

Chapter 5

Guidance on insurance distribution activities

5.7 The regulated activities: assisting in the administration and performance of a contract of insurance

- 5.7.1 **G** The *regulated activity of assisting in the administration and performance of a contract of insurance* (article 39A) relates, in broad terms, to activities carried on by intermediaries after the conclusion of a *contract of insurance* and for or on behalf of *policyholders*, in particular in the event of a claim. Loss assessors acting on behalf of *policyholders* in the event of a claim are, therefore, likely in many cases to be carrying on this *regulated activity*. By contrast, managing claims on behalf of certain insurers is not a *regulated activity* (see ■ PERG 5.7.7 G (Exclusions)).
- 5.7.2 **G** Neither assisting in the administration nor assisting in the performance of a contract alone will fall within this activity. Generally, an activity will either amount to assisting in the administration or assisting in the performance but not both. Occasionally, however, an activity may amount to both *assisting in the administration and performance of a contract of insurance*. For example, where a *person* assists a claimant in filling in a claims form, in the *FCA's* view this amounts to assisting in the administration of a *contract of insurance*. In some instances, however, this may also amount to assisting in the performance of a *contract of insurance*. In the *FCA's* view, an example of when a *person* may be assisting in the performance of a contract is where a *person* fills in the whole or a significant part of a claims form on behalf of a claimant. This is because, by helping complete a claims form, a *person* may be assisting the *policyholder* to perform his contractual obligation to notify the *insurance undertaking* in the event of a claim and provide details of the claim in the manner and form required by the contract.
- 5.7.3 **G** Put another way, where an intermediary's assistance in filling in a claims form is material to whether performance takes place of the contractual obligation to notify claims, it is more likely to amount to *assisting in the administration and performance of a contract of insurance*. Conversely, in the *FCA's* view, a *person* who merely gives pointers about how to fill in the claims form or merely supplies information in support of a claim will not be assisting in the performance of a *contract of insurance*. Instead, the *person* will only be facilitating rather than assisting in the performance of a *contract of insurance*.
- 5.7.4 **G** More generally, an example of an activity that, in the *FCA's* view, is likely to amount to assisting a *policyholder* in both the administration and the performance of a *contract of insurance* is notifying a claim under a *policy* and then providing evidence in support of the claim, or helping negotiate its

settlement on the *policyholder's* behalf. Notifying an *insurance undertaking* of a claim assists the *policyholder* in discharging his contractual obligation to do so (assisting in the performance); providing evidence in support of the claim or negotiating its settlement assists management of the claim (assisting in the administration).

5.7.5 G On the other hand, where a *person* does no more than advise a *policyholder* generally about making a claim or provide evidence in support of a claim, this is unlikely to amount to both assisting in the administration and performance. Similarly, the mere collection of premiums from *policyholders* is unlikely, without more, to amount to *assisting in the administration and performance of a contract of insurance*. The collection of premiums from customers or clients at the pre-contract stage, however, may amount to *arranging* (see example in ■ PERG 5.15.4 G (Types of activity – are they regulated activities and, if so, why?)).

5.7.6 G Where a *person* receives funds on behalf of a *policyholder* in settlement of a claim, in the FCA's view, the act of receipt is likely to amount to assisting in the performance of a contract. By giving valid receipt, the *person* assists the *insurance undertaking* to discharge its contractual obligation to provide compensation to the *policyholder*. He may also be assisting the *policyholder* to discharge any obligations he may have under the contract to provide valid receipt of funds, upon settlement of a claim. Where a *person* provides valid receipt for funds received on behalf of the *policyholder*, he is also likely to be assisting in the administration of a *contract of insurance* (for example, making prior arrangements relating to transmission and receipt of payment).

Exclusions

5.7.7 G By article 39B of the *Regulated Activities Order* (Claims management on behalf of an insurer etc):

- (1) loss adjusting on behalf of a relevant insurer (see ■ PERG 5.7.8 G);
- (2) expert appraisal; and
- (3) managing claims for a relevant insurer;

are also excluded from the *regulated activity of assisting in the administration and performance of a contract of insurance*. This is where the activity is carried on in the course of carrying on any profession or business (see also ■ PERG 5.14 (Exemptions)). In determining whether they are carrying on the *regulated activity of assisting in the administration and performance of a contract of insurance*, therefore, *persons* should consider whether they are acting on behalf of the relevant insurer and not the *policyholder*.

5.7.8 G A 'relevant insurer' for the purposes of article 39B means:

- (1) an *authorised person* who has *permission* for *effecting and carrying out contracts of insurance*; or
- (2) a member of the Society of Lloyd's or the members of the Society of Lloyd's taken together; or

(3) [deleted]

(4) a reinsurer, being a *person* whose main business consists of accepting risks ceded by a *person* falling under (1) or (2) or a *person* who is established outside the *United Kingdom* and who carries on the activity of *effecting and carrying out contracts of insurance*.

So, a *person* whose activities are excluded under article 12 of the *Regulated Activities Order* (Breakdown insurance) will not be a relevant insurer for these purposes and any *person* who performs loss adjusting or managing claims

on behalf of such a *person* will not be able to use the exclusion in article 39B.