relevant sections in FSMA:

a. Section 327 (conditions for activities to be exempt) provides amongst other things:

‘(4) The manner of the provision by [a member of a DPB] of any service in the course of carrying on the activities must be incidental to the provision by him of professional services.’

b. FSMA S332 deals with rules, including those which must be made by a DPB, and includes:

‘(4) Rules made in compliance with subsection (3) [i.e. the DPB rules] must be designed to secure that, in providing a particular professional service to a particular client, the member carries on only regulated activities which arise out of, or are complementary to, the provision by him of that service to that client.’

What does this mean?

The insurance activity must arise out of (or be complementary to) professional services (ie activities which are not themselves regulated activities), the provision of which is supervised and regulated by RICS. To be covered by the DPB licence, the insurance activities must relate in some way to the provision of surveying services. So:

- an RICS member, whose firm is licensed through the DPB scheme, who also practised part time as a vet would not be able to sell pet insurance in that capacity under the “umbrella” of the DPB licence, because that selling of pet insurance would not be incidental to his RICS-regulated professional activities; but
- an RICS member, whose firm is licensed through the DPB scheme, who arranges all the insurance requirements for an estate which he manages for a client, including veterinary insurance for animals including the owner’s dog, will be able to make the arrangements under the “umbrella” of a DPB licence, because arranging that insurance is incidental to the RICS-regulated surveying services which he provides to his client.

The ‘incidental to’ test is unlikely to be satisfied where insurance services are provided (by way of business) to a client other than in connection with surveying services provided to that client. For example, an RICS member who wanted to provide insurance arranging services to persons to whom he was not also providing surveying services could not do so under the “umbrella” of a DPB licence, as the provision of the insurance services here would not be “incidental” to the provision of professional services (ie surveying services) regulated by RICS.

Appendix D – Designated Professional Body (DPB) help sheet for property managers on general insurance mediation work

A Chartered Surveyor involved in property management is usually acting as agent for the landlord. As agent, it is normal for the surveyor to arrange insurance; pay premiums; and/or assist the client, or tenant, with claims. Generally speaking then, it is highly possible that property managers will provide some sort of Regulated Activity as specified under the Financial Services and Markets Act 2000 (FSMA).

It is a criminal offence to carry on regulated activities by way of business, if you are not either:

- **authorised by the Financial Conduct Authority direct; or**
- **an Appointed Representative of an FCA-authorized firm; or**
- **regulated by a Designated Professional Body such as the RICS through their DPB Scheme.**

The DPB scheme run by the RICS is intended to provide a simple and cost-effective means for Chartered Surveyors to meet the statutory requirement to be regulated for insurance-related business.

What is the “BY WAY OF BUSINESS” test?

Authorisation to carry out insurance-related regulated activities is only required if regulated activities are conducted “by way of business” and “for remuneration”. If you provide insurance-related services as part of wider property management services you are likely to be carrying on those activities “by way of business”. You will be carrying on the activities “for remuneration” if you receive any form of direct or indirect payment, benefit or consideration in relation to the services. In practice, if you are carrying on any insurance-related regulated activities as part of your business as a property manager, the “for remuneration” test is likely to be met.

Note that “remuneration” for insurance activities may well arise even if you are not paid separately or specifically for particular regulated activities. For example, if they are part of the service provided under your terms of business (or conditions of engagement) and your management fees are calculated as a percentage of the rental/service charge income, then that will be sufficient to constitute “remuneration”.

In addition, “remuneration” is not restricted to payment received from the person who benefits from the regulated activity per se. Being paid commission from a broker or insurance company in respect of your clients’ completed insurance contracts or policies will constitute “remuneration” for these purposes.

What are REGULATED ACTIVITIES in relation to general insurance work?

a. Dealing in insurance contracts as agent

This may arise, for example, where a property manager, managing agent, representative or someone else within the company/firm, acting for the client commits the client to enter into an insurance contract, for example by accepting a quotation from an insurance company or an insurance broker on a client’s behalf. Committing an insurance company to providing insurance for a prospective policyholder (this may arise where an intermediary has a delegated authority from an insurer) is also a regulated activity under this heading.

a. Arranging (bringing about) deals in insurance contracts

A person brings about a contract of insurance if his involvement in the chain of events leading to the insurance policy or contract is important enough that, without it, there would be no policy. Examples include negotiating the terms of the insurance contract on behalf of the customer, or assisting in the completion of a proposal form and sending it to the insurer.

c. Making arrangements with a view to transactions in insurance contracts

This activity contrasts with the two above in that it is not limited to instances where your involvement actually results in an insurance policy or contract being **concluded**. It includes the activities of persons that help policy holders fill in or check applications or proposal forms and situations where a person introduces clients to an intermediary or broker for advice or assistance.

d. Assisting in the administration and performance of a contract of insurance

This activity relates, in broad terms, to activities carried on **after** the policy has come into force, in particular in the event of a claim, where you act on behalf of either the property owner or the tenant/leaseholder in the discharge of their responsibilities under the insurance contract. This may include notifying a claim, providing evidence direct to the insurers, claim managers or loss adjusters in support of the claim and/or helping to negotiate its settlement.

Note that this activity is centred on direct communications and negotiations with the insurers or their representatives **on behalf of** the policy holder/beneficiary. If you are only providing information to the **property owner** to help him/her to make a claim, then that in isolation is unlikely to amount to a regulated activity.

Additionally, advising **insurers** on the property owner's behalf of mid-term changes to a policy (for example the addition or removal of a property, or a change in the risk) may amount to this regulated activity.

Note that the activities mentioned above are regulated activities whether or not you had any part in arranging the insurance policy under which the claim, notification etc, arises.

e. Advising on insurance contracts.

For advice to fall within this provision it must:

- i) relate to a particular contract of insurance
- ii) be given to a person in his capacity as an insured or potential insured
- iii) be advice intended to result in a particular action or change (and not just information or interpretation); and
- iv) relate to the merits of a person buying, selling, subscribing for or underwriting (or exercising any right to do so) a contract of insurance.

Typically, you will be "advising" in this sense when you advise a client on which of a range of quotations to accept for a particular insurance requirement.

f. Agreeing to carry on any of the activities in a) – e).

Entering into a legally binding agreement to provide services which consist of regulated activities is also a regulated activity. Here it is the timing that is important: you will need to have your authorisation in place **before** you bind yourself or your firm to carry out regulated activities.

There are a number of activities which surveyors undertake which may arise in connection with insurance, but which do not involve the regulated activities of advising on or arranging insurance contracts, or negotiation of claims. These are not regulated activities and do not require FCA authorisation or a DPB Licence.

Which surveying services related to insurance fall OUTSIDE the scope of regulated activities?

Provision of information

Providing factual information (e.g. information about the property) either to your clients or passing the same to their brokers or insurers is outside the scope as long as you are not giving advice or recommendations on specific policies or sending proposal forms etc direct to brokers or insurers with a view to the client arranging insurance with them.

Professional appraisal

Providing 'professional appraisal' to a client. This would include, for example, providing re-instatement cost calculations to your clients or their lenders or writing specifications and estimates for repairs.

Dealing with incidents which involve or may involve a claim

Arranging emergency repairs, reinstatement works etc, following an incident which gives rise to a claim on a policy.

Questions and answers – regulated activity scenarios

Q. As a residential managing agent, I have negotiated favourable terms with an insurer for a landlord policy covering contents, rent free periods and legal fees. I fill in the proposal forms, and sign on behalf of my client. Do I need to be regulated?

A. Yes, there are at least two separate regulated activities being performed. These are "arranging (bringing about) deals in insurance contracts" see b) above and "dealing in insurance contracts as agent" see a) above. If you are recommending the policy to your client the regulated activity of advising may also arise.

Q. If I assist my client with notifying a claim to an insurer is this a regulated activity?

A. It will depend on the "assistance"; if **you** phone the insurance company to notify the claim on behalf of the client this is likely to fall within d) above. However, if you only pass on the insurers' phone number to the client or the tenant for them to phone, then it does not.

Q. If I help a client fill in a claim form is this a regulated activity?

A. Yes, this falls into category d) above: Assisting in the administration and performance of a contract of insurance.

Q. My client asks me to tell him which policy to choose from a selection of proposals he has received, if I tell him will this be considered a regulated activity?

A. Yes, as you would be advising your client on the selection of a particular policy, see category e) above. However, if you simply provide the client with further information about what is covered by each of the proposals, without giving him an actual or implied recommendation, this is unlikely to constitute regulated advice.

Q. We do not receive commission on the building policies our landlord/clients take out, but the broker that we recommend "likes doing business with us" and gives us a substantial discount on our own office and Professional Indemnity Insurance policies. Does that mean the services to the clients are a regulated activity?

A. Yes, please see the "by way of business" test. You receive economic benefit arising from your clients' policies, and if you are instrumental in arranging the policies, this is likely to amount to a regulated activity.

Questions and answers – non-regulated activity scenarios

Q. My client asks for advice on the levels of cover needed for his building policies, is that a regulated activity?

A. Not if it is only a request for the re-instatement costs, for him to arrange his own insurance, and you have no other involvement with his insurers and do not give advice on the choice of a specific policy.

Q. I receive my client/landlords' insurance policies and send them to the tenants for information. Is this a regulated activity?

A. No, as you are simply passing on information.

Q. I act for a landlord client whose properties are let on full repairing and insuring basis. The tenants thus deal with any insurance issues but I check the sums insured are correct and keep copies of the policy schedules on file in case of any future queries. Is this likely to be regulated?

A. It is unlikely that this will be a regulated activity if the tenant deals with all insurance issues themselves.

Q. My client, the landlord, arranges his insurances himself, and passes the policy schedules to me, so I can collect the premium money as part of the tenants' service charges. Is this a regulated activity?

A. Collecting premium money as part of rent and/or services charges is not, without more, a regulated activity.

Q. I'm not sure if what I do is classed as a regulated activity?

A. Further guidance can be found within the Guidance for the DPB Scheme. The guidance is available on our website www.rics.org/dpb You can also contact us, direct, but it is likely that if you have studied the guidance RICS has released, then this is the best advice we can give.

Information is also available from the FCA website. Chapter 5 of the FCA's Perimeter Guidance Manual (PERG) contains detailed guidance on regulated activities connected with insurance mediation.

Ultimately, if you remain uncertain, you should seek legal or other professional advice as to whether what you do requires you to be regulated.

Appendix E – additional guidance to firms holding a Designated Professional Body (DPB) licence on status disclosure and terms of engagement for general insurance mediation work

Introduction

Schedule 1 of the DPB Rules (page 9 part 2) and DPB Guidance (page 9, paragraph 34) set out the requirement on licensed firms to provide their clients with terms of engagement setting out the service to be provided. You should ensure that you have read through those documents (which can be found at: www.rics.org/dpb) before preparing your terms of engagement.

This help sheet deals with the information to be provided before the firm first conducts any general insurance mediation work for its client. Please see the separate help sheet on demands and needs for guidance on the information to be provided at the time of each individual insurance transaction.

Practical guidance

It is key that a firm's terms of engagement are clear and reflect accurately the scope of the service to be provided. The client should be in a position of fully understanding what service the firm is providing them.

RICS recommends that firms should review, from time to time, their terms of engagement documentation taking into account any feedback from clients (including complaints) and others, such as, insurers.

Below is a quick reference checklist of the type of information that should be included in a firm's terms of engagement.

What information should be included in terms of engagement? (DPB Rules, page 9, part 2)

Contact information

Have you provided your client with information about the firm's name and contact details including who will be conducting business on behalf of the client (and where appropriate, who will be responsible for its overall supervision)?

Information about the nature of the service that the firm is providing

Have you clearly stated the basis on which you will provide general insurance mediation services? For example, will the firm restrict itself to providing information and arranging insurance as instructed by the client or will the firm provide the client with advice and a recommendation on the choice of specific insurance contracts?

Suggested wording could include:

'We can arrange insurance cover to meet your insurance requirements. We will if required provide you with information about insurance products available, but we will not provide advice or a recommendation: you will need to make your own choice about how to proceed.

Or: We can arrange insurance cover to meet your insurance requirements. We will if required provide you with advice and a recommendation after we have assessed your insurance needs'.

Have you outlined whether the information or advice and recommendation that the firm will provide to the client will be based on a "fair analysis" of the market, from a limited number of insurers or from a single insurer only? Where the firm operates by using a limited number of insurers or a single insurer then it must state whether it is contractually obliged to limit its choice in this way (i.e. is "tied" to a single insurer or a range of insurers). It must also tell the client that they may request a list of the insurers with which it conducts or may conduct business.

Suggested wording could include:

'In providing information[/advice and recommendations] on the basis of a "fair analysis" of the market to source an appropriate insurance policy for your requirements based on the information that you have provided.

[Please note that a "fair analysis" requires consideration of a sufficiently large number of contracts available on the market to enable an informed recommendation to be made on which contract would be adequate to meet the client's needs. This requires a good knowledge of what is available right across the market – it is unlikely that you can claim to offer a "fair analysis" service if you only deal with a relatively small selection of insurers.]

Or: We provide information[/advice and recommendations] based [on products available from a limited range of insurers with whom we commonly do business. Please do let us know if you would like a list of these] [only on products available from ABC Insurance Ltd].

[Although we have chosen to limit our choice in this way, we are not contractually obliged to deal only with [these insurers] [ABC Insurance Ltd] or [We are contractually obliged to deal only with [these insurers] [ABC Insurance Ltd]'].

Information about the Firm's regulatory status

Have you explained your Firm's status using the standard paragraph required by the FCA as set out in DPB Rules, page 9, part 2(g)?

"This Firm is not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry out insurance mediation activity 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 Royal Institution of Chartered Surveyors (RICS). The register can be accessed via the Financial Conduct Authority website www.fsa.gov.uk/register"

Information about connections with insurers

If appropriate, have you disclosed any connection (in terms of ownership or voting rights) with an insurer? This needs to be done if you have 10% or more of the voting rights in the insurer or an insurer has 10% or more of the voting rights in your firm.

Complaints and compensation arrangements

Have you provided details to your client about what to do if they want to make a complaint, including access to redress via the Surveyors Ombudsman Scheme? Have you identified whether you are covered by the RICS Client Money Protection Scheme?

(For further information on complaints please see the redress information sheet at: www.rics.org/dpb).

Suggested wording could include:

'If you wish to make a complaint, please contact us at ...

The firm will handle your complaint in accordance with RICS' Complaints Handling Procedure. A copy of this is available on request.

We are covered by RICS' Client Money Protection Scheme. You may be entitled to compensation through that scheme if we cannot meet our obligations. This will depend on the type of business and the circumstances of the claim.'

Maintaining a copy of the terms of engagement/business

Have you kept a copy of the terms of engagement/business signed by the client (or an unsigned copy if the client has not returned a signed copy)?

The Insurance Mediation Directive requires that the client must be given the terms of engagement in a 'durable medium'. This basically means on paper but could also include CD Roms, DVDs and e-mail stored on the hard drive of the recipient's computer.

Disclosure of commission

A key requirement of the DPB scheme is that the firm must account to its clients for all commission and other benefits obtained through general insurance mediation activity. This is outlined in the DPB Rules and supporting guidance (the key reference is at page 3, item 6 of the guidance) and additional guidance can be found on this at: **www.rics.org/dpb**. The client must be informed in writing about the commission, which must be remitted to the client, unless the client has specifically given their informed consent, in writing, that the firm may retain the commission.

Please note that it is not sufficient for a firm to cover the commission issue in their general terms of engagement. You will need to have specific arrangements in place to document the disclosure of commission process. However, it would seem appropriate to make reference to that process within your terms of engagement.

*For further information please refer to the disclosure of commission help sheet at: **www.rics.org/dpb**.*

Appendix F – additional guidance to firms holding a Designated Professional Body (DPB) Licence on the treatment of commission

Introduction

1. The DPB Guidance (page 3 paragraph 6) sets out the requirement on DPB licensed firms to account to their clients for any pecuniary advantage or other reward received from any other person other than the Client in connection with DPB

Regulated activities.

2. A number of questions have arisen as to the practical implications of complying with this requirement. This guidance attempts to explain the background to the requirement and to answer the more common questions about compliance. If it does not cover your query, please contact us for more help.

Background

3. Under the Financial Services and Markets Act (FSMA) 2000, a firm can only be an exempt professional firm under a DPB scheme if it accounts to its client for any pecuniary reward or other advantage arising out of regulated business done for that client. FCA consider this requirement to mean that the firm “must hold to the order of its client” and any such reward or advantage. In the context of the RICS DPB scheme, “reward or advantage” will include any kind of commission from brokers or insurers, including commission on insurance renewals.
4. In simple terms, this means that a DPB-licensed firm must treat any commission or similar payment it receives as belonging to its client. The firm may only retain the commission for itself if it discloses the amount to the client and the client consents to the firm retaining the commission. In the absence of consent, the commission must be paid to the client. The consent must be specific and informed by knowledge of the amount: it is not sufficient to rely on a general provision, for example, in a terms of business agreement. The informed consent from the client must be in writing.
5. This requirement is a fundamental condition for the DPB exemption in the FSMA under which the RICS DPB scheme operates. It is not simply an RICS requirement; it is a matter of law. The FCA looks to the DPBs to ensure that the requirement is observed.
6. It is important to understand that the requirement is about ownership of commission; it is not simply a requirement about disclosure.

Practical guidance

7. The RICS DPB scheme is intended for professional firms when they provide insurance services incidental to or complimentary to their core professional service.

8. If a firm wishes to undertake regulated activities for commission then, in principle, the RICS DPB scheme route is not appropriate. Against this background, DPB firms have a number of considerations and options for dealing with insurance commissions:
- a. firms whose practice has been to charge a fee for insurance-related work and to remit any commission to the client will not, of course, have to make any change to their arrangements
 - b. unless they already operate a regime of full disclosure and specific consent, firms now regulated by the RICS DPB Scheme that have previously retained commissions will need to change their practice. Such firms have essentially two options:
 - to change their terms for insurance work such that all insurance work becomes fee-based, with any commissions due being remitted to the client; or
 - to disclose to the client the amount of all commissions received in respect of insurance business for the client, and to obtain the client's specific consent to the firm retaining these amounts.
 - c. for specific consent, you should either:
 - advise the client on each occasion you arrange insurance what commission you will receive (or have received) for the transaction and seek specific consent, in writing, on each such occasion; or
 - explain to the client that you will receive commission which you will hold to the client's order; that you will provide a statement from time to time (perhaps when billing the client for their fee) and seek at that point their specific consent, in writing, to retain the commission.
9. It will be important that you keep accurate records of disclosures made and the informed consent of your client. This will be one of the checks undertaken by the RICS in monitoring firms regulated via the DPB scheme.

Questions and answers

Q. What should we do if we don't know the amount of commission we will receive?

A. If at the time of disclosure it is not possible to ascertain the precise amount of specify accurately the basis on which commission will be calculated then you should give an approximation. The client should be advised of the precise amount when known.

Q. Why do we have to get the informed consent of our clients?

A. This requirement is a fundamental condition for the DPB exemption in the FSMA under which the RICS DPB scheme operates. It is not simply an RICS requirement; it is set out in the FSMA.

Q. What if, despite our best attempts, we cannot obtain our client's informed consent?

A. In the absence of informed consent, the commission must be given to the client.

Q. What should we do with the commission while waiting for the client to provide their informed consent?

A. As a practical measure, RICS recommends that you keep the commission in a client account and if, after a period of three months, you have not received the client's informed consent, you should pay the commission to the client. Please note that RICS Rules of Conduct for Firms regarding clients' money will apply here.

Q. Many of my clients will just be annoyed by my writing to them and asking them for a response on the treatment of commission point.

A. You will need to explain to your clients that you are writing to them because of the change in your regulatory status and the obligation to account to them for commission. If you believe your clients will not welcome requests to give specific consent, you may want to consider altering the terms of business so that you charge an appropriate fee for insurance work, and then pay all the commission to your clients. This will avoid the need for seeking consent and therefore reduce correspondence.

Q. But I don't receive any commission for placing insurance.

A. If you do not receive any commission (whether monetary or non-monetary benefits received from the insurer or broker) for your general insurance mediation activities for a client there is clearly then no requirement to gain any informed consent from the client. You may nevertheless want to consider making it clear to the client at the time you arrange insurance that you do not receive commission.

Q. FCA-regulated firms are not subject to the same requirement.

A. This is so, but given that the activities undertaken by FCA-regulated firms are more than incidental to or complimentary to a professional service they are subject to a fuller range of FCA requirements, including financial requirements, and a different overall set of checks and balances applying to their relationship with their clients.

Q. The whole commission point is just over the top.

A. The requirement is there because firms operating under a DPB scheme are exempt from direct FCA regulation. The obligation to account for commission in this way must be weighed against the advantages of being regulated via the RICS DPB scheme – a scheme that is far more tailored to how chartered surveyors work, is more proportionate and cost-effective when compared to the FCA regime.

Transparency of fees and benefits is not a new concept for RICS members.

Further information

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The information in the guidance contains views expressed by RICS and should be read in conjunction with the RICS DPB Rules and Guidance documents. This additional guidance has been prepared in consultation with RICS Designated Professional Body Regulated Activities Committee (consisting of RICS members and lay members) and advice from a firm of experts on FAS and insurance matters as to the implications of the requirements and what practical measures can be taken to comply with them. However, these views do not constitute legal advice and cannot bind a court of law.



Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 118,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers property, asset valuation and real estate management; the costing and leadership of construction projects; the development of infrastructure; and the management of natural resources, such as mining, farms and woodland. From environmental assessments and building controls to negotiating land rights in an emerging economy; if our members are involved the same professional standards and ethics apply.

We believe that standards underpin effective markets. With up to seventy per cent of the world's wealth bound up in land and real estate, our sector is vital to economic development, helping to support stable, sustainable investment and growth around the globe.

With offices covering the major political and financial centres of the world, our market presence means we are ideally placed to influence policy and embed professional standards. We work at a cross-governmental level, delivering international standards that will support a safe and vibrant marketplace in land, real estate, construction and infrastructure, for the benefit of all.

We are proud of our reputation and we guard it fiercely, so clients who work with an RICS professional can have confidence in the quality and ethics of the services they receive.

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