

May 2004

Dear Member,

REGULATION - ACTING ON BEHALF OF POLICYHOLDERS

14 January 2005 is not that far away. More to the point is almost upon us. FSA continue to make it quite clear that they believe the vast majority of those assisting policyholders will be involved in a regulated activity (assisting in the administration and performance of an insurance contract).

It was the view of the Synergy Committee that this position was unfair, requiring that amongst others our members needed to join a club, but for which the rules were generally written with others such as brokers in mind. As a result we have managed to obtain from FSA the attached document which specifies a summary that they have produced of the applicable ICOB rules.

At the same time CILA has received an approach from FOS pointing out that from 24 January 2005 regulated insurance intermediaries will be covered by law by the Financial Ombudsman Service.

They have extended an invitation to attend a series of events across the country for mortgage and insurance intermediaries. Unfortunately the invitation came too late to catch the first five events leaving only Brentwood, Liverpool and Swansea, although further dates are envisaged.

As an alternative, however, FOS have offered to arrange presentations aimed solely at our members. This seems preferable but clearly we need to know the potential level of interest before arranging such an event(s).

Additional information can be found on the FOS website at

<http://www.financial-ombudsman.org.uk>

In particular you may wish to read Ombudsman News – Special Edition 2004 which covers, amongst other things, applying to join voluntary jurisdiction of the Financial Ombudsman Service. Please respond by e-mail to Graham Cave at graham.cave@cila.co.uk regarding the potential meetings with FOS.

Finally, for those members involved in claims preparation who may still be in doubt as to their registration, we have received further clarification from the FSA for those acting on behalf of policyholders. Details are also enclosed with this letter.

Andy King

President

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PRU 9.4 is intended to ensure that an insurance company only uses the regulated insurance mediation services of intermediaries that are authorised or exempt. PRU 9.4 will not apply directly to a loss adjuster since it applies only to insurance companies. Nor will PRU 9.4 apply to an insurer negotiating the settlement of a claim with a loss assessor, regardless of whether the loss assessor is carrying on the regulated activity of assisting in the admin and performance of a contract of insurance. This is because the insurer is not "using the services of" the loss assessor.

There is, however, a possibility that section 27 of the Financial Services and Markets Act 2000 could be relevant to this scenario. Section 27 states that an agreement made in the course of carrying on a regulated activity by an authorised person is unenforceable against the other party to the agreement if it is made through an unauthorised person. So if an insurer or his agent (i.e. a loss adjuster) negotiates the settlement of a claim with a loss assessor that is not authorised but should be, it is possible that s27 could apply to make the settlement unenforceable by the insurer against the policyholder. This provision would not catch the loss adjuster directly, rather it would affect the position of the insurer as against the policyholder.

However, the insurer might be able to argue that it was just and equitable to reach the settlement it did with the loss assessor, acting on behalf of the policyholder, in which case s27 would not apply and the settlement would stand (s 28 (3) of the Act). This would be for a court to judge, so we cannot say whether or in what circumstances the just and equitable defence would be available to an insurer or their loss adjusters settling claims through an unauthorised loss assessor. Insurers may, therefore, feel it is prudent for it or its loss adjusters to ascertain whether or not the loss assessors with whom they deal are carrying regulated activities and, if so, whether they are authorised or exempt from the need to be authorised (e.g. as appointed representatives).

In addition, as you are aware, the FSA expects regulated firms to have systems and controls in place that are adequate for the business they carry on (SYSC 3.1.1R). This includes the identification, measurement, management and control of risks of regulatory concern. So, for example, where an insurer agrees a settlement with a loss assessor acting on behalf of a policyholder and the settlement is of a significant value, or the loss assessor is acting on behalf of several policyholders, it may well be appropriate for the insurer to check the status of this loss assessor under its SYSC obligations.

High Street Firms Divisions, FSA
27th April, 2004