

## Chapter 5

# Guidance on insurance distribution activities



5.15 Illustrative tables

- 5.15.1 G [deleted]
- 5.15.2 G [deleted]
- 5.15.3 G 

The table in ■ PERG 5.15.4 G is designed as a short, user-friendly guide but should be read in conjunction with the relevant sections of the text of this *guidance*. It is not a substitute for consulting the text of this *guidance* or seeking professional advice as appropriate (see ■ PERG 5.1.6 G on the effect of this *guidance*). References in this table to articles are to articles of the *Regulated Activities Order*. In this table, it is assumed that each of the activities described is carried on by way of business (see ■ PERG 5.4). Save where otherwise indicated, it is assumed that the intermediary is carrying on activities in respect of *policies* where the intermediary is not the *policyholder*. Also, that this table does not provide an exhaustive list of all of the exclusions or exemptions that are of relevance to each type of activity. For a full explanation of the exclusions and exemptions under the *Regulated Activities Order* and their applicability see generally ■ PERG 5.3.7 G to ■ PERG 5.3.8 G, ■ PERG 5.6.4AG to ■ PERG 5.6.23 G, ■ PERG 5.7.7 G, ■ PERG 5.8.24 G to ■ PERG 5.8.26 G, ■ PERG 5.11, ■ PERG 5.12.9 G to ■ PERG 5.12.10 G, ■ PERG 5.13 and ■ PERG 5.14. This table is referred to in ■ PERG 5.7.5 G (The regulated activities: assisting in the administration and performance of a contract of insurance).

5.15.4 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
MARKETING AND EFFECTING INTRODUCTIONS		
Passive display of information -for example, medical insurance brochures in doctor's surgery (whether or not remuneration is received for this activity)	No.	Merely displaying information does not constitute making arrangements under article 25(2) (see PERG 5.6.4 G).
Providing a customer with contact details or information about a broker / insurance undertaking (whether by phone, fax, e-mail,	Yes, but articles 33B or 72C may be available.	This will constitute making arrangements under article 25(2). But, the exclusions in articles 33B or 72C will apply if all the intermediary

Type of activity	Is it a regulated activity?	Rationale
face-to-face or any other means of communication)		does is supply information to the customer and the relevant conditions of those exclusions are otherwise met (see PERG 5.6.4AG to PERG 5.6.9 G). Generally, this will not amount to advice under article 53(1) unless there is an implied recommendation of a particular <i>policy</i> (see PERG 5.8.4 G), in which case articles 33B and 72C would not be available.
Providing an <i>insurance undertaking</i> /broker with contact details of customer	Yes, but article 33B may be available.	This will constitute making arrangements under article 25(2) when undertaken in the context of regular or ongoing arrangements for introducing customers. Article 33B applies to the provision of information about a potential policyholder to an <i>insurance undertaking</i> or an insurance or reinsurance intermediary, and so may apply here if the relevant conditions are met. It will only apply if the provider of the customer information does not take any step other than providing the information to assist in the conclusion of a <i>contract of insurance</i> .
Marketing on behalf of <i>insurance undertaking</i> to intermediaries only (for example, broker consultants)	Yes.	This amounts to work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). Article 33B does not apply because the information provided to the intermediary doesn't relate to a potential policyholder, and isn't provided to a policyholder. Article 72C is not available because

Type of activity	Is it a regulated activity?	Rationale
Telemarketing services (that is, companies specialising in marketing an <i>insurance undertaking's</i> products/services to prospective customers)	Yes.	<p>this activity does not involve provision of information to the <i>policyholder</i> or potential <i>policyholder</i> only.</p> <p>This amounts to introducing and/or other work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). This could also involve article 25(1) <i>arranging</i> where the telemarketing company actually <i>sells</i> a particular <i>policy</i> and could involve <i>advising on investments</i>. Article 33B is unlikely to apply, as the telemarketing company is likely to be actively persuading the customer rather than merely providing information. Article 72C will not be available where the provision of information is more than incidental to the telemarketing company's main business. Articles 33B and 72C will not be available where the telemarketing company is <i>advising on investments</i>.</p>
PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE		
Discussion with client about need for insurance generally/need to take out a particular type of insurance	Generally, no. Articles 33B or 72C available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to <i>arranging</i> . If so, articles 33B or 72C might be of application (see <a href="#">PERG 5.6.5 G</a> to <a href="#">PERG 5.6.9 G</a> ).
Advising on the level of cover needed	Generally, no. Articles 33B or 72C available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities

Type of activity	Is it a regulated activity?	Rationale
		might amount to making arrangements under article 25(2) (see PERG 5.8.3 G). If so, articles 33B or 72C might be of application (see PERG 5.6.4AG to PERG 5.6.9 G).
Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several <i>policies</i> which suit the answers given)	Yes. Subject to article 72 C exclusion where available.	This will constitute <i>arranging</i> although article 72C may be of application (see PERG 5.6.4AG to PERG 5.6.9 G). If there is no express or implied recommendation of a particular <i>policy</i> , this activity will not amount to advice under article 53(1) (see PERG 5.8.15 G to PERG 5.8.19 G).
Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies	Possibly. Article 72C available.	This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments</i> (except <i>P2P agreements</i> ) (see PERG 5.8.8 G (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments</i> (except <i>P2P agreements</i> ), article 72C may be of application (see PERG 5.6.5 G to PERG 5.6.9 G), and where information is provided by a professional in the course of a profession, article 67 may apply (see PERG 5.11.9 G to PERG 5.11.12 G). Article 33B will not be available where this involves taking steps other than the provision of information.
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see PERG 5.8.4 G to PERG 5.8.5 G).

Type of activity	Is it a regulated activity?	Rationale
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see PERG 5.8.4 G to PERG 5.8.5 G).
Advice by journalists in newspapers, broadcasts etc.	Generally, no because of the article 54 exclusion.	Article 54 provides an exclusion for advice given in newspapers etc (see PERG 5.8.24 G to PERG 5.8.25 G).
Giving advice to a customer in relation to <i>buying</i> a consumer product, where insurance is a compulsory secondary purchase and/or a benefit that comes with <i>buying</i> the product	Not necessarily but depends on the circumstances.	Where the advice relates specifically to the merits of the consumer product, it is possible that references to the accompanying insurance may be seen to be information and not advice. If, however, the advice relates, in part, to the merits of the insurance element, then it will be <i>regulated activity</i> .
ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS		
Providing information to customer who fills in application form	Possibly. Subject to article 67 or 72C, and article 33B, exclusions where available.	This activity may amount to <i>arranging</i> although the exclusions in article 67 (see PERG 5.11.9 G to PERG 5.11.12 G) and article 72C (see PERG 5.6.4AG to PERG 5.6.9 G) may be of application. Article 33B could also apply, depending on the type of information provided.
Helping a potential <i>policyholder</i> fill in an application form	Yes.	This activity amounts to <i>arranging</i> . Articles 33B and 72C will not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see PERG 5.6.4AG to PERG 5.6.9 G).
Receiving completed proposal forms for checking and forwarding to an <i>insurance undertaking</i> (for example, an administration outsourcing service provider that receives and processes proposal forms)	Yes.	This amounts to <i>arranging</i> . Articles 33B and 72C do not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see PERG 5.6.4AG to PERG 5.6.9 G).

Type of activity	Is it a regulated activity?	Rationale
Assisting in completion of proposal form and sending to <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> . Articles 33B and 72C do not apply because this activity goes beyond the mere provision of information (see PERG 5.6.4AG to PERG 5.6.9 G).
NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE		
Negotiating terms of <i>policy</i> on behalf of a customer with the <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> (see PERG 5.6.2 G).
Negotiating terms of <i>policy</i> on behalf of <i>insurance undertaking</i> with the customer and signing proposal form on his behalf	Yes.	These activities amount to both <i>arranging</i> and <i>dealing in investments as agent</i> .
Concluding a <i>contract of insurance</i> on insurance company's behalf, for example, motor dealer who has authority to conclude insurance contract on behalf of <i>insurance undertaking</i> when <i>selling</i> a car	Yes.	A <i>person</i> carrying on this activity will be <i>dealing in investments as agent</i> . He will also be <i>arranging</i> (as the article 28 exclusion only applies in the limited circumstances envisaged under article 28(3)) (see PERG 5.6.12 G).
Agreeing, on behalf of a prospective <i>policyholder</i> , to <i>buy</i> a <i>policy</i> .	Yes.	A <i>person</i> who, with authority, enters into a <i>contract of insurance</i> on behalf of another is <i>dealing in investments as agent</i> under article 21, and will also be <i>arranging</i> .
Providing compulsory insurance as a secondary purchase	Yes. It will amount to <i>dealing in investments as agent</i> or <i>arranging</i> .	The fact that the insurance is secondary to the primary product does not alter the fact that arranging the package involves <i>arranging</i> the insurance.
COLLECTION OF PREMIUMS		
Collection of cheque for premium from the customer at the pre-contract stage.	Yes (as part of <i>arranging</i> ).	This activity is likely to form part of <i>arranging</i> . But the mere collection/receipt of premiums from the customer is unlikely, without more, to amount to <i>arranging</i> .
Collection of premiums at post-contract stage	No.	The mere collection of premiums from <i>policyholders</i> is unlikely, without more, to

Type of activity	Is it a regulated activity?	Rationale
amount to <i>assisting in the administration and performance of a contract of insurance</i> .		
MID-TERM ADJUSTMENTS AND ASSIGNMENTS		
Solicitors or licensed conveyancers discharging client instructions to assign <i>contracts of insurance</i> .	Not where article 67 applies.	As the assignment of rights under a <i>contract of insurance</i> (as opposed to the creation of new <i>contracts of insurance</i> ) does not fall within <i>insurance distribution</i> , article 67 is of potential application (see PERG 5.11.9 G to PERG 5.11.12 G).
Making mid-term adjustments to a <i>policy</i> , for example, property manager notifies changes to the names of the leaseholders registered as “interested parties” in the <i>policy</i> in respect of the property.	Yes.	Assuming the freeholder (as <i>policyholder</i> ) is obliged under the terms of the <i>policy</i> to notify the <i>insurance undertaking</i> of changes to the identity of the leaseholders, the property manager is likely to be <i>assisting in the administration and the performance of the contract of insurance</i> .
TRADED ENDOWMENT POLICIES (“TEPs”)		
Making introductions for the purposes of <i>selling</i> TEPs	Yes, unless article 72C applies.	Making introductions for these purposes is <i>arranging</i> unless article 72C applies (see PERG 5.6.5 G to PERG 5.6.9 G). The exclusions in article 29 (Arranging deals with or through authorised persons) and 33 (Introducing) no longer apply to <i>arranging contracts of insurance</i> .
Market makers in TEPs	Yes, although the exclusion in article 28 may apply.	Unauthorised market makers can continue to make use of the exclusions in articles 15 (Absence of holding out etc.) and 16 (Dealing in contractually based investments), where appropriate. In order to avoid the need for <i>authorisation</i> in respect of <i>arranging</i> they may be able to rely upon article 28 (see PERG 5.6.12 G).



Type of activity	Is it a regulated activity?	Rationale
<b>ASSISTING POLICYHOLDER WITH MAKING A CLAIM</b>		
Merely providing information to the insured to help him complete a claim form	No.	Of itself, this is likely to amount to assisting in the administration but not the performance of a <i>contract of insurance</i> . In the FCA's view, the provision of information in these circumstances is more akin to facilitating performance of a <i>contract of insurance</i> rather than assisting in the performance (see PERG 5.7.3 G to PERG 5.7.5 G)
Completion of claim form on behalf of insured	Potentially.	This activity amounts to assisting in the administration of a <i>contract of insurance</i> . Whether this activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> will depend upon whether a person's assistance in filling in a claims form is material to whether performance of the contractual obligation to notify a claim takes place (see PERG 5.7.2 G to PERG 5.7.3 G).
Notification of claim to <i>insurance undertaking</i> and helping negotiate its settlement on the <i>policyholder's</i> behalf	Yes.	This activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> (see PERG 5.7.4 G).
<b>ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS</b>		
Negotiation of settlement of claims on behalf of an <i>insurance undertaking</i>	No.	Managing claims on behalf of an <i>insurance undertaking</i> does not amount to <i>assisting in the administration and performance of a contract of insurance</i> by virtue of the exclusion in article 39B (see PERG 5.7.7 G).
Providing information to an <i>insurance undertaking</i> in connection with its investigation or assessment of a claim	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> .

Type of activity	Is it a regulated activity?	Rationale
Loss adjusting and managing claims (for example, by administration outsourcing providers)	Potentially.	These activities may amount to <i>assisting in the administration and performance of a contract of insurance</i> . Article 39B excludes these activities, however, when undertaken on behalf of an <i>insurance undertaking</i> only (see PERG 5.7.7 G).
Providing an expert appraisal of a claim	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> whether carried out on behalf of an <i>insurance undertaking</i> or otherwise.
Jeweller repairs customer's jewellery pursuant to a <i>policy</i> which permits the jeweller to carry out repairs	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> . It amounts to managing claims on behalf of an <i>insurance undertaking</i> and so falls within the exclusion in article 39B (see PERG 5.7.7 G).

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