

**Handbook for  
Designated Professional Body Firms ("DPB Firms") and  
Licensed Authorised Professional Firms ("Licensed APFs")**

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## Part 1

### Introduction

Words in bold and italics are defined in part 7 (Interpretation and Definitions) of this Handbook.

In the following parts of this Handbook, paragraphs in bold type are, to the extent applicable, mandatory. Paragraphs denoted by the words, "for amplification" are intended to provide guidance and are not mandatory, but may be referred to in the interpretation of mandatory provisions.

This Handbook only applies to **regulated activities** carried on in the **United Kingdom**.

### Regulated Activities

- 1.1 Certain types of investment, insurance or mortgage related business activities (known as "**regulated activities**") are regulated under the Financial Services and Markets Act 2000 ("**FSMA 2000**"). Any **firm**, including a **sole practitioner**, which undertakes, or wishes to undertake, **regulated activities** must, before doing so, ensure that it complies with the applicable regulatory requirements, according to the scope and nature of the **regulated activities** which it intends to undertake.
- 1.2 In order to comply with the regulatory requirements, there are three "compliance routes" available to **firms** which wish to undertake **regulated activities**. Those three compliance routes are set out and explained in an Information and Assistance Note which has been produced by the Actuarial Profession for this purpose<sup>1</sup>: In broad terms, however, the three available compliance routes are as follows:-
- 1.2.1 If controlled or managed (or both) by member(s) of the Institute and Faculty of Actuaries (the "**Institute and Faculty**"), a **firm** may obtain a **licence** (a "**DPB licence**") from the **Institute and Faculty**, becoming subject to the requirements set out in this Handbook ("**compliance route 1**"); or
- 1.2.2 A **firm** may obtain authorisation from the Financial Services Authority ("**FSA**"), becoming subject to the full requirements set out by the **FSA** in its Handbook (the "**FSA Handbook**") ("**compliance route 2**"). A **firm** can also act as an **appointed representative** of a fully **authorised person**. This allows the **appointed representative** to undertake work in relation to **regulated activities** without requiring authorisation itself; or
- 1.2.3 If controlled and managed by member(s) of the **Institute and Faculty**, a **firm** may obtain authorisation directly from the **FSA** as what is known as an "**authorised professional firm**" ("**APF**"). The **FSA Handbook** provides for an alternative regulatory regime applicable to **APFs**, as compared with that which applies under compliance route 2, to the extent that they are undertaking what are known as "**non-mainstream regulated activities**". Before making use of this alternative **FSA** regulatory regime, however, firms must additionally obtain a **licence** from the **Institute and Faculty** (an "**APF licence**") and comply with relevant provisions of this Handbook ("**compliance route 3**").
- 1.3 This Handbook, produced by the **Institute and Faculty** in its role as a **Designated Professional Body** ("**DPB**"), is relevant to those **firms** which undertake, or intend to undertake, **investment** or insurance related **regulated activities** by either of **compliance route 1** or **compliance route 3**.
- 1.4 In particular, for **firms** proceeding by **compliance route 1**, this Handbook is intended to provide **firms** which do not wish to obtain **FSA** authorisation with a simple regulatory solution,

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<sup>1</sup> Information and Assistance Note: "The Actuary and Activities Regulated under FSMA 2000"

specifically adapted and proportionate to the circumstances of **firms** which wish only to undertake a limited range of **regulated activities** which are complementary/incidental to their core professional practice. This **Handbook** is designed to allow **firms** in these circumstances to achieve a straightforward regulatory solution, whilst ensuring that the Actuarial Profession meets its statutory and public interest obligations in ensuring an appropriate measure of regulatory supervision.

### **Compliance Route 1 (DPB Firms)**

- 1.5 **Firms** which proceed by **compliance route 1** ("**DPB firms**") are permitted to undertake only certain types of **regulated activity**. In broad terms, **DPB firms** may undertake a range of **regulated activities** for **business clients**, including insurance companies and trustees of **UK** registered occupational pension schemes. These are known as **exempt regulated activities**. Specific details of the types of **regulated activity** which may and may not be undertaken by a **DPB firm** are set out in Part 2 of this **Handbook**. **DPB firms** cannot additionally be regulated by **compliance route 2** or **compliance route 3**. Furthermore, as further set out below, in order to be regulated as a **DPB firm**, the **exempt regulated activities** must be carried on in a manner which is incidental and complementary to the provision of the **firm's** core **professional services**.
- 1.6 There are three types of **DPB licences** available to **firms** wishing to undertake **exempt regulated activities** in accordance with **compliance route 1**:
- 1.6.1 Insurance **DPB licences** – this type of **licence** allows a **DPB firm** to carry on **insurance mediation activities** only;
- 1.6.2 **Investment DPB licences** – this type of **licence** allows a **DPB firm** to carry on **regulated activities** to the extent permitted by this **Handbook**, with the exception of **insurance mediation activities**; and
- 1.6.3 Combined **DPB licences** – this type of **licence** allows a **DPB firm** to carry on **regulated activities** to the extent permitted by this **Handbook**, including **insurance mediation activities**.
- 1.7 Each of these **DPB licences** may be issued by the **Institute and Faculty** subject to specific restrictions or exclusions and **DPB firms** are responsible for ensuring that they understand and comply with their own particular **DPB licence**.
- 1.8 Full details of the requirements for **DPB firms**, including the detailed **rules** applicable to **DPB licences** are set out in parts 2, 3, 5, 6 and 7 of this **Handbook**.

### **Compliance Route 3 (Authorised Professional Firms)**

- 1.9 **Firms** which choose instead to be regulated directly by the **FSA** may be entitled in terms of the provisions of the **FSA Handbook** to be regulated by the **FSA** as an **APF**. This entitles the **firm** to proceed by **compliance route 3** and to take advantage of certain regulatory benefits which are available to **APFs** under the provisions of the **FSA Handbook**.
- 1.10 Further details are set out in the Information and Assistance Note. In broad terms, however, **APFs** are entitled to take advantage of certain disapplications and modifications of the full **FSA** regulatory regime, to the extent that they are undertaking only certain types of **regulated activity**, known as **non-mainstream regulated activities** under a **licence** granted by the **Institute and Faculty**. For **mainstream regulated activities** such as the provision of **advice** to individuals, the full **FSA** regulatory regime will apply.
- 1.11 **Firms** which wish to take advantage of this alternative **FSA** regime must before doing so obtain an **APF licence** from the **Institute and Faculty**. The obligation to obtain an **APF licence** is imposed upon members of both the Faculty of Actuaries and **Institute and Faculty** by an Actuarial Profession Standard APS D1. As a condition of obtaining an **APF licence**, **firms** must comply with the applicable provisions of this **Handbook**.

- 1.12 Full details of the requirements for **Licensed APFs**, including the detailed **rules** applicable to **APF licences**, are set out in parts 4, 5, 6 and 7 of this **Handbook**.

**Important Legal Points To Note**

- 1.13 It is important to note that:

- 1.13.1 A breach of the regulatory requirements may attract a criminal sanction under **FSMA 2000**, in addition to disciplinary action in terms of this **Handbook**. It may also result in **investment** contracts being unenforceable.
- 1.13.2 The provisions in relation to the civil offence of market abuse, as set out in Part VIII of **FSMA 2000**, are applicable to all **firms** (whether or not regulated under one of the compliance routes mentioned above) and their staff. The **FSA** has published a Code of Market Conduct containing guidance on what does and does not amount to market abuse.
- 1.13.3 Members and **firms** should also be aware of and comply with the requirements of the other legislation which is likely to be relevant to the undertaking of **regulated activities**, including in particular the provisions of the **Money Laundering Regulations 2007** and the **Proceeds of Crime Act 2002**, which apply equally to non-regulated activities.
- 1.13.4 Members of the **Institute and Faculty of Actuaries** should also be aware that they are individually subject to the disciplinary scheme of the **Institute and Faculty**. In particular, any failure by a member to comply with the Actuarial Profession Code or Standards may be considered under the Actuarial Profession's Disciplinary Schemes.

**The DPB Committee**

- 1.14 The **DPB Committee** has the overall responsibility is to act on behalf of Institute and Faculty Council to meet the Institute and Faculty's responsibilities as a Designated Professional Body (DPB) under Part XX of the Financial Services and Markets Act 2000. As such it is responsible to Institute and Faculty Council; but for day-to-day co-ordination of professional issues it is to work with the Professional Regulation Executive Committee.
- 1.15 **Firms** must deal with the **DPB Committee** in an open and co-operative way in all matters relating to their activities licensed by the Institute and Faculty.

## Part 2

### DPB Firms - Regulated Activities

#### Introduction

- 2.1 For amplification: As outlined in part 1 of this *Handbook*, *firms* which are *DPB firms* are permitted to carry on certain types of *regulated activity* without being authorised by the *FSA* (this is referred to as *compliance route 1*). The purpose of this part of this *Handbook* is to set out the *regulated activities* which the *Institute and Faculty* permits *DPB firms* to carry on under this *compliance route 1*. These consist of *exempt regulated activities* as defined in *FSMA 2000*, subject to certain additional restrictions imposed on *DPB firms* by the *Institute and Faculty*.
- 2.2 For amplification: In broad terms, *compliance route 1* allows *DPB firms* to carry on a range of *regulated activities* for *business clients*, including insurance companies and trustees of *UK* registered occupational pension schemes. *DPB firms* may not however generally advise individuals about a particular *investment*.
- 2.3 **Unless otherwise exempt, no *DPB firm* may carry on or agree to carry on or hold itself out as carrying on *regulated activities* except under a *DPB licence* granted by the *Institute and Faculty* as a *DPB*.**
- 2.4 **The *rules* in this part of this *Handbook* setting out which *regulated activities* *DPB firms* are permitted to undertake, together with the *rules* set out in Parts 3, 5, 6 and 7 of this *Handbook* are the *rules* made by the *Institute and Faculty* as required by section 332(3) of *FSMA 2000*, the *Insurance Mediation Directive* and the *Distance Marketing Directive*.**
- 2.5 For amplification: The specific *provisions* relating to the alternative regime for *APFs* carrying on *non-mainstream regulated activities* (referred to as *compliance route 3*) are not addressed in this part of this *Handbook* and are instead set out in part 4 of this *Handbook*.
- 2.6 For amplification: The first section of this part of this *Handbook* (more specifically, paragraphs 2.7 to 2.25) sets out the *regulated activities* which the *Institute and Faculty*, as a *DPB*, permits *DPB firms* to carry on, subject to certain conditions. The second section (more specifically, paragraphs 2.26 to 2.54) sets out the conditions which a *DPB firm* must meet in order to carry on those *regulated activities* under a *DPB licence*. The third section (more specifically, paragraphs 2.55 to 2.63) sets out the *rules* and guidance on the related matter of *financial promotions*. Annex 2.1 also provides examples of activities which in the opinion of the *Institute and Faculty* are not *regulated activities*.

#### Regulated activities permitted with a *DPB licence*

- 2.7 **The *Institute and Faculty* shall only permit *DPB firms* to carry on those *regulated activities* set out in paragraphs 2.10, 2.17 and 2.22 to the extent permitted by its *DPB licence*. *Firms* may however only undertake any of these *regulated activities* provided that they also comply with certain conditions. The conditions are set out in paragraphs 2.26, 2.27, 2.28, 2.29, 2.34, 2.37, 2.40, 2.42, 2.45, and 2.50.**
- 2.8 For amplification: The *regulated activities* which the *Institute and Faculty* permits *DPB firms* to carry on are a sub-set of *exempt regulated activities*.
- 2.9 For amplification: This part of this *Handbook* may be reviewed and revised, as appropriate from time to time, to ensure that *regulated activities* performed by *DPB firms* do not exceed those which are appropriate under the *DPB* regime. Any revisions, however, must be approved by the *FSA*.
- 2.10 ***DPB firms* may carry on the following *regulated activities* for *business clients* (except in relation to *investments* which are or will be acquired by individuals):**

- 2.10.1 **advising** on (including recommending) any particular *investment*;
- 2.10.2 **arranging** transactions in *investments*;
- 2.10.3 **dealing as agent** in *investments* for a *client* on the *client's* instructions, but in the case of a *contract of insurance* only if **dealing as agent** on behalf of the insured;
- 2.10.4 **assisting** in the administration and performance of a *contract of insurance*; and
- 2.10.5 agreeing to carry on any such activity listed in paragraphs 2.10.1 to 2.10.4 above.

2.11 For amplification: Examples of **business clients** include the following:

- trustees of any trust based occupational pension scheme when acting as such, including trustees who are individuals;
- corporate bodies;
- governments and public organisations;
- sole traders or partners in a partnership in connection with their business affairs (but not their personal affairs e.g. on their pension arrangements); and
- with regard to charities, many larger charities are incorporated (e.g. as companies limited by guarantee or under Royal Charter) and therefore automatically qualify as **business clients**. In cases of unincorporated charities where the trustees include individuals, if the charity employs staff and therefore needs **advice** on, for example, pension arrangements, it will usually be the case that the charity (strictly the trustees) is carrying on a business, for example a school or hospital. If a charity can be said to be carrying on a business, individual trustees can also be advised on the charity's investments. In the *Institute and Faculty's* view this extends also to sporting and aid charities providing services to non-members.

Examples of **clients** who are not **business clients** include:

- company directors about their own pension arrangements; and
- individuals acting as trustees of family trusts.

2.12 For amplification: Set out below are some examples of the types of activity that fall into each of the categories set out in paragraph 2.10. It should, however, be noted that **DPB firms** are permitted, subject to the conditions set out in paragraphs 2.26 to 2.54 of this **Handbook**, to carry on an activity that is not explicitly listed below, as long as it falls into one of the categories of **regulated activities** set out in paragraph 2.10 of this **Handbook**.

2.13 For amplification: Examples of activities which the *Institute and Faculty* permits **DPB firms** to carry on for **business clients** in the context of **advising** on (including recommending) any particular **investment** include:

- **advising** on suitable pooled investment fund contracts or units in a collective **investment** scheme;
- **advising** on a pooled vehicle as part of a segregated portfolio;
- **advising** on suitable additional voluntary contribution contracts for occupational pension schemes;

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- **advising** on suitable insured scheme contracts for occupational pension schemes (including executive pension plans);
- **advising** on suitable immediate or deferred annuities for trustees of occupational pension schemes;
- **advising** on suitable policies to be used by an occupational pension scheme for occupational income drawdown;
- **advising** on suitable policies to receive a forced external transfer of a divorce credit given to occupational pension schemes;
- **advising** on suitable UK gilts (or strips) in the context of matching the liabilities of an occupational pension scheme or insurance company;
- **advising** on the merits of different *options* and/or *futures* to manage a pension scheme's or insurance company's exposure to a particular risk;
- **advising** the trustees of an occupational scheme or an insurance company on *securities* issued by an insurance company as a result of demutualisation;
- **advising** companies (but not individual directors) or trustees on suitable Directors & Officers policies, Trustee liability Insurance policies or similar;
- **advising** an insurance company on suitable reinsurance treaties; and
- **advising** an employer on a suitable private health insurance policy where the employer is the policyholder.

2.14 For amplification: Examples of activities which the *Institute and Faculty* permits *DPB firms* to carry on for *business clients* in the context of *arranging* deals in *investments* include:

- **arranging any investment** arising from *advice* given in the examples in paragraph 2.13;
- portfolio restructuring, including the obtaining of tenders for programmed package trades in *securities*;
- **arranging** a transfer of assets from one occupational pension scheme or insurance company to another as part of a bulk transfer or merger;
- **arranging** a transfer of assets from one investment manager to another investment manager on behalf of an occupational pension scheme or insurance company; and
- **arranging** for a prospective policyholder to enter into a particular insurance policy including assistance in the completion of application forms and forwarding them to the insurer.

2.15 For amplification: Examples of activities which the *Institute and Faculty* permits *DPB firms* to carry on for *business clients* in the context of dealing in *investments* as agent for a *client* on the *client's* instructions include:

- **signing for a client** of a contract for the purchase or acquisition of a particular *investment* by the *client* under a power of attorney on written instructions from the *client* specifying the transaction to be effected; and
- **accepting on behalf of an insured** an offer of a particular policy on instructions from the *client*. A *DPB firm* may not accept a risk on behalf of the insurer.

- 2.16 For amplification: Examples of activities which the *Institute and Faculty* permits *DPB firms* to carry on for *business clients* in the context of *assisting* in the administration and performance of a *contract of insurance* include:
- **Notifying a claim under a policy and then providing evidence in support of the claim or negotiating its settlement on behalf of the policyholder.**
- 2.17 *DPB firms* may carry on the following *regulated activities* for *business clients* where the *investments* are or will be acquired by individuals:
- 2.17.1 *advising* on or *arranging* a suitable *investment* for the *business client* to make available to a specified group of individuals, as long as it is explicitly agreed with an *authorised person* that the *authorised person* will take full compliance responsibility for all *advice* given to the individuals;
- 2.17.2 *assisting* in the administration and performance of a *contract of insurance*;
- 2.17.3 agreeing to carry on any such activity listed in paragraphs 2.17.1 to 2.17.2 above.
- 2.18 For amplification: Paragraph 2.17 applies to *business clients* (typically employers), *UK* or overseas, seeking professional *advice* relating to *investments* that are purchased or are to be purchased by an individual or individuals (typically employees), for example personal pensions, stakeholder pensions and private health insurance (or an overseas equivalent). If *insurance mediation activities* are being undertaken overseas, *DPB firms* must comply with the passporting provisions in the *Insurance Mediation Directive*. Please see paragraphs 6.32 to 6.36 for further details.
- 2.19 For amplification: As a general rule, a *DPB firm* will be able to deal with the employer but because of the constraints on *financial promotion* and the conditions set out at paragraphs 2.26 to 2.54, it is likely that a *DPB firm* will not be able to have any direct dealings with employees with respect to a particular product. For this reason, any presentations to employees can only be in the form of *generic advice*.
- 2.20 For amplification: Set out below are some examples of the types of activity that fall into each of the categories set out in paragraph 2.17. It should, however, be noted that *DPB firms* are permitted, subject to the conditions set out in paragraphs 2.26 to 2.54 of this *Handbook*, to carry on an activity that is not explicitly listed below, as long as it falls into one of the categories of *regulated activities* set out in paragraph 2.17 of this *Handbook*.
- 2.21 For amplification: Examples of *regulated activities* that the *Institute and Faculty* permits *DPB firms* to carry on for *business clients* where the *investments* are or will be acquired by individuals include:
- 2.21.1 *advising* employers on and *arranging* for employers, pension and insurance products to be made available to employees. Private health insurance policies where the employee is to be the policyholder are subject to paragraph 2.17 but if the employer is to be the policyholder, see paragraph 2.13; and
- 2.21.2 *assisting* employers in notifying and negotiating the settlement of claims.
- 2.22 *DPB firms* may carry on the following *regulated activities* for *clients* who are individuals
- 2.22.1 *Advising* to the extent of commenting on and/or endorsing and/or *advising* against any *investment* recommendation of an *authorised person* given to the individual and which does not involve the *DPB firm* recommending any other particular *investment*.

**2.22.2** Introducing *clients* to an *authorised person* (who is authorised to carry on the *regulated activity* in question) for the purpose of the *client* receiving *independent advice*.

**2.22.3** Agreeing to carry on any such activity listed in paragraphs 2.22.1 to 2.22.2.

2.23 For amplification: Paragraph 2.22.2 is intended to allow *DPB firms* to introduce *clients* to an *authorised person* (who is authorised to carry on the activity in question) in circumstances where the introduction amounts to a *regulated activity*, including introductions to a connected *firm* and/or when the introduction relates to insurance products. In each case, however, the introduction must be for the purpose of the *client* receiving *independent advice*. Where the *regulated activity* is *insurance mediation activity*, the *DPB firm* must also be included in the Exempt Professional Firms (EPFs) Register maintained by the *FSA*.

2.24 For amplification: Set out below are some examples of the types of activity that fall into each of the categories set out in paragraph 2.22. It should, however, be noted that *DPB firms* are permitted, subject to the conditions set out in paragraph 2.26 to 2.54 of this *Handbook*, to carry on an activity that is not explicitly listed below, as long as it falls into one of the categories of *regulated activities* set out in paragraph 2.22 of this *Handbook*.

2.25 For amplification: Examples of *regulated activities* that the *Institute and Faculty* permits *DPB firms* to carry on for individuals include:

- endorsing a particular type of *investment* (rather than a particular product) recommended by an *authorised person*; and
- introducing an individual to an *authorised person* (who is authorised to carry on the activity in question) for the purposes of the *client* receiving *independent advice* in relation to insurance products.

#### Conditions for carrying on regulated activities permitted by the Institute and Faculty

2.26 There are conditions, derived from *FSMA 2000*, which *DPB firms* must satisfy in order to carry on *regulated activities* under a *DPB licence* issued by the *Institute and Faculty*. These conditions are as follows:

##### Carrying on of regulated activities

2.27 A *DPB firm* must only carry on, or hold itself out as carrying on, *regulated activities* as provided for in this *Handbook*.

2.28 A *DPB firm* must not carry on, nor hold itself out as carrying on, *regulated activities* which are not permitted by this *Handbook*.

##### Incidental to professional services

2.29 Any *regulated activities* must be carried on in a manner which is incidental to the provision of the *DPB firm's* core *professional services* (its "*relevant professional services*").

2.30 For amplification: In assessing whether activities are 'incidental'<sup>2</sup> for this purpose, the *FSA* considers it relevant to take into account: (1) the scale of *regulated activity* in proportion to other *relevant professional services* provided; (2) whether and to what extent *regulated activities* are held out as separate services; and (3) the impression given of how the *firm*

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<sup>2</sup> The concept of "incidental" is derived from Directive 2004/39/EC on markets in financial instruments which exempts from the scope of the Directive "persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service" (Article 2(1) (c)).

provides **regulated activities**, for example through its advertising or other promotions of its services.

- 2.31 For amplification: The focus is on the relationship of the **regulated activity** to the **relevant professional service** from the standpoint of the **DPB firm**. Thus it is the sum of the individual transactions which are **regulated activities** which falls to be assessed, and the relationship of that whole service to the **relevant professional services** (again taken as a whole) of the **firm**.
- 2.32 For amplification: In accordance with the **FSA's** opinion, one consequence of this is that a **DPB firm** cannot provide services which are **regulated activities** if they amount to a separate business conducted in isolation from the provision of the **relevant professional services**. This does not, however, preclude the **DPB firm** from operating its professional business in a way which involves separate teams or departments, one of which handles the **regulated activities**.
- 2.33 For amplification: In view of this guidance from the **FSA**, **DPB firms** should be careful how any **regulated activities** are promoted. Even if such activities are a relatively minor part of the **DPB firm's** services, the way in which the **regulated activities** are advertised and/or presented could be relevant. **DPB firms** should take care that any advertisement or promotion does not have the effect of holding out the **regulated activity** as a separate business. Any such advertisement or promotion, if it constituted a **financial promotion**, must also come within one of the exemptions in the **Financial Promotion Order** or it will have to be approved by an **authorised person**. For further information on **financial promotions** please see paragraphs 2.55 to 2.63 below.

#### Complementary to professional services

- 2.34 **A DPB firm in providing a particular relevant professional service to a particular client, may only carry on regulated activities which arise out of, or are complementary to, the provision by them of that service to that client.**
- 2.35 For amplification: It is not possible to carry on a **regulated activity** as the only service which the **DPB firm** and the **client** intend the **DPB firm** to provide.
- 2.36 For amplification: When any set of services, such as a scheme actuary appointment or generic investment consulting, is provided to a **client** the services will not necessarily be provided in a particular order. The **regulated activity** can still be provided to the **client** even though it is the first service as long as the **DPB firm** is in a position to demonstrate that the intention was to provide a series of services which includes other **relevant professional services**. It should be noted that a **UK** pension scheme and the sponsoring employer of that pension scheme are two separate **clients** and that a new **client** may arise out of the change of ownership of an existing **client**.

#### Prohibited activities

- 2.37 **Unless otherwise exempt, a DPB firm must not undertake any of the regulated activities listed in Annex 2.2.**
- 2.38 For amplification: The list of prohibited **regulated activities** set out at Annex 2.2 is derived from the Financial Services and Markets Act 2000 (Professions)(Non-Exempt Activities) Order 2001 (SI 2001/1227) as amended (the "**2001 Order**"). Please note, however, that the **Institute and Faculty** has not adopted all of the exceptions to the prohibitions in the **2001 Order**.
- 2.39 For amplification: Annex 2.2 includes a wide range of activities, including, for example, a prohibition against **DPB firms** managing or agreeing to manage any assets which consist of or include **securities** or **contractually-based investments**.

- 2.40 **Unless otherwise exempt, a DPB firm must not carry on any regulated activities which are prohibited by a direction<sup>3</sup> or an order<sup>4</sup> under FSMA 2000.**
- 2.41 For amplification: At the date of publication of this **Handbook**, the Treasury has only made one order (as amended) which prohibits certain **regulated activities** being carried on by **DPB firms**. This is the **2001 Order**, as amended, referred to at paragraph 2.38 above. As at the date of issue of this **Handbook**, it is considered that all of the activities prohibited in terms of the **2001 Order**, as amended, are included within the list of Prohibited Activities set out at Annex 2.2 of this **Handbook** (although Annex 2.2 is in certain respects wider than the **2001 Order** in terms of the range of activities which it prohibits). However, the Annex 2.2 list is for guidance only as at the date of this Handbook and it remains the responsibility of DPB firms to verify whether or not a particular activity is, now or in the future, prohibited. In the event of any uncertainty, **DPB firms** should consult the **Institute and Faculty** or seek independent legal advice.

### Insurance mediation activities

- 2.42 **A DPB firm may only carry on insurance mediation activities, which includes contracts of insurance and rights or interests in life policies, if:**
- 2.42.1 **it has specific permission in its DPB licence to carry on such activities; and**
- 2.42.2 **it is included in the Exempt Professional Firms Register maintained by the FSA.**
- 2.43 For amplification: The register can be inspected at [www.fsa.gov.uk/register/home.do](http://www.fsa.gov.uk/register/home.do) (EPF Search). It is the responsibility of **DPB firms** to ensure that they do not carry on any **insurance mediation activities** until their name is recorded in the **Exempt Professional Firms Register**.
- 2.44 For amplification: The process involved in being added to the **Exempt Professional Firms Register** and the additional requirements which must be met by **DPB firms** which are permitted to carry on **insurance mediation activities** are set out in part 3 of this **Handbook**.

### Account to client for any reward or advantage

- 2.45 **A DPB firm must account to its client for any pecuniary reward or other advantage received in respect of carrying on regulated activities from anyone other than its client.**
- 2.46 For amplification: If a **DPB firm** receives any commission (or other benefit) as a result of acting for or giving **advice** to a **client**, or introducing a **client** to anyone, in the course of **regulated activities** the **DPB firm** must account for the commission (or other benefit) to the **client**.
- 2.47 For amplification: The **FSA** considers accounting to the **client** as meaning that a **DPB firm** must hold to the order of its **client** any such reward or other advantage that it receives.
- 2.48 For amplification: Accounting to the **client** (or holding to the order of a **client**) means treating the commission (or other benefit) as belonging to the **client**. **DPB firms** must therefore either (i) remit the commission (or other benefit) to the **client** or (ii) deal with it on the **client's** express instructions (provided that the **client** has been informed that they have the right to require the **DPB firm** to remit the commission (or other benefit) to the **client**). There is no de minimis level below which it is not necessary to account to the **client**.

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<sup>3</sup> Section 328 enables the **FSA** to make a direction that the permission of **DPB firms** to carry on **regulated activity** shall not apply to particular classes of persons or to particular descriptions of **regulated activity**.

<sup>4</sup> Both (i) any order from the Treasury under section 327(6) specifying which regulated activities are prohibited from being carried on by any **DPB firm** and (ii) any order under section 329 which empowers the **FSA** to make an order disapplying the permission of a particular **DPB firm** to carry on any, or particular, **regulated activities**.

- 2.49 For amplification: If the **DPB firm** is to retain or offset the commission (or other benefit) against its fees, the **DPB firm** must ensure that it receives express written and informed consent from the **client** to such retention or offsetting. In seeking this consent, the **DPB firm** must inform the **client** of the amount and frequency of the commission (or other benefit) which the **DPB firm** wishes to retain or offset. Please note: blanket disclosure of the retention or offsetting of commission (or other benefit) within a letter, or terms, of engagement is not sufficient to demonstrate informed consent. Unless and until express written and informed consent is obtained from the **client** to treat the commission (or other benefit) differently, a **DPB firm** should remit any commission (or other benefit) to its **client**.

#### No FSA authorisation

- 2.50 **A DPB firm cannot hold an FSA authorisation to carry on regulated activities and must disclose to its clients that it is not authorised by the FSA when it carries on regulated activities.**
- 2.51 For amplification: A **DPB firm** must not make any representation to a **client** either that (i) it is authorised under **FSMA 2000** or regulated by the **FSA** or (ii) the regulatory protections provided by or under **FSMA 2000** to a **person** using the services of an **authorised person** are available.
- 2.52 For amplification: A **DPB firm** must, before it provides a service which includes the carrying on of a **regulated activity** (other than an **insurance mediation activity** for which see paragraph 2.53 below), with or for a **client**, disclose in writing to the **client** in a manner that is clear, fair and not misleading that it is not authorised under **FSMA 2000**.
- 2.53 For amplification: Where a **DPB firm** intends to provide a service which includes the carrying on of an **insurance mediation activity** with or for a **client**, it must make the following statement in writing to the **client** in a way that is clear, fair and not misleading and no less prominent than any other information provided to the **client** at the same time:
- "[This firm is]/ [We are] not authorised by the Financial Services Authority. However, we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. The register can be accessed via the Financial Services Authority website at [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register) This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by the Institute and Faculty of Actuaries."
- 2.54 For amplification: Please also refer to paragraphs 3.13 to 3.14 and paragraph 3.76 of part 3 and Annex 3.1 on required disclosures to **clients**.

#### Financial promotions

- 2.55 **A DPB firm must not undertake any financial promotion unless it is approved by an authorised person or the communication is exempt from the requirement to be approved by an authorised person under the Financial Promotion Order.**
- 2.56 For amplification: The fact that a **DPB firm** is permitted to carry on a **regulated activity** does not necessarily mean that **financial promotions** connected with that activity will be exempt from the requirement to have **financial promotions** approved.
- 2.57 For amplification: The definition of **financial promotion** captures a wide range of activities. It includes communicating an invitation or inducement for someone to engage in investment activity, such as entering into an **investment** or any transaction in **investments**. In addition it includes entering into management or advisory contracts.
- 2.58 For amplification: Communicating includes all forms of communication e.g. letters, emails newspaper or magazine advertisements etc (non real time) and telephone calls, meetings etc (real time). Communications which amount to a **financial promotion**, unless **exempt**, can only be made by, or if the contents have been approved by, an **authorised person**.

- 2.59 For amplification: The **Financial Promotion Order** contains a number of exemptions which allow some categories of **financial promotion** to be made by unauthorised persons. In particular, articles 55 and 55A of the **Financial Promotion Order** contain exemptions specifically for **DPB firms** and there are also other more general exemptions available (e.g. **real time** promotions of **general insurance contracts**).
- 2.60 For amplification: Article 55 of the **Financial Promotion Order**, states that a **real time financial promotion** is exempt where it relates to the provision of a **regulated activity** (which a **DPB firm** is permitted to carry on) to someone who has already engaged the **DPB firm** to provide **relevant professional services**. In addition, under article 55A a **non-real time financial promotion** by a **DPB firm** is exempt from the requirement to have it approved by an **authorised person** where it relates to a **regulated activity** which the **DPB firm** is permitted to carry on, provided it contains the following statement:
- "The [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are licensed by the Institute and Faculty of Actuaries. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide".
- 2.61 For amplification: The **FSA** has issued guidance on **financial promotion**, which includes the **FSA's** view of what an invitation or inducement means and discussing the various exemptions to the prohibition on **financial promotion**. This guidance can be found in the **FSA's** Perimeter Guidance Manual, more specifically PERG 8 *Financial promotion and related activities*.
- 2.62 For amplification: All **DPB firms** must be fully familiar with the definition of **financial promotion**, the exemptions from the general prohibition and how it impacts on their activities. As stated above, the fact that an activity appears in the lists of **regulated activities** which the **Institute and Faculty** permits does not necessarily mean that **financial promotions** connected with that activity will be exempt.
- 2.63 For amplification: Suggested paragraphs for engagement letters which may help **DPB firms** in the context of making use of some of the exemptions from the prohibition on **financial promotions** can be found in Annex 3.1.

## Part 3

### DPB firms – Conduct of Business Code

#### Introduction

- 3.1 For amplification: This part 3 of this *Handbook* sets out how **DPB firms** must conduct business in carrying on those **regulated activities** which **DPB firms** are permitted to carry on in accordance with part 2 of this *Handbook* (referred to as **compliance route 1**).
- 3.2 For amplification: Please note paragraphs 3.68, 3.74,3.76, 3.77, 3.78, 3.80, 3.84 and 3.85 are rules made by the **Institute and Faculty** for the purpose of section 332(3) of **FSMA 2000**, the **Insurance Mediation Directive** and the **Distance Marketing Directive**.
- 3.3 **A DPB firm must conduct its business (i) with honesty and integrity (ii) with appropriate knowledge, skill and care and (iii) show appropriate respect for others when carrying on any exempt regulated activities.**
- 3.4 For amplification: **DPB firms** must not act in a way which damages the reputation or impugns the integrity of the **Institute and Faculty**. This may mean that on occasion a **DPB firm** has to take actions which work against their own apparent immediate interests so as to safeguard the reputation of the **Institute and Faculty**.
- 3.5 For amplification: **DPB firms** must also demonstrate appropriate respect for **client** confidentiality and not advertise or solicit business in a way that they know or ought to know is false or misleading.
- 3.6 **This part of this Handbook only applies to regulated activities permitted to be carried on by DPB firms in accordance with part 2 of this Handbook.**

#### Initial contact with clients

#### Full agreement with clients

- 3.7 **A DPB firm shall ensure that there is full agreement between it and its clients about the nature, scope and terms of the services to be or being provided. A DPB firm must be able to evidence such agreement.**
- 3.8 For amplification: The information required to evidence agreement on the nature, scope and terms of service with the **client** will depend on the particular circumstances. In most instances, **DPB firms** have a degree of discretion as to what evidence is required; however, in other circumstances the evidence required is prescribed by **rules** made under this *Handbook*. For example, if a **DPB firm** is **arranging** a transaction on behalf of the **client**, it will need to obtain specific written instructions. For further details see paragraph 3.86.
- 3.9 For amplification: If a **DPB firm** uses an engagement letter, agreement is evidenced if either the **client** signs the engagement letter (this is by far the clearest way of making sure that the **client** confirms the terms on which the **DPB firms** will act) or the **client** receives it before the **DPB firm** starts to act and the **client** does not object to the terms.
- 3.10 For amplification: Where an engagement letter is issued by a **sole practitioner** (which is a **DPB firm**) the letter should normally set out and draw the **client's** attention to appropriate arrangements for completing the work agreed in the event that the **sole practitioner** is unable to do so.
- 3.11 For amplification: The **client** should not be put under pressure by the **DPB firm** to accept engagement terms that may not be in accordance with their wishes.
- 3.12 For amplification: Where **advice** is given to an employer in respect of a pension scheme, **DPB firms** should note that the employer is a separate **client** to the trustees of a pension scheme sponsored by that employer. As a result, separate instructions and terms of

engagement should be agreed as necessary with each party. Likewise, a further engagement letter may be required following the change of ownership of a **client**.

Status disclosure

- 3.13 **The DPB firm shall inform the client in writing of the following information before the DPB firm provides a service to that client which includes the carrying on of a regulated activity:**
- 3.13.1 **that the DPB firm is not authorised by the FSA;**
  - 3.13.2 **the nature of the regulated activities carried on by the DPB firm and the fact that they are limited in scope;**
  - 3.13.3 **to the extent that the service provided includes the carrying on of an insurance mediation activity, that the DPB firm is included on the register maintained by the FSA so that it can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts and that this register can be accessed via the FSA website at [www.fsa.gov.uk/register/home.do](http://www.fsa.gov.uk/register/home.do) ;**
  - 3.13.4 **that the DPB firm is regulated for these activities, including as applicable insurance mediation activities and arrangements for complaints or redress if something goes wrong, by the Institute and Faculty;**
  - 3.13.5 **details of the complaints and redress mechanisms available to the client in respect of regulated activities, including the procedure for contacting the DPB firm in the event of their wishing to complain about the DPB firm's services and of the right to complain to the Institute and Faculty; and**
  - 3.13.6 **that the client will not have access to any compensation scheme in the event of the DPB firm being unable to meet claims against it.**
- 3.14 **The information described in paragraph 3.13 must be conveyed by the DPB firm in a way which is fair, clear and not misleading.**
- 3.15 For amplification: The required information can be disclosed within the terms of engagement or in other material supplied to the **client** and Annex 3.1 includes suggested paragraphs for the engagement letter of a **DPB firm**.
- 3.16 For amplification: There is no requirement for a **DPB firm** to have a legend on its letterhead, other written or electronic materials including emails or the **firm's** website, noting that it is regulated by the **Institute and Faculty** for certain **exempt regulated activities**. Annex 3.1 however, includes a specimen legend for use by a **DPB firm** if it so wishes (but if it does so, any **DPB firm** whose **licence** is withdrawn or surrendered must immediately remove it). Annex 3.1 also contains suggested paragraphs for engagement letters which may help **DPB firms** in the context of making use of some of the exemptions from the prohibition on **financial promotions** (see further details at paragraphs 2.55 to 2.63 of part 2 of this **Handbook**).
- 3.17 For amplification: A **DPB firm** carrying on **insurance mediation activities** can, where relevant, combine the information required by this paragraph with that required by paragraph 3.76 below.
- 3.18 For amplification: **DPB firms** whose **licence** permits them to carry on **insurance mediation activities** may elect to give the information required by paragraph 3.13.3 to all their **clients** regardless of whether they anticipate providing services which constitute **insurance mediation activity**.
- 3.19 **A DPB firm must not make any representation to a client that:**

- 3.19.1 it is authorised under *FSMA 2000* or regulated by the *FSA*; or
- 3.19.2 the regulatory protections provided by or under *FSMA 2000* to a *person* using the services of an *authorised person* are available.
- 3.20 For amplification: *DPB firms* carrying on *insurance mediation activities* should take special care to ensure that *clients* are not misled into thinking registration with the *FSA* equates to authorisation under *FSMA 2000*.

### General dealings with *clients*

- 3.21 For amplification: This section of this *Handbook* will set out the conduct required of *DPB firms* for general dealings with *clients*.

### Best interests of *clients*

- 3.22 **A *DPB firm* shall carry on any *regulated activities* in the best interests of each of its *clients*.**
- 3.23 For amplification: The best interests of a *client* include helping the *client* to fulfil obligations to which the *client* is subject, which includes duties to the customers, members and beneficiaries of the *client*. It will not be in the best interests of a *client* to disregard its duties, whether legal or regulatory, to third parties.
- 3.24 **A *DPB firm* must ensure that its ability to provide objective advice to its *clients* is not, and cannot reasonably be seen to be, compromised.**
- 3.25 For amplification: The duty on *DPB firms* to act in the best interests of their *clients* is fundamental to the *client* relationship. 'Objective advice' means **advice** which is not coloured or influenced by considerations which might conflict with the best interests of the *client*. This does not, however, preclude the exercise of appropriate professional judgement.
- 3.26 For amplification: The duty on *DPB firms* to act in the best interests of their *clients* does not require *DPB firms* to act other than in accordance with their wider professional, regulatory and legal obligations.
- 3.27 For amplification: *DPB firms* should consider carefully whether it is in any given context appropriate to accept gift(s), in case this may cause their judgement to be, or to be seen to be, coloured or influenced by considerations which might conflict with the best interests of their *clients*.

### Competence

- 3.28 **A *DPB firm* shall not carry on any *regulated activity* unless it has a clear and complete understanding of the extent to which, and circumstances in which, it may undertake *regulated activities*. It must also have a sufficient understanding of the relevant legal and legislative framework, demonstrating proper regard to the technical and professional standards expected of it before carrying on any *regulated activity*.**
- 3.29 **A *DPB firm* must not carry on or continue to carry on any *regulated activities* (including *insurance mediation activities*) which it is not competent to perform.**
- 3.30 **A *DPB firm* shall ensure that *principals* and relevant staff attend such compulsory education programme as may be specified by the *Institute and Faculty*.**
- 3.31 **All *regulated activity* (including *insurance mediation activities*) should be carried on or supervised by a suitably qualified, competent and experienced individual within the *DPB firm*.**

- 3.32 For amplification: This requirement is covered in more detail in relation to confirmation of **advice** in paragraphs 3.47 to 3.52 below. Suitably qualified in the case of **advice** on a **packaged product** means an individual who has at least one of the qualifications on the Qualification List set out in Annex 3.2. It is expected that this list will be revised from time to time.
- 3.33 For amplification: Competent and experienced means assessed to be such by the **DPB firm** in relation to the particular **regulated activity**. Formal assessments are not required in the case of **DPB firms**.
- 3.34 For amplification: A **DPB firm** carrying out **insurance mediation activities** must ensure that (i) a reasonable proportion of the persons within its management structure who are responsible for the **insurance mediation activity** and (ii) all other persons directly involved in its **insurance mediation activity**, demonstrate the knowledge and ability necessary for the performance of their duties.

#### Communication

- 3.35 **When carrying on any regulated activities, a DPB firm must communicate clearly, completely and effectively with its clients.**
- 3.36 **In particular, a DPB firm must ensure that all of their communication, whether written or oral, is clear, and that their method of communication is appropriate, having regard to:**
- 3.36.1 **the intended audience;**
  - 3.36.2 **the purpose of the communication;**
  - 3.36.3 **the significance of the communication to its intended audience; and**
  - 3.36.4 **the capacity in which the DPB firm is acting.**
- 3.37 For amplification: The over-riding requirement is to ensure that the intended audience can gain a proper understanding of what is being communicated. Of necessity, technical and complex information may require to be communicated. The extent to which an explanation is required may depend upon the intended audience and the overall context. If it becomes apparent that a misunderstanding has arisen, appropriate steps should be taken promptly to clarify the position.
- 3.38 For amplification: Complex language can detract from clarity. Plain language is preferable in most cases.
- 3.39 For amplification: Where large volumes of data are to be conveyed, it will rarely be suitable for this to be done orally. Similarly, any communication directed at a **client** or employer which has significant implications for that **client** or employer, should normally be confirmed in writing.
- 3.40 For amplification: **DPB firms** should ensure that they communicate appropriately any risks associated with their **advice** or recommended course of action, including any risks associated with the possibility that the communication may be taken out of context.
- 3.41 For amplification: **DPB firms** should make clear, where appropriate, the intended audience for the communication, its purpose and the capacity in which the **DPB firm** is acting. In particular, **DPB firms** should not give the impression that they speak for the **Institute and Faculty** unless they are authorised to do so.
- 3.42 **A DPB firm must ensure that any communication with which it is associated is accurate and not misleading, and contains sufficient information to enable its subject matter to be put in proper context.**

- 3.43 For amplification: Communication requires **DPB firms** to listen to the **client** and to understand their objectives. Where a view is expressed by a **DPB firm** it is important that the existence of alternative views and the potential implications of those alternatives are indicated. The provision only of a restricted viewpoint is unlikely to achieve the aim of promoting an understanding of the subject matter by the intended audience, or to allow the **client** properly to assess any risks which may arise.
- 3.44 For amplification: This does not mean that every communication needs to contain every potentially relevant piece of information or potential alternative point of view. The inclusion of too much information may also act against the aim of promoting an understanding of the subject matter.
- 3.45 For amplification: A **DPB firm** should not be associated with reports, communications or other information or any other communication when they believe that information or communication may:
- 3.45.1 contain a materially false or misleading statement; or
  - 3.45.2 omit or obscure information required to be included where such omission or obscurity would be misleading.
- 3.46 For amplification: Communication is likely to be most effective when viewed as a process rather than an event. In many situations, setting out the key concepts and issues at a high level initially will be the most effective route. The detail can be expanded upon in subsequent communications.

#### Confirmation of **Advice**

- 3.47 **A DPB firm's advice must be presented and confirmed in writing, by a suitably qualified, competent and experienced individual within the DPB firm. In the case of a contract of insurance to which paragraph 3.80 applies, this should take the form of the statement of demands and needs as set out in paragraph 3.80.**
- 3.48 For amplification: It is expected that the written confirmation of **advice** will at least include:
- 3.48.1 the **DPB firm's** understanding of its **client's** requirements and objectives; and
  - 3.48.2 the reasons why the **advice** relating to the particular **investment** has been given.
- 3.49 For amplification: Please see paragraphs 3.31 to 3.33 above regarding what is meant by a qualified, competent and experienced individual. Individuals (for example, **client** managers), however, who would not normally meet the requirements for providing **advice** may present or provide written confirmation of **advice** jointly with a suitably qualified, competent and experienced individual.
- 3.50 For amplification: **Advice** can be presented and confirmed in writing by different individuals. This is on the basis that **DPB firms** may deem different individuals to be competent and experienced in presenting **advice** and those providing written confirmation of the **advice**.
- 3.51 **When carrying on any regulated activities, a DPB firm must provide all advice and services in connection with that regulated activity with appropriate care, ensuring that any advice is accurate and that any service delivered is appropriate to the instructions and requirements of that client.**
- 3.52 For amplification: **DPB firms** must ensure that they agree clearly with the **client** the specific nature and scope of the work to be undertaken, having regard to the requirement to act in the best interests of the **client** as set out in paragraph 3.22. It would not, for example, be in the **client's** best interests, and would therefore be inappropriate, for a **DPB firm** to provide services which it is aware give rise to a conflict with the **client's** wider legal or regulatory duties.

Seeking *advice* from an *authorised person*

- 3.53 **When seeking *advice* from an *authorised person* on behalf of a *client*, a *DPB firm* must:**
- 3.53.1 ensure that the *authorised person* will provide *advice* that is *independent*;
  - 3.53.2 supply the information about the *client* that the *authorised person* reasonably requests in order to *advise* the *client* (the *client's* permission to do this must be obtained);
  - 3.53.3 ensure that where information is supplied to the *authorised person* which falls within the *client's* knowledge and judgement, the *DPB firm* obtains confirmation from the *client* of the accuracy of such information;
  - 3.53.4 ensure that where risk warnings and information are provided by the *authorised person* for the *client*, these are promptly passed to the *client*; and
  - 3.53.5 ensure that the *client* is aware of the respective responsibilities of the *DPB firm* and the *authorised person*.
- 3.54 For amplification: Not all *authorised persons* provide *independent* financial *advice*. Some are linked to a product provider and so only advise on a limited number of options. A *client's* interests will not be best served unless *independent advice* is obtained.
- 3.55 For amplification: *DPB firms* should note that the exemption in paragraph 15 of the *Financial Promotion Order* for real time (e.g. verbal) introductions of *clients* to *authorised persons* is subject to the *authorised person* not being in the same corporate group as the *DPB firm* and the *DPB firm* does not receive from any *person* other than the *client* any commission or other pecuniary amount or advantage from the introduction.
- 3.56 For amplification: A *DPB firm* can comment on the *advice* given by an *authorised person* in the case of a *business client* provided it does not make an alternative recommendation (unless it is otherwise allowed to do so by this *Handbook*).
- 3.57 For amplification: For the avoidance of doubt, paragraph 3.53 above generally does not apply to a situation where a *DPB firm* *advises* an employer on, for example, a stakeholder pension provider and an *authorised person* provides *advice* (or *financial promotion*) to its employees. In this situation the employees would generally not be the *clients* of the *DPB firm*.
- 3.58 For amplification: A *DPB firm* can comment on the *advice* in the case of a *client* who is an individual but cannot make an alternative recommendation in such a case. Recommending an *investment* to *clients* who are individuals is not permitted by the *Institute and Faculty*. It is most important that such *clients* are made aware of this to avoid misunderstanding or potential claims.

Requirement not to hold *client* money

- 3.59 **Except in accordance with paragraph 2.45 above, a *DPB firm* must not hold *client* money, including in the form of cash or cheques made payable to the *DPB firm*.**
- 3.60 For amplification: Where a *client* has given a *DPB firm* express consent for the *DPB firm* to retain or offset against its fees, any commission (or other benefit) received (see paragraphs 2.45 to 2.49 for further details), a *DPB firm* may in that instance and to that extent only hold *client* money.
- 3.61 For amplification: A *DPB firm* must ensure that all monies representing premiums or otherwise payable to the issuer or insurer are only received from a *client* where it is in the form of a cheque and that cheque is made payable to the issuer or insurer and not the *DPB firm*. Similarly, all monies payable by the issuer or insurer, whether in respect of claims,

return of premium, proceeds of sale or otherwise due to the **client** must take the form of a cheque payable to the **client** and not the **DPB firm**.

#### Safekeeping of **client's** property

- 3.62 **If a *DPB firm* receives a *client's* property, details of its receipt and location should be recorded in an appropriate manner. A *DPB firm* should also take appropriate steps to ensure that such property is kept safely.**
- 3.63 For amplification: Property includes cheques payable to an insurer, policyholder or third party, policy documents and share certificates.
- 3.64 For amplification: A ***DPB firm*** should ensure that it maintains appropriate insurance cover for any ***client*** property held.
- 3.65 **Where a *client's* property is passed to a third party on the *client's* instructions, such instructions should be obtained in writing and an acknowledgement of the receipt of the property should be obtained from the third party.**
- 3.66 For amplification: A ***DPB firm*** should give the ***client*** a receipt for such property and also record the return of the property to the ***client***.

#### Dealings with *clients* as regards specific types of activity

- 3.67 For amplification: This section of part 3 of this ***Handbook*** will set out the conduct required of ***DPB firms*** in respect of certain types of ***regulated activity***. ***DPB firms*** should comply with all of the requirements applicable to the ***regulated activity*** in question.

#### Advising on *packaged products*

- 3.68 **When a *DPB firm* provides *advice* consisting of a recommendation to buy or subscribe to a *packaged product*, the *DPB firm* must be reasonably satisfied that there is not another *packaged product* that would be likely to be materially better to satisfy its *client's* requirements, objectives and interests.**
- 3.69 For amplification: Further details of the type of ***advice*** that a ***DPB firm*** may provide are given in part 2 of this ***Handbook***. Where the ***advice*** relates to a ***packaged product***, it is expected that the ***DPB firm*** will generally need to carry out or arrange access to research on the products available from different product providers in order to be able to comply with this requirement.

#### Advising on *non-investment insurance contracts*

- 3.70 **Subject to paragraph 3.85, a *DPB firm* must not give *advice* to a *client* on a particular type of *non-investment insurance contract* unless it has analysed a sufficiently large number of contracts available in the relevant sector or sectors of the market to be able to give *advice* on a *non-investment insurance contract* which is adequate to meet the *client's* needs.**
- 3.71 For amplification: The requirement in the case of a ***non-investment insurance contract*** is different from that for ***packaged products*** under paragraph 3.68. It requires a ***DPB firm*** to analyse a sufficiently large number of products offered by different insurers such as to be able to satisfy the requirement that the product selected is adequate to meet the ***client's*** needs. In the case of a niche market, such as warranty insurance, the ***DPB firm's*** analysis of the sector should be based on sufficient knowledge of the contracts available from that sector. ***DPB firms*** may use panels of insurers to meet this requirement but the panel must be sufficiently wide to enable ***advice*** to be given on a fair analysis basis and the insurers on the panel and the products offered must be reviewed on a regular basis.

- 3.72 For amplification: Where a **DPB firm** provides a service based on a fair analysis of the market (or of a sector of the market), it should ensure that its analysis of the market and the available contracts are kept adequately up to date. For example, a **firm** should update its selection of contracts if it is aware that a contract has generally become available offering an improved product feature, or a better premium, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market.
- 3.73 For amplification: The panel selection criteria are also important in determining whether the panel is sufficient to meet the 'fair analysis' criteria. Selection should therefore be based on product features, premiums and services offered to customers, not on the benefit offered to the **firm**.
- 3.74 **Subject to paragraph 3.85 a DPB firm carrying on insurance mediation activities must take reasonable steps to ensure that if it recommends a particular non-investment insurance contract to a client, the recommendation is suitable for the client's demands and needs.**
- 3.75 **A DPB firm may recommend a non-investment insurance contract that does not meet all of the client's demands and needs if:**
- 3.75.1 **there is no non-investment insurance contract within those analysed by the DPB firm for the purpose of paragraph 3.68 or 3.70 (as the case may be) that meets all the client's demands and needs; and**
  - 3.75.2 **the DPB firm identifies to the client the demands and needs that are not met by the non-investment insurance contract that it recommends.**

**Advising on or arranging all contracts of insurance**

- 3.76 **Subject to paragraph 3.85, a DPB firm carrying on insurance mediation activities must, before the conclusion of any contract of insurance, or the renewal or amendment of a contract of insurance, provide the client with the following information on a durable medium to the extent that such information has not previously been provided on such a medium under paragraph 3.13:**
- 3.76.1 **the name and address of the DPB firm;**
  - 3.76.2 **that the DPB firm is included on the FSA Register so that it can carry on insurance mediation activity but that it is not authorised by the FSA;**
  - 3.76.3 **that paragraphs 3.76.1 and 3.76.2 can be checked on the FSA Register by visiting the FSA's website [www.fsa.gov.uk/register/home.do](http://www.fsa.gov.uk/register/home.do) ;**
  - 3.76.4 **whether the DPB firm has any holding, direct or indirect, representing more than 10 per cent of the voting rights or of the capital in an insurance undertaking;**
  - 3.76.5 **whether an insurance undertaking or parent of an insurance undertaking has a holding, direct or indirect, representing more than 10 per cent of the voting rights or of the capital in the DPB firm;**
  - 3.76.6 **in relation to the contract of insurance provided, that the DPB firm has selected or dealt with the contract on the basis of a fair analysis of a sufficiently large number of contracts of insurance which are available on the market; and**
  - 3.76.7 **how to complain to the DPB firm and that complaints may subsequently be referred to the Institute and Faculty.**
- 3.77 **All information provided to clients under paragraphs 3.76 shall be communicated:**

- 3.77.1 in simple, plain, and concise language which is understandable to the *client*; and
- 3.77.2 in English, unless the *client* requests that it is, and the *DPB firm* agrees to it being, in another language.
- 3.78 The information to be provided to *clients* under paragraphs 3.76 may be provided orally if:
- 3.78.1 the *client* requests this; or
- 3.78.2 the *client* requires immediate cover;
- and need not be provided before conclusion of the contract if the contract is concluded by telephone at the *client's* request and the *client* has given their explicit consent to receiving limited information before conclusion of the contract. The *DPB firm* must however provide the information required under paragraph 3.76 on a *durable medium* to the *client* immediately upon the conclusion of the *contract of insurance*.
- 3.79 For amplification: It is not necessary to repeat information already given when renewing or amending a policy, only to give information which has changed. If the *client* is an individual and the contract to provide the relevant service is subject to the ***Financial Services (Distance Marketing) Regulations 2004*** the minimum information requirements of those Regulations must be given on the telephone before the contract is made. The ***Institute and Faculty*** anticipates that it would be unusual for such Regulations to apply as a *DPB firm* may not offer to ***advise*** individuals on ***investments*** but only comment on ***advice*** given to them by an ***authorised person***. If a *DPB firm* were, however, to agree over the telephone to provide even such a limited service to an individual without a face to face meeting the relevant *DPB firm* should consider if the Regulations apply. It is the responsibility of *DPB firms* to ensure that they comply with the ***Financial Services (Distance Marketing) Regulations 2004***, which apply to 'distance contracts' with a consumer (an individual acting for purposes outside any business they may carry on) concerning financial services. The ***FSA*** has produced guidelines on what is a 'distance contract' in its Insurance: New Conduct of Business Sourcebook.
- 3.80 Subject to paragraph 3.85, where a *DPB firm* in the course of carrying on *insurance mediation activities* recommends (see paragraphs 3.47, 3.68, 3.70, 3.74 and 3.75) or arranges (see paragraphs 3.86, 3.90, 3.92, and 3.94) a *contract of insurance* for a *client* it must, before the conclusion of the *contract of insurance* provide the *client* with a statement of their demands and needs on a *durable medium*. The statement must also:
- 3.80.1 confirm whether or not the *DPB firm* has recommended that contract; and
- 3.80.2 if so, explain the reasons for the recommendation.
- 3.81 The statement referred to in paragraph 3.80 is not required if the *DPB firm* has introduced the *client* to an ***authorised person*** who has dealt directly with the *client*.
- 3.82 For amplification: The *DPB firm* should ask the *client* what their requirements are, collect all relevant information and explain to the *client* what they need to disclose (including what facts the insurer would regard as material facts). The *DPB firm* should also enquire about any relevant existing insurance.
- 3.83 For amplification: In assessing the *client's* demands and needs the *DPB firm* should have regard to:
- 3.83.1 the facts disclosed by the *client*;
- 3.83.2 any information the *DPB firm* already holds about the *client*;

- 3.83.3 whether the level of cover is sufficient for the risks that the **client** wishes to insure; and
- 3.83.4 the relevance of any exclusions, excesses, limitations or conditions in the contract.
- 3.84 **The requirements of paragraphs 3.77 and 3.78 as to the method and timing of providing information under paragraph 3.76 shall apply also to a statement of demands and needs under paragraph 3.80.**

Reinsurance Contracts and **Contracts of Large Risk**

- 3.85 **Paragraphs 3.70, 3.74, 3.75, 3.76 and 3.80 do not apply to *insurance mediation activities* in respect of reinsurance contracts or *contracts of large risks*.**

**Arranging deals in investments**

- 3.86 **A *DPB firm* arranging a deal in an *investment* on behalf of a *client*, must have written instructions (or other written evidence) from the *client* specifying the transaction to be effected.**
- 3.87 For amplification: Arranging deals means buying, selling, subscribing for or underwriting ***investments***. This includes issuing, or taking out, a ***contract of insurance***.
- 3.88 For amplification: Examples of the type of ***arrangements*** that a ***DPB firm*** may be able to make for ***clients*** are given in part 2 of this ***Handbook***.
- 3.89 For amplification: A ***DPB firm*** must seek written instructions or other written evidence from the ***client*** before it undertakes the transaction.
- 3.90 **A *DPB firm* should not *arrange* a deal in an *investment* on behalf of a *client* if it considers that the transaction would be materially detrimental to the *client's* interests unless it has advised the *client* in writing and the *client* still wants the *DPB firm* to *arrange* the deal.**
- 3.91 For amplification: It is important to note that a ***DPB firm*** can still at its absolute discretion, after considering all the implications for the ***client***, decline to ***arrange*** the deal.
- 3.92 **Where the deal is *arranged* through an *authorised person*, the *DPB firm* should ensure that the *client* is aware of the respective responsibilities of the *DPB firm* and the *authorised person*.**
- 3.93 For amplification: Please see paragraph 3.53 to 3.58 for further guidance on ***arranging*** a deal through an ***authorised person***.
- 3.94 **Where the deal is *arranged* through an *authorised person* the *DPB firm* should ensure, where information is provided by the *authorised person* for the *client*, that this is promptly passed to the *client*.**
- 3.95 For amplification: This is a particular example of the general requirement set out in paragraph 3.53 that a ***DPB firm*** which receives relevant information from a third party (e.g. an insurer) for the ***client*** should promptly pass that on to the ***client***. For the purposes of paragraphs 3.53 to 3.58 this includes using the ***authorised person exemption***.
- 3.96 For amplification: If no relevant exemption as set out in the ***Financial Promotion Order*** applies, the ***DPB firm*** should ensure that any material constituting a ***financial promotion*** has been approved by the ***authorised person*** who is ***arranging*** the deal or another ***authorised person***.

### Dealing in *investments* as agent

- 3.97 **A *DPB firm* dealing in *investments* on behalf of a *client* must have written instructions from the *client* specifying the transaction to be effected.**
- 3.98 For amplification: A ***DPB firm*** must have written instructions from the ***client*** before it undertakes the transaction.
- 3.99 For amplification: ***Dealing as agent*** includes accepting the offer of a policy on behalf of the insured. A ***DPB firm*** may not, however, act as agent of an insurer for the purpose of accepting a risk.
- 3.100 **A *DPB firm* should not deal in *investments* on behalf of a *client* if it considers that the transaction would be materially detrimental to the *client's* interests unless it has advised the *client* in writing and the *client* still wants the *DPB firm* to deal.**
- 3.101 For amplification: A ***DPB firm*** can still, however, at its absolute discretion, after considering all the implications for the ***client***, decline to deal.

### Complaints resolution

- 3.102 **If a *DPB firm* receives a complaint concerning services, covered by this *Handbook*, that it has provided or failed to provide to a potential *client*, *client* or former *client* it must immediately acknowledge the receipt of the complaint. This includes complaints made by interested parties who are not *clients*, such as consumer associations or other persons acting on behalf of a client.**
- 3.103 For amplification: In paragraph 3.102 above, a complaint means (in line with the FSA Handbook) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
- 3.104 For amplification: All ***DPB firms*** must ensure that they have an appropriate and adequate complaints redress procedure in place. ***DPB firms*** must ensure they have procedures regarding the receipt, investigation and response to complaints. In doing so, ***DPB firms*** should have regard to the type of business they undertake, the size and organisation of the ***DPB firm*** and the number and complexity of the complaints they are likely to receive.
- 3.105 For amplification: When acknowledging receipt of the complaint, complainants should be advised of these procedures and details of who is dealing with the complaint, along with an estimate of the time it will take the ***DPB firm*** to investigate and reply.
- 3.106 **A *DPB firm* must ensure that all complaints concerning services covered by this *Handbook* receive an appropriate response. A complaint must be dealt with in a way which is fair, impartial and thorough and the complainant should receive a response to the complaint as soon as is reasonably practicable. Except in the case of a *sole practitioner*, *DPB firms* should ensure that complaints are investigated by an employee of sufficient competence or a *principal*. The employee or *principal* should, where possible, not be directly involved in the subject matter of the complaint and have the authority to settle the complaint or have ready access to someone with the necessary authority.**
- 3.107 For amplification: Where a ***DPB firm*** cannot complete an investigation of the complaint in a reasonable time, it should contact the complainant to advise them of this and give a revised timescale for formally responding. The firm must at this time also advise the complainant that they have the right to refer the complaint to the ***DPB Committee***.
- 3.108 For amplification: Any final ***resolution letter*** to the complainant must include a reminder that the complainant has the right to refer their complaint to the ***DPB Committee*** if they are unhappy with the ***DPB firm's*** response. The letter should provide details of the address the

referral should be made to and advise the complainant that they must make the referral within six months.

- 3.109 For amplification: If a complaint is made by an interested party who is not a **client**, **DPB firms** should ensure that no confidential information, or personal information the disclosure of which would breach the Data Protection Act 1988, is disclosed without the agreement of the **client**. This must not, however, be used to hinder proper complaints. A **DPB firm** in such a case must make reasonable endeavours to obtain agreement from the **client**.
- 3.110 For amplification: A **DPB firm** should have regard to the terms of its **professional indemnity insurance** when a complaint is made. Depending upon its policy terms and the facts, the **DPB firm** might be obliged to give notice to its insurers of the complaint as either a claim against it or as a circumstance which might give rise to a claim (the precise requirements might vary from policy to policy).
- 3.111 **If, following an investigation, the DPB firm is of the opinion that the complaint is justified in whole or part it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, the provision of information, the return of books or documents, the reduction or repayment of fees, or otherwise.**

**Part 4**  
**Rules governing Licensed Authorised Professional Firms**

**Introduction**

- 4.1 **An *APF* which holds an *APF licence* issued by the *Institute and Faculty* (a "*Licensed APF*") must, as a condition of holding that *licence*, comply with the requirements described in this part 4 of this *Handbook*.**
- 4.2 **For amplification: This part 4 of this *Handbook* applies to *firms* which are regulated directly by the *FSA* as *Authorised Professional Firms* ("*APFs*") and which are subject to an *APF licence* issued by the *Institute and Faculty* ("*Compliance route 3*"). For the avoidance of doubt, a *firm* may not simultaneously be both an *APF* and a *DPB firm*. Consequently, this part 4 of this *Handbook* does not apply to *DPB firms*.**
- 4.3 **For amplification: The obligation to obtain an *APF licence* derives from Actuarial Profession Standard D1. Further information is included in the Information and Advisory Note published by the Actuarial Profession entitled, "*The Actuary and Activities Regulated under FSMA 2000*"**
- 4.4 **For amplification: For *firms* regulated directly by the *FSA* (i.e. not *DPB firms*) the *FSA Handbook* provides for a specific regulatory regime applicable to *APFs* to the extent that they are undertaking what are known as "*non-mainstream regulated activities*". Before making use of this alternative *FSA* regulatory regime, however, the *principals* of an *Actuarial APF* must, in accordance with section 3.1 of *APS D1* ensure that their *firm* obtains a *licence* from the *Institute and Faculty* (an "*APF licence*"). The duties and obligations imposed by the *Institute and Faculty* as conditions of holding an *APF licence* are set out and described in this part of this *Handbook*.**
- 4.5 **For amplification: For the avoidance of doubt, *APFs* must comply with those parts of the *FSA Handbook* which are applicable to it. Reference is made in particular to the Specialist Sourcebook for Professional Firms (PROF), contained within the *FSA Handbook*, which includes provision imposed by the *FSA* in relation to the undertaking by *APFs* of *non-mainstream regulated activities*. *APFs* are advised to contact the *FSA* in the event that they require clarification as to their regulatory status, or the extent of their authorisation as *APFs*, or as to the requirements and obligations imposed upon them by the *FSA*.**
- 4.6 **To the extent that any provision of this *Handbook* applicable to *Licensed APFs* conflicts with a relevant provision of the *FSA Handbook*, the provisions of the *FSA Handbook* shall prevail.**

**Requirements imposed on *Licensed Authorised Professional Firms***

- 4.7 **Subject to paragraph 4.8, as a condition of holding an *APF licence*, a *Licensed APF* shall:-**
- 4.7.1 **Comply with the contractual terms and conditions, to the extent applicable to *Licensed APFs*, set out in part 6 of this *Handbook*;**
- 4.7.2 **Comply with the *Professional Indemnity Insurance* requirements set out in part 6 of this *Handbook*;**
- 4.7.3 **Comply with the *Institute and Faculty's Conduct of Business Code* for *Licensed APFs* (see sections 4.10 – 4.106 below);**
- 4.7.4 **Comply with the *Disciplinary Process* including any disciplinary measures imposed on the *Licensed APF* in accordance with the *Disciplinary Process*.**
- 4.8 **Paragraph 4.7 in particular and the requirements of this part 4 in general shall only apply in relation to the undertaking by *Licensed APFs* of *non-mainstream regulated activities*.**

- 4.9 For amplification: **Licensed APFs** must also refer to this **FSA Handbook** in relation to the undertaking of either **non-mainstream regulated activities** or **mainstream regulated activities**.

#### The Conduct of Business Code for Licensed APFs

- 4.10 For amplification: This section of this part of this **Handbook** sets out how **Licensed APFs** must conduct business in carrying on **non-mainstream regulated activities**.
- 4.11 **A Licensed APF must (i) conduct its business with honesty, integrity, appropriate knowledge, skill and care and (ii) show appropriate respect for others when carrying on any non-mainstream regulated activities.**
- 4.12 For amplification: **Licensed APFs** must not act in a way which damages the reputation or impugns the integrity of the **Institute and Faculty or the actuarial profession**. This may mean that on occasion a **Licensed APF** has to take actions which work against their own apparent immediate interests so as to safeguard the reputation of the **Institute and Faculty or the Actuarial Profession**.
- 4.13 For amplification: **Licensed APFs** must also demonstrate appropriate respect for **client** confidentiality and not advertise or solicit business in a way that they know or ought to know is false or misleading.

#### Initial contact with clients

##### Status Disclosure

- 4.14 **A Licensed APF shall provide the client with the following information in writing before the Licensed APF provides a service which includes the undertaking of non-mainstream regulated activities:**
- 4.14.1 **A statement that the Licensed APF is authorised and regulated by the FSA;**
- 4.14.2 **A statement that the Licensed APF is licensed in relation to the undertaking of non-mainstream regulated activities by the Institute and Faculty;**
- 4.14.3 **A statement of the nature of the complaints and redress mechanisms available to the client in relation to the undertaking of non-mainstream regulated activities, including the procedure for contacting the Licensed APF in the event of a complaint and of the right of complaint to the Institute and Faculty; and**
- 4.14.4 **A statement that the client will not have access to any compensation scheme operated by the Institute and Faculty in the event of the Licensed APF being unable to meet claims against it in respect of non mainstream regulated activities.**

##### Full agreement with clients

- 4.15 **A Licensed APF shall ensure that it is in full agreement with its clients about the nature, scope and terms of the services to be or being provided (including whether the service being provided includes the provision of non-mainstream regulated activities). A Licensed APF must be able to evidence such agreement.**
- 4.16 For amplification: The information required to evidence agreement on the nature, scope and terms of service with the **client** will depend on the particular circumstances. In most instances, **Licensed APFs** have a degree of discretion as to what evidence is required. However, in other circumstances the evidence required is prescribed by **rules** made under this **Handbook**. For example, if a **Licensed APF** is **arranging** a transaction on behalf of the **client**, it will need to obtain specific written instructions. For further details see paragraph 4.82.

- 4.17 For amplification: If a **Licensed APF** uses an engagement letter, agreement is demonstrated if either the **client** signs the engagement letter (this is by far the clearest way of making sure that the **client** confirms the terms on which the **Licensed APF** will act) or the **client** receives it before the **Licensed APF** starts to act and the **client** does not object to the terms.
- 4.18 For amplification: Where an engagement letter is issued by a **sole practitioner** (which is a **Licensed APF**) the letter should normally set out and draw the **client's** attention to appropriate arrangements for completing the work agreed in the event that the **sole practitioner** is unable to do so.
- 4.19 For amplification: The **client** should not be put under pressure by the **Licensed APF** to accept engagement terms that may not be in accordance with their wishes.
- 4.20 For amplification: Where **advice** is given to an employer in respect of a pension scheme, **Licensed APFs** should note that the employer is a separate **client** from the trustees of a pension scheme sponsored by that employer. As a result, separate instructions and terms of engagement should be agreed as necessary with each party. Likewise, a further engagement letter may be required following the change of ownership of a **client**.

### General dealings with clients

- 4.21 For amplification: This section of this **Handbook** will set out the conduct required of **Licensed APFs** for general dealings with **clients**.

### Best interests of client

- 4.22 **A Licensed APF shall carry on any non-mainstream regulated activities in the best interests of each of its clients.**
- 4.23 For amplification: The best interests of a **client** include helping the **client** to fulfil obligations to which the **client** is subject, which includes duties to the customers, members and beneficiaries of the **client**. It will not be in the best interests of a **client** to disregard its duties, whether legal or regulatory, to third parties.
- 4.24 **A Licensed APF must ensure that its ability to provide objective advice to its clients is not, and cannot reasonably be seen to be, compromised.**
- 4.25 For amplification: The duty on **Licensed APFs** to act in the best interests of their **clients** is fundamental to the **client** relationship. 'Objective advice' means **advice** which is not coloured or influenced by considerations which might conflict with the best interests of the **client**. This does not, however, preclude the exercise of appropriate professional judgement.
- 4.26 For amplification: The duty on **Licensed APFs** to act in the best interests of its **clients** does not require **Licensed APFs** to act other than in accordance with their wider professional, regulatory and legal obligations.
- 4.27 For amplification: **Licensed APFs** should consider carefully whether it is, in any given context, appropriate to accept gift(s), in case this may cause their judgement to be, or to be seen to be, coloured or influenced by considerations which might conflict with the best interests of their **clients**.

### Competence

- 4.28 **A Licensed APF shall not carry on any non-mainstream regulated activity unless it has a clear and complete understanding of the extent to which, and circumstances in which, it may undertake non-mainstream regulated activities. It must also have a sufficient understanding of the relevant legal and legislative framework, demonstrating proper regard to the technical and professional standards expected of it before carrying on any non-mainstream regulated activity.**

- 4.29 **A Licensed APF must not carry on or continue to carry on any *non-mainstream regulated activities* which it is not competent to perform.**
- 4.30 **A Licensed APF shall ensure that *principals* and relevant staff attend such compulsory education programme as may be specified by the *Institute and Faculty*.**
- 4.31 **All *non-mainstream regulated activity* should be carried on or supervised by a suitably qualified, competent and experienced individual within the *Licensed APF*.**
- 4.32 **For amplification: This requirement is covered in more detail in relation to confirmation of *advice* in paragraphs 4.47 to 4.52 below. Suitably qualified in the case of *advice* on a *packaged product* means an individual who has at least one of the qualifications on the Qualification List set out in Annex 3.2. It is expected that this list will be revised from time to time.**
- 4.33 **For amplification: Competent and experienced means assessed to be such by the *Licensed APF* in relation to the particular *regulated activity*. Formal assessments are not required in the case of *Licensed APFs*.**
- 4.34 **For amplification: A *Licensed APF* carrying out *insurance mediation activities* must ensure that**
- (i) a reasonable proportion of the persons within its management structure who are responsible for the *insurance mediation activity* and
  - (ii) all other persons directly involved in its *insurance mediation activity* demonstrate the knowledge and ability necessary for the performance of their duties.

#### Communication

- 4.35 **When carrying on any *non-mainstream regulated activities*, a *Licensed APF* must communicate clearly, completely and effectively with its *clients*.**
- 4.36 **In particular, a *Licensed APF* must ensure that all of its communication, whether written or oral, is clear and that their method of communication is appropriate, having regard to:**
- 4.36.1 **the intended audience;**
  - 4.36.2 **the purpose of the communication;**
  - 4.36.3 **the significance of the communication to its intended audience; and**
  - 4.36.4 **the capacity in which the *Licensed APF* is acting.**
- 4.37 **For amplification: The over-riding requirement is to ensure that the intended audience can gain a proper understanding of what is being communicated. Of necessity, technical and complex information needs to be communicated. The extent to which an explanation is required may depend upon the intended audience and the overall context. If it becomes apparent that a misunderstanding has arisen, appropriate steps should be taken promptly to clarify the position.**
- 4.38 **For amplification: Complex language can detract from clarity. Plain language is preferable in most cases.**
- 4.39 **For amplification: Where large volumes of data are to be conveyed, it will rarely be suitable for this to be done orally. Similarly, any communication directed at a *client* or employer which has significant implications for that *client* or employer, should normally be confirmed in writing.**
- 4.40 **For amplification: *Licensed APFs* should ensure that they communicate appropriately any risks associated with their *advice* or recommended course of action, including any risks associated with the possibility that the communication may be taken out of context.**

- 4.41 For amplification: **Licensed APFs** should make clear, where appropriate, the intended audience for the communication, its purpose and the capacity in which the **Licensed APF** is acting. In particular, **Licensed APFs** should not give the impression that they speak for the **Institute and Faculty** unless they are authorised to do so.
- 4.42 **A Licensed APF must ensure that any communication with which it is associated is accurate and not misleading and contains sufficient information to enable its subject matter to be put in proper context.**
- 4.43 For amplification: Communication requires **Licensed APFs** to listen to the **client** and to understand their objectives. Where a view is expressed by a **Licensed APF** it is important that the existence of alternative views and the potential implications of those alternatives are indicated. The provision of a restricted viewpoint only is unlikely to achieve the aim of promoting an understanding of the subject matter by the intended audience, or to allow the **client** properly to assess any risks which may arise.
- 4.44 For amplification: This does not mean that a communication needs to contain every potentially relevant piece of information or potential alternative point of view however remote. The inclusion of too much information may also act against the aim of promoting an understanding of the subject matter and firms must ensure that the appropriate balance is struck by exercise of their professional judgement
- 4.45 For amplification: A **Licensed APF** should clearly and visibly distance itself from reports, communications or other information or any other communication when they believe that information or communication may:
- 4.45.1 contain a materially false or misleading statement;
  - 4.45.2 contain statements or information furnished recklessly; or
  - 4.45.3 omit or obscure information required to be included where such omission or obscurity would be misleading.
- 4.46 For amplification: Communication is likely to be most effective when viewed as a process rather than an event. In many situations, setting out the key concepts and issues at a high level initially will be the most effective route. The detail can be expanded upon in subsequent communications.

#### Confirmation of **Advice**

- 4.47 **A Licensed APF's advice must be presented and confirmed in writing, by a suitably qualified, competent and experienced individual within the Licensed APF. In the case of a contract of insurance to which paragraph 4.76 applies, this should take the form of the statement of demands and needs set out in paragraph 4.76.**
- 4.48 For amplification: It is expected that the written confirmation of **advice** will at least include:
- 4.48.1 the **Licensed APF's** understanding of its **client's** requirements and objectives; and
  - 4.48.2 the reasons why the **advice** relating to the particular **investment** has been given.
- 4.49 For amplification: Please see paragraphs 4.32 to 4.34 above regarding what is meant by a qualified, competent and experienced individual. Individuals (for example, **client** managers), however, who would not normally meet the requirements for providing **advice** may present or provide written confirmation of **advice** jointly with a suitably qualified, competent and experienced individual.
- 4.50 For amplification: **Advice** can be presented and confirmed in writing by different individuals. This is on the basis that a **Licensed APF** may deem different individuals to be competent and experienced in presenting **advice** and providing written confirmation of the **advice**.

- 4.51 **When carrying on any *non-mainstream regulated activities*, a *Licensed APF* must provide all *advice* and services in connection with that *non-mainstream regulated activity* with appropriate care, ensuring that any *advice* is accurate and that any service delivered is appropriate to the instructions and requirements of that *client*.**
- 4.52 For amplification: A ***Licensed APF*** must ensure that they agree clearly with the ***client*** the specific nature and scope of the work to be undertaken, having regard to the requirement to act in the best interests of the ***client***, as set out in paragraphs 4.22 and 4.23. It would not, for example, be in the ***client's*** best interests, and would therefore be inappropriate, for a ***Licensed APF*** to provide services which it is aware give rise to a conflict with the ***client's*** wider legal or regulatory duties.

#### Seeking *advice* from an *authorised person*

- 4.53 **When seeking *advice* from another *authorised person* on behalf of a *client*, a *Licensed APF* must:**
- 4.53.1 **ensure that the *authorised person* will provide *advice* that is *independent*;**
  - 4.53.2 **supply the information about the *client* that the *authorised person* reasonably requests in order to *advise* the *client*;**
  - 4.53.3 **ensure that where information is supplied to the *authorised person* which falls within the *client's* knowledge and judgement, the *Licensed APF* obtains confirmation from the *client* of the accuracy of such information;**
  - 4.53.4 **ensure that where risk warnings and information are provided by the *authorised person* for the *client*, these are promptly passed to the *client*; and**
  - 4.53.5 **ensure that the *client* is aware of the respective responsibilities of the *Licensed APF* and the *authorised person*.**
- 4.54 For amplification: Not all ***authorised persons*** provide ***independent*** financial ***advice***. Some are linked to a product provider and so only advise on a limited number of options. A ***client's*** interests will not be best served unless ***independent advice*** is obtained.

#### Requirement not to hold *client* money

- 4.55 **A *Licensed APF* must not hold *client* money, including in the form of cash or cheques made payable to the *Licensed APF* unless it is authorised by the *FSA* to do so.**
- 4.56 For amplification: A ***Licensed APF*** may hold ***client*** money to the extent that it is authorised to do so by the ***FSA***. If not so authorised, a ***Licensed APF*** may only do so where and to the extent that a ***client*** has given express written and informed consent for the ***Licensed APF*** to retain or offset against its fees, any commission (or other benefit) received.
- 4.57 For amplification: Unless otherwise authorised by the ***FSA***, a ***Licensed APF*** must ensure that all monies representing premiums or otherwise payable to the issuer or insurer are only received from a ***client*** where it is in the form of a cheque and that cheque is made payable to the issuer or insurer and not the ***Licensed APF***. Similarly, all monies payable by the issuer or insurer, whether in respect of claims, return of premium, proceeds of sale or otherwise due to the ***client*** must take the form of a cheque payable to the ***client*** and not the ***Licensed APF***.

#### Safekeeping of *client's* property

- 4.58 **If a *Licensed APF* receives a *client's* property, details of its receipt and location should be recorded in an appropriate manner. A *Licensed APF* should also take appropriate steps to ensure that such property is kept safely.**

- 4.59 For amplification: Property includes cheques payable to an insurer, policyholder or third party, policy documents and share certificates.
- 4.60 For amplification: A **Licensed APF** should ensure that it maintains appropriate insurance cover for any **client** property held.
- 4.61 **Where *client's* property is passed to a third party on the *client's* instructions, such instructions should be obtained in writing and an acknowledgement of the receipt of the property should be obtained from the third party.**
- 4.62 For amplification: A **Licensed APF** should give the **client** a receipt for such property and also record the return of the property to the **client**.

#### **Dealings with *clients* as regards specific types of activity**

- 4.63 For amplification: This section of part 4 of this **Handbook** sets out the conduct required of **Licensed APFs** in respect of certain types of ***non-mainstream regulated activities***.

#### **Advising on *investments* – packaged products**

- 4.64 **When a *Licensed APF* provides *advice* consisting of a recommendation to buy or subscribe to a *packaged product*, the *Licensed APF* must be reasonably satisfied that there is not another *packaged product* that would be likely to be materially better to satisfy its *client's* requirements, objectives and interests.**
- 4.65 For amplification: Where the ***advice*** relates to a ***packaged product***, it is expected that the ***Licensed APF*** will generally need to carry out or arrange access to research on the products available from different product providers in order to be able to comply with this requirement. If the ***packaged product*** is a ***contract of insurance***, e.g. a personal pension, the requirements of paragraphs 4.72 must also be fulfilled.

#### **Advising on *investments* - *non-investment insurance contract***

- 4.66 **Subject to paragraph 4.81, a *Licensed APF* must not give *advice* to a *client* on a particular type of *non-investment insurance contract* unless it has analysed a sufficiently large number of contracts available in the relevant sector or sectors of the market to be able to give *advice* which is adequate to meet the *client's* needs.**
- 4.67 For amplification: The requirement in the case of a ***non-investment insurance contract*** is different from that for ***packaged products*** under paragraph 4.64 as it requires a ***Licensed APF*** to analyse a sufficiently large number of products offered by different insurers so as to satisfy the requirement that the product selected is adequate to meet the ***client's*** needs. In the case of a niche market, such as warranty insurance, the ***Licensed APF's*** analysis of the sector should be based on sufficient knowledge of the contracts available from that sector. ***Licensed APFs*** may use panels of insurers to meet this requirement but the panel must be sufficiently wide to enable ***advice*** to be given on a fair analysis basis and the insurers on the panel and the products offered must be reviewed on a regular basis.
- 4.68 For amplification: Where a ***Licensed APF*** provides a service based on a fair analysis of the market (or from a sector of the market), it should ensure that its analysis of the market and the available contracts are kept adequately up to date. For example, a ***firm*** should update its selection of contracts if it is aware that a contract has generally become available offering an improved product feature, or a better premium, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market.
- 4.69 For amplification: The panel selection criteria are also important in determining whether the panel is sufficient to meet the 'fair analysis' criteria. Selection should be based on product features, premiums and services offered to customers, not on the benefit offered to the ***firm***.

- 4.70 Subject to paragraph 4.81 a *Licensed APF* carrying on *insurance mediation activities* must take reasonable steps to ensure that if it recommends a particular *non-investment insurance contract* to a *client*, the recommendation is suitable for the *client's* demands and needs.
- 4.71 A *Licensed APF* may recommend a *non-investment insurance contract* that does not meet all of the *client's* demands and needs if:
- 4.71.1 there is no *non-investment insurance contract* within those analysed by the *Licensed APF* for the purpose of paragraph 4.64 or 4.66 (as the case may be) that meets all the *client's* demands and needs; and
  - 4.71.2 the *Licensed APF* identifies to the *client* the demands and needs that are not met by the *non-investment insurance contract* that it recommends.

**Advising on or arranging all contracts of insurance**

- 4.72 Subject to paragraph 4.82, a *Licensed APF* carrying on *insurance mediation activities* must, before the conclusion of any *contract of insurance*, or the renewal or amendment of a *contract of insurance*, provide the *client* with the following information on a *durable medium*:
- 4.72.1 the name and address of the *Licensed APF*;
  - 4.72.2 that the *Licensed APF* is included on the *FSA Register* so that it can carry on *insurance mediation activity* and that is authorised by the *FSA*;
  - 4.72.3 that paragraphs 4.72.1 and 4.72.2 can be checked on the *FSA Register* by visiting the *FSA's* website [www.fsa.gov.uk/register](http://www.fsa.gov.uk/register);
  - 4.72.4 whether the *Licensed APF* has any holding, direct or indirect, representing more than 10 per cent of the voting rights or of the capital in an *insurance undertaking*;
  - 4.72.5 whether an *insurance undertaking* or parent of an *insurance undertaking* has a holding, direct or indirect, representing more than 10 per cent of the voting rights or of the capital in the *Licensed APF*;
  - 4.72.6 in relation to the *contract of insurance* provided, that the *Licensed APF* has selected or dealt with the contract on the basis of a fair analysis of a sufficiently large number of *contracts of insurance* which are available on the market;
  - 4.72.7 how to complain to the *Licensed APF* and that complaints may subsequently be referred to the *Institute and Faculty*; and
  - 4.72.8 any additional information as provided for in the *FSA's* Insurance: New Conduct of Business Sourcebook.
- 4.73 All information provided to *clients* under paragraphs 4.72 shall be communicated:
- 4.73.1 in simple, plain, and concise language which is understandable to the *client*; and
  - 4.73.2 in English, unless the *client* requests that it is, and the *Licensed APF* agrees to it being, in another language.
- 4.74 The information to be provided to *clients* under paragraphs 4.72 may be provided orally if:
- 4.74.1 the *client* requests this; or

4.74.2 the *client* requires immediate cover;

and need not be provided before conclusion of the contract if the contract is concluded by telephone at the *client's* request and the *client* has given their explicit consent to receiving limited information before conclusion of the contract. The *Licensed APF* must however provide the information required under paragraph 4.72 on a *durable medium* to the *client* immediately upon the conclusion of the *contract of insurance*.

- 4.75 For amplification: It is not necessary to repeat information that has already been given when renewing or amending a policy. However, any changes to the information previously provided must be communicated. If the *client* is an individual and the contract to provide the relevant service is subject to the *Financial Services (Distance Marketing) Regulations 2004* the minimum information requirements of those Regulations must be given on the telephone before the contract is made. It is the responsibility of *Licensed APFs* to ensure that they comply with the *Financial Services (Distance Marketing) Regulations 2004*, which apply to 'distance contracts' with a consumer (an individual acting for purposes outside any business they may carry on) concerning financial services. The *FSA* has produced guidelines on what is a 'distance contract' in its *Insurance: New Conduct of Business Sourcebook*.
- 4.76 **Subject to paragraph 4.81, where a *Licensed APF* in the course of carrying on *insurance mediation activities* recommends (see paragraphs 4.47, 4.64, 4.66, 4.70 and 4.71) or *arranges* (see paragraphs 4.82, 4.85, 4.87, 4.89 and 4.91) a *contract of insurance* for a *client* it must, before the conclusion of the *contract of insurance* provide the *client* on a *durable medium* with a statement of their demands and needs. The statement must also:**
- 4.76.1 confirm whether or not the *Licensed APF* has recommended that contract;  
and
- 4.76.2 if so, explain the reasons for the recommendation.
- 4.77 **The statement referred to in paragraph 4.72 is not required if the *Licensed APF* has introduced the *client* to an *authorised person* who has dealt directly with the *client*.**
- 4.78 For amplification: The *Licensed APF* should ask the *client* what their requirements are, collect all relevant information and explain to the *client* what they need to disclose (including what facts the insurer would regard as material facts). The *Licensed APF* should also enquire about any relevant existing insurance.
- 4.79 For amplification: In assessing the *client's* demands and needs the *Licensed APF* should have regard to:
- 4.79.1 the facts disclosed by the *client*;
- 4.79.2 any information the *Licensed APF* already holds about the *client*;
- 4.79.3 whether the level of cover is sufficient for the risks that the *client* wishes to insure;  
and
- 4.79.4 the relevance of any exclusions, excesses, limitations or conditions in the contract.
- 4.80 **The requirements of paragraphs 4.73 and 4.74 as to the method and timing of providing information under paragraph 4.72 shall apply also to a statement of demands and needs under paragraph 4.76.**

Reinsurance Contracts and **Contracts of Large Risk**

- 4.81 Paragraphs 4.66, 4.70, 4.71, 4.72 and 4.76 do not apply to *insurance mediation activities* in respect of reinsurance contracts or *contracts of large risks*.

Arranging deals in *investments*

- 4.82 A **Licensed APF** arranging a deal in an *investment* on behalf of a *client*, must have written instructions (or other written evidence) from the *client* specifying the transaction to be effected.
- 4.83 For amplification: Arranging deals means buying, selling, subscribing for or underwriting *investments*. This includes issuing, or taking out, a **contract of insurance**.
- 4.84 For amplification: A **Licensed APF** must seek written instructions or other written evidence from the *client* before it undertakes the transaction.
- 4.85 A **Licensed APF** should not *arrange* a deal in an *investment* on behalf of a *client* if it considers that the transaction would be materially detrimental to the *client's* interests unless it has advised the *client* in writing and the *client* still wants the **Licensed APF** to *arrange* the deal.
- 4.86 For amplification: It is important to note that a **Licensed APF** can still at its absolute discretion, after considering all the implications for the *client*, decline to *arrange* the deal.
- 4.87 Where the deal is *arranged* through an *authorised person* the **Licensed APF** should ensure that the *client* is aware of the respective responsibilities of the **Licensed APF** and the *authorised person*.
- 4.88 For amplification: Please see paragraph 4.53 to 4.54 for further guidance on *arranging* a deal through an *authorised person*.
- 4.89 Where the deal is *arranged* through an *authorised person* the **Licensed APF** should ensure where information is provided by the *authorised person* for the *client* that this is promptly passed to the *client*.
- 4.90 For amplification: This is a particular example of the general requirement set out in paragraph 4.53 that a **Licensed APF** which receives relevant information from a third party (e.g. an insurer) for the *client* should promptly pass that on to the *client*. For the purposes of paragraphs 4.53 to 4.54 this includes using the **authorised person exemption**.

Dealing in *investments* as agent

- 4.91 A **Licensed APF** dealing in *investments* on behalf of a *client* must have written instructions from the *client* specifying the transaction to be effected.
- 4.92 For amplification: A **Licensed APF** must have written instructions from the *client* before it undertakes the transaction.
- 4.93 For amplification: **Dealing as agent** includes accepting the offer of a policy on behalf of the insured. A **Licensed APF** may not, however, act as agent of an insurer for the purpose of accepting a risk.
- 4.94 A **Licensed APF** should not deal in *investments* on behalf of a *client* if it considers that the transaction would be materially detrimental to the *client's* interests unless it has advised the *client* in writing and the *client* still wants the **Licensed APF** to deal.
- 4.95 For amplification: A **Licensed APF** can still, however, at its absolute discretion, after considering all the implications for the *client*, decline to deal.

**Complaints resolution**

- 4.96 **If a *Licensed APF* receives a complaint concerning services, covered by this *Handbook*, that it has provided or failed to provide to a potential *client*, *client* or former *client* it must immediately acknowledge the receipt of the complaint. This includes complaints made by interested parties who are not *clients*, such as consumer associations or other persons acting on behalf of a *client*.**
- 4.97 **For amplification:** In paragraph 4.96, a complaint means (in line with the FSA Handbook) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
- 4.98 **For amplification:** All ***Licensed APFs*** must ensure that they have an appropriate and adequate complaints redress procedure in place. ***Licensed APFs*** must ensure they have procedures regarding the receipt, investigation and response to complaints. In doing so, ***Licensed APFs*** should have regard to the type of business they undertake, the size and organisation of the ***Licensed APF*** and the number and complexity of the complaints they are likely to receive.
- 4.99 **For amplification:** When acknowledging receipt of the complaint, complainants should be advised of these procedures and details of who is dealing with the complaint, along with an estimate of the time it will take the ***Licensed APF*** to investigate and reply.
- 4.100 **A *Licensed APF* must ensure that all complaints concerning services covered by this *Handbook* receive an appropriate response. A complaint must be dealt with in a way which is fair, impartial and thorough and the complainant should receive a response to the complaint as soon as is reasonably practicable. Except in the case of a *sole practitioner*, *Licensed APFs* should ensure that complaints are investigated by an employee of sufficient competence or *principal* who, where possible, is not directly involved in the subject matter of the complaint and has the authority to settle the complaint or has ready access to someone with the necessary authority.**
- 4.101 **For amplification:** Where a ***Licensed APF*** cannot complete an investigation of the complaint in a reasonable time, it should contact the ***complainant*** to advise them of this and give a revised timescale for formally responding. The firm should at this time advise the complainant that they have the right to refer the complaint to the DPB Committee.
- 4.102 **For amplification:** Any final ***resolution letter*** to the complainant must include a reminder that the complainant has the right to refer their complaint to the ***DPB Committee*** if they are unhappy with the ***Licensed APF's*** response. The letter should provide details of the address the referral should be made to and advise the complainant that they must make the referral within six months.
- 4.103 **For amplification:** If a complaint is made by an interested party who is not a ***client***, ***Licensed APFs*** should ensure that no confidential information, or personal information the disclosure of which would breach the Data Protection Act 1988, is disclosed without the agreement of the ***client***. This must not, however, be used to hinder proper complaints. A ***Licensed APF*** in such a case must make reasonable endeavours to obtain agreement from the ***client***.
- 4.104 **For amplification:** A ***Licensed APF*** should have regard to the terms of its ***professional indemnity insurance*** when a complaint is made. Depending upon its policy terms and the facts, the ***Licensed APF*** might be obliged to give notice to its insurers of the complaint as either a claim against it or as a circumstance which might give rise to a claim (the precise requirements might vary from policy to policy).
- 4.105 **For amplification:** Where the complaint is the subject of a notification to insurers the ***Licensed APF*** will have to act in accordance with the terms of the policy.

- 4.106 **If, following an investigation, the *Licensed APF* is of the opinion that the complaint is justified in whole or part it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, the provision of information, the return of books or documents, the reduction or repayment of fees, or otherwise.**

## Part 5

### Complaints & Disciplinary Process

#### Introduction

- 5.1 For amplification: This Part 5 of this *Handbook* sets out the disciplinary process which will be followed by the *Institute and Faculty* in the event of a **Complaint** being received about a *DPB firm* or a *Licensed APF* or, in the absence of a **Complaint**, a suspected breach by a *DPB firm* or a *Licensed APF* of any *rule(s)* set out in this *Handbook* which is/are applicable to it.
- 5.2 This part of this *Handbook* applies to both *DPB firms* and *Licensed APFs*.
- 5.3 In the interpretation and application of this part of this *Handbook*, appropriate regard shall be had to the principles of natural justice and applicable articles of the European Convention on Human Rights.
- 5.4 *Licensed Firms* must comply and cooperate fully with any investigation and/or proceedings and/or determination under this part of this *Handbook*.
- 5.5 The *DPB Committee* may consider any matter which has come to its attention and which it considers to be relevant to the question as to whether a *Licensed Firm* may have breached one or more requirements of this *Handbook*, whether such matter has come to its attention in the course of considering a **Complaint** or otherwise. Where the matter has not been raised by a **Complainant**, the provisions of this Part 5 of this *Handbook* shall nonetheless, so far as possible, be applied as if the matter had been raised by a **Complainant** in the form of a **Complaint**.
- 5.6 For amplification: Members of the *Institute and Faculty* are reminded that, as individuals, they are subject to the Actuarial Profession's Disciplinary Scheme, in addition to any action which may be taken in relation to their *Licensed Firm* under this Part 5.

#### Action by the Institute and Faculty on receipt of a Complaint

- 5.7 All **Complaints** into alleged breaches of the *rules* set out in this *Handbook* by *Licensed Firms* should be addressed to the *DPB Manager*.
- 5.8 For amplification: The address is as follows:

The DPB Manager  
The Actuarial Profession  
Maclaurin House  
18 Dublin Street  
Edinburgh  
EH1 3PP

This address should also be notified in all *Resolution Letters* from *Licensed Firms*.

- 5.9 When a **Complaint** is received, the *DPB Manager* shall issue a letter to the **Complainant** acknowledging receipt of the **Complaint** and setting out the process for dealing with the **Complaint**. The letter shall also ask for any relevant papers or evidence to be submitted for consideration, to be sent to the *DPB Manager*.
- 5.10 The *DPB Manager* shall, at the same time, write to the *Respondent Firm* advising it of the **Complaint** and asking for any relevant papers to be submitted.
- 5.11 The *DPB Manager* shall confirm whether the matter(s) raised constitute a **Complaint** for the purposes of this Part 5 of this *Handbook* and that the case has been referred to the *DPB Manager* within 6 months of the *Licensed Firm's* final *Resolution Letter*. If

it has been referred outside the 6 month limit, the *Licensed Firm* will be asked if it has any objections to the *Complaint* being considered by the *DPB Committee*. If the *Licensed Firm* objects to the *Complaint* being dealt with, the *DPB Manager* will write to the *Complainant* advising that the matter cannot in the circumstances be considered by the *DPB Committee*.

- 5.12 If the *DPB Manager* is satisfied that a valid *Complaint* has been received, they shall refer the *Complaint* for the *DPB Committee's* consideration. The decision of the *DPB Manager* in this respect is final. Before arriving at their decision, they may consult with the Chairman of the *DPB Committee*.

#### Preliminary Consideration by the *DPB Committee*

- 5.13 The *DPB Committee* shall consider each *Complaint* referred to it under paragraph 5.12 by the *DPB Manager*.
- 5.14 Where the *DPB Committee* considers that the matter to which a *Complaint* refers would, if proved, amount to a breach of the requirements of this *Handbook*, it shall proceed in accordance with paragraphs 5.16 to 5.24 below.
- 5.15 Where the *DPB Committee* considers that the matters to which a *Complaint* refers would not, if proved, amount to a breach of the requirements of this *Handbook*, it shall dismiss the *Complaint*, notifying the *Complainant* and *Respondent Firm* in writing and providing reasons for its decision.

#### Investigation by the *DPB Committee*

- 5.16 The *DPB Committee* shall undertake such investigation as it considers necessary in order to establish whether the *Respondent Firm* has breached any requirement of this *Handbook*, the circumstances of any such breach, and all matters relevant to the consideration of any such breach. Subject to the provisions of this Part 5, the *DPB Committee* may, at its discretion, obtain such documentation and interview such witnesses as it sees fit.
- 5.17 At the conclusion of its investigation, the *DPB Committee* shall prepare a written statement of relevant facts, which it shall provide to the *Respondent Firm*, together with a notice requiring the *Respondent Firm* to confirm whether it agrees that the statement of facts is accurate and complete within a specified period, which will be not less than 28 days. To the extent that it does not agree that the statement of facts is accurate and complete, the *Respondent Firm* shall within 28 days set out its version of the relevant facts. The *DPB Committee* may undertake such further inquiries and investigation, and may issue such revised statement(s) of facts, as it considers appropriate.

#### Determination of the *DPB Committee*

- 5.18 The *DPB Committee* shall determine the *Complaint* by deciding whether the *Respondent Firm* has breached one or more of the requirements of this *Handbook*.
- 5.19 The *DPB Committee* shall meet in private for the purposes of determining the *Complaint*. It shall consider the matter on the basis of the facts, to the extent agreed by the *Respondent Firm*, and the available documentary evidence and any written submissions. Before reaching its determination, the *DPB Committee* shall ensure that the *Respondent Firm* has been accorded a reasonable opportunity to make written submissions in relation to all of the matters in issue.
- 5.20 If the *DPB Committee* determines that the *Respondent Firm* has not breached any requirement of this *Handbook*, it shall dismiss the *Complaint*. It shall in that case notify the *Complainant* and *Respondent Firm* accordingly, providing reasons for its determination.

Additional consequences of breaching this *Handbook*

- 5.21 If the *DPB Committee* determines that the *Respondent Firm* has breached one or more requirements of this *Handbook*, it may additionally take any one or more of the following steps in relation to the *Respondent Firm*:-
- 5.21.1 provide guidance and advice to the *Respondent Firm* on the future conduct of its business;
  - 5.21.2 reprimand the *Respondent Firm* in private;
  - 5.21.3 require the *Respondent Firm* to take such action as it considers necessary to remedy the situation which gave rise to the breach and/or to reduce the likelihood of recurrence. This may include, but is not limited to, requiring the *Respondent Firm* to provide such compensation, redress or reparation (whether monetary or otherwise and whether or not in favour of any *Complainant*) as the *DPB Committee* considers appropriate;
  - 5.21.4 impose a fine of such amount as it considers appropriate on the *Respondent Firm*;
  - 5.21.5 suspend the *Respondent Firm* from carrying on *regulated activities*, (or certain specific *regulated activities*) for such period as it may determine;
  - 5.21.6 withdraw the *licence* of the *Respondent Firm*;
  - 5.21.7 impose or vary such restrictions or conditions as it considers appropriate on the *licence* of the *Respondent Firm*;
  - 5.21.8 publish a report of the nature of the breach, the decision of the *DPB Committee* and the steps taken by the *DPB Committee*, provided that the *Respondent Firm* shall have a reasonable opportunity to consider and comment on this report prior to its publication;
  - 5.21.9 make such costs award(s) as the *DPB Committee* considers equitable in all the circumstances. In the case of an award of costs in favour of the *Institute and Faculty* against the *Respondent Firm*, such award may take account of the costs of any investigation and associated administrative and legal costs incurred by the *Institute and Faculty*.
- 5.22 The *DPB Committee* shall notify the *Respondent Firm* and the *Complainant* in writing of its determination under paragraph 5.18 or 5.20 and any steps taken under paragraph 5.21, providing reasons for its decision in each case. Such notice shall also inform the *Respondent Firm* of its right of appeal under paragraph 5.23 below.
- 5.23 The *Respondent Firm* may by notice appeal to the *DPB Tribunal* against any determination of the *DPB Committee* under paragraph 5.18 above, such notice to be provided in writing to reach the *DPB Manager* within 28 days of the written notification of the *DPB Committee*'s determination and reasons under paragraph 5.22. Such notice shall specify the grounds for the appeal, which may be against a determination and/ or any steps taken by the *DPB Committee* under paragraph 5.21. The *DPB Manager* shall provide a copy of the notice to any *Complainant*.
- 5.24 If the *Respondent Firm* exercises its right to appeal to the *DPB Tribunal*, the implementation of any of the steps taken by the *DPB Committee* under paragraph 5.21 shall be suspended until the appeal has been determined by the *DPB Tribunal*.

**Appeal hearing before the DPB Tribunal**

- 5.25 Where a matter has been referred to the *DPB Tribunal* in accordance with paragraph 5.23 above the following procedure shall apply:
- 5.25.1 the appeal to the *DPB Tribunal* shall, subject to sub-paragraph 5.25.2 be by way of a review in private of the documentation which had been available to the *DPB Committee* in considering the matter, together with any further documentary evidence and/or written submissions produced by the *Respondent Firm, Complainant* or *DPB Committee*, which documentation and/or submissions shall be produced to the clerk to the *DPB Tribunal* not later than 7 days prior to the hearing notified under sub-paragraph 5.25.4 below;
- 5.25.2 the *Respondent Firm* may, no later than 14 days following notification of the date of the hearing under sub-paragraph 5.25.4 below, elect to proceed by means of an oral hearing, in which case the parties to the oral hearing will be the *Respondent Firm* and the *DPB Committee* and may each present oral submissions and witness evidence. Any *Complainant* may at the discretion of the *DPB Tribunal* also appear, make submissions and present evidence, including witness evidence, at the hearing. An oral hearing shall be held in public, except to the extent that the *DPB Tribunal* considers that there is good reason to hold all or part of the hearing in private;
- 5.25.3 the chairman of the *DPB Tribunal* shall have the power prior to the substantive hearing of the appeal by the *DPB Tribunal* to deal with all procedural matters and give directions for the preparation for and conduct of the appeal;
- 5.25.4 the clerk to the *DPB Tribunal* shall by written notice inform the *Respondent Firm, DPB Manager* and any *Complainant* of the date and venue for the hearing and of their right:
- (i) to make written submissions to the *DPB Tribunal* on any matters relating to the determination and/or any steps taken by the *DPB Committee* under paragraph 5.21;
  - (ii) in the event that the *Respondent Firm* requests an oral hearing under sub-paragraph 5.25.2, to make oral representations and/or lead witness evidence on such matters to the *DPB Tribunal*;
- 5.25.5 the *DPB Tribunal* shall, having considered all of the evidence properly put before it, determine whether the *Respondent Firm* has breached one or more requirements of this *Handbook*;
- 5.25.6 where the *DPB Tribunal* determines that the *Respondent Firm* has not breached any of the requirements set out in this *Handbook* it shall dismiss the *Complaint* and may make such costs award against the *Institute and Faculty* and/or *Respondent Firm* as it considers appropriate in the circumstances;
- 5.25.7 where the *DPB Tribunal* determines that the *Respondent Firm* has breached one or more requirements of this *Handbook*, it may:-
- (i) affirm the determination and/or any steps taken by the *DPB Committee*; or
  - (ii) make any such alternative determination and/or take any such steps as would have been within the power of the *DPB Committee* under paragraph 5.21, including, as it sees fit, making such costs award as it considers appropriate against the *Institute and Faculty* and/or *Respondent Firm*;

- 5.25.8 the *DPB Tribunal* shall notify the *Respondent Firm*, the *DPB Manager* and any *Complainant* as soon as possible in writing of its decision and the reasons for its decision; and
- 5.25.9 the determination of the *DPB Tribunal* shall be final.

### **Complaints Reviewer**

- 5.26 If the *DPB Committee* dismisses the *Complaint* under paragraphs 5.15 or 5.20 above, the *Complainant* may, by written notice to the *DPB Manager*, apply to have the *DPB Committee's* decision reviewed by the *Complaints Reviewer*. Any such notice must be provided such as to reach the *DPB Manager* within 28 days of notification of the decision which is the subject of the review application. The notice shall set out the *Complainant's* grounds for the application.
- 5.27 If the *DPB Committee* determines that the *Respondent Firm* has breached one or more requirements of this *Handbook* under 5.18, the *Complainant* may, by written notice to the *DPB Manager*, apply to have the *DPB Committee's* determination reviewed by the *Complaints Reviewer*, but only to the extent of and in relation to the *DPB Committee's* exercise or otherwise of the power to require the *Respondent Firm* to take action under 5.21.3. Any such notice must be provided such as to reach the *DPB Manager* within 28 days of notification of the decision which is the subject of the review application. The notice shall set out the *Complainant's* grounds for the application.
- 5.28 The review application, if properly notified under paragraph 5.26 or paragraph 5.27, shall be considered by the *Complaints Reviewer*, along with such documentation and submissions as were available to the *DPB Committee* or are produced to the *Complaints Reviewer* in the context of their review.
- 5.29 In the case of a review application arising from a decision of the *DPB Committee* to dismiss the *Complaint* under paragraph 5.15, the *Complaints Reviewer* shall either:
  - 5.29.1 affirm the decision of the *DPB Committee*, dismissing the *Complaint*; or
  - 5.29.2 revoke the decision of the *DPB Committee*, referring the *Complaint* back to the *DPB Committee* for investigation and determination under paragraphs 5.16 to 5.24.
- 5.30 In the case of a review application arising from a decision of the *DPB Committee* to dismiss the *Complaint* under paragraph 5.20, the *Complaints Reviewer* shall either:
  - 5.30.1 affirm the decision of the *DPB Committee*, dismissing the *Complaint*; or
  - 5.30.2 refer the *Complaint* for reconsideration and determination by the *DPB Committee* under paragraph 5.18, in which case the *Complaints Reviewer* may direct that the *DPB Committee* is for this purpose differently composed. In the event that the *DPB Committee*, having reconsidered it, determines to dismiss the *Complaint*, its determination shall be final and no further review application shall be made to the *Complaints Reviewer* in relation to the *Complaint*.
- 5.31 In the case of a review application under 5.27, the *Complaints Reviewer* shall either:
  - 5.31.1 affirm the decision of the *DPB Committee*; or
  - 5.31.2 refer the matter for reconsideration and determination by the *DPB Committee* under paragraph 5.18, in which case the *Complaints Reviewer* may direct that the *DPB Committee* is, for this purpose, differently composed. The extent of the *DPB Committee's* reconsideration shall, however, be restricted to the question as to whether or not to require the *Respondent Firm* to take action under 5.21.3 and to make such

determination under 5.21.3 as it considers fit. No further review application shall be made to the *Complaints Reviewer* in relation to the *Complaint*.

- 5.32 The *Complaints Reviewer* shall, in deciding a review application under either paragraph 5.29, 5.30 or 5.31 provide reasons for their decision and may make such recommendations as they see fit. They shall notify the *Complainant, Respondent Firm* and *DPB Manager* of their decision, reasons and any such recommendations.

#### **General provisions relating to the *DPB Committee* and the *DPB Tribunal***

- 5.33 The *DPB Committee* and the *DPB Tribunal*, as the case may be, acting of its own motion or upon the application of any party, adjourn a hearing before it at any time upon such terms as it sees fit.
- 5.34 At any stage the *DPB Committee* and the *DPB Tribunal* separately may appoint an independent legal adviser to assist them on any matters of law or procedure.
- 5.35 All documents put before the *DPB Committee* and the *DPB Tribunal* shall be deemed to be authentic. If a party challenges the authenticity of any document the *DPB Committee* or *DPB Tribunal*, as the case may be, shall consider the objections raised by such party (and any evidence raised in rebuttal) and shall, on the basis of such representations, accord the evidence contained in such documents such weight as they see fit.
- 5.36 In a hearing before the *DPB Committee* or *DPB Tribunal* that involves the decision of a court or tribunal in the *United Kingdom*:
- 5.36.1 the finding or sentence of any criminal court may be proved by producing a certified copy of the certificate of conviction relating to the offence;
  - 5.36.2 the finding and sentence of any tribunal exercising a professional disciplinary jurisdiction may be proved by producing a certified record of the finding and sentence; and
  - 5.36.3 the judgment of any civil court may be proved by producing a certified copy of the judgment.
- 5.37 The findings of fact of a civil or criminal court of competent jurisdiction in the *United Kingdom* shall be admissible as conclusive evidence of those facts.
- 5.38 The findings of fact of any tribunal exercising a professional disciplinary jurisdiction in the *United Kingdom* shall be admissible as *prima facie* evidence of those facts.
- 5.39 Subject to paragraph 5.5, the *DPB Committee* and the *DPB Tribunal*, as the case may be, shall have complete discretion over the procedure to be adopted before them, including, as they see fit, the power to vary or dispense with time limits.
- 5.40 The *Respondent firm* shall be given a proper opportunity to answer any *Complaint*.
- 5.41 In all proceedings under this part of this *Handbook*, the standard of proof shall be the civil standard, as applied by the Courts of England and Wales.
- 5.42 Determinations of the *DPB Committee* and of the *DPB Tribunal*, as the case may be, shall be by simple majority.

#### **Conflicts of Interest**

- 5.43 Each person appointed to a role under this *Disciplinary Process*, including the *Complaints Reviewer* and members of the *DPB Committee* and *DPB Tribunal*, shall ensure that they are in a position to act with appropriate objectivity in relation to any matter in relation to which they are appointed. In particular:-

- 5.43.1 no person may be appointed to both the *DPB Committee* and the *DPB Tribunal* in respect of the consideration under this part 5 of the same *Complaint* or matter; and
- 5.43.2 no person shall act in such a role in circumstances in which they have a connection with any party to the matter which would prevent them, or might reasonably be seen to prevent them, from acting with appropriate objectivity.

#### **Information sharing**

- 5.44 The Institute and Faculty may disclose to any of the following bodies such information as it considers appropriate in relation to any *Complaint* and/or any *Licensed Firm* for the purpose of assisting that body in properly undertaking that body's regulatory functions:
  - 5.44.1 the *FSA*;
  - 5.44.2 the Accountancy & Actuarial Discipline Board ("AADB");
  - 5.44.3 any overseas actuarial professional regulatory body which is a full member of the International Actuarial Association;
  - 5.44.4 the Pensions Regulator; and
  - 5.44.5 the Financial Ombudsman Service.

## Part 6

### Licence Terms and Conditions

#### Purpose

- 6.1 This part 6 of this Handbook sets out the contractual terms and conditions applicable to *Licensed Firms*.
- 6.2 For amplification: The granting of a *licence* under this *Handbook* to either a *DPB firm* or an *APF* establishes an enforceable contract between that *firm* and the *Institute and Faculty*.

#### Obligations of a firm

##### Eligibility

- 6.3 A *firm* shall apply for a *licence* or an extension to the *regulated activities* permitted by an existing *licence* in the manner which the *Institute and Faculty* decides. A *firm* shall satisfy the *Institute and Faculty* on application and at any time thereafter that:
- 6.3.1 the principal business of the *firm* is the provision of services that constitute the practice of the profession of actuary;
  - 6.3.2 if a *DPB firm*, at least one *principal* is a Fellow or Associate of the Institute and Faculty of Actuaries or an *affiliate member* of the *Institute and Faculty* who is also a Fellow or Associate of the Faculty of Actuaries;
  - 6.3.3 if a *DPB firm*, the *firm* is managed or controlled by Fellow(s) or Associate(s) of the *Institute and Faculty* and/or *affiliate members* of the *Institute and Faculty* who is/are also Fellow(s) or Associate(s) of the Faculty of Actuaries;
  - 6.3.4 if an *APF*, the *firm* is managed and controlled by Fellow(s) or Associate(s) of the *Institute and Faculty* and/or *affiliate members* of the *Institute and Faculty* who is/are also Fellow(s) or Associate(s) of the Faculty of Actuaries;
  - 6.3.5 the *firm* complies with the *PII Requirements* set out at paragraphs 6.18 to 6.27 below;
  - 6.3.6 there is no reason for the *Institute and Faculty* to refuse to grant a *licence* because of any legal, disciplinary or regulatory investigation, enquiry, action or finding. The *firm* shall provide the Institute and Faculty with full information in relation to any such legal, disciplinary or regulatory investigation, enquiry, action or finding to which it is subject;
  - 6.3.7 there is no direction under section 328 of *FSMA 2000* in relation to a class of person which includes the *firm* in respect of activities to be covered by its *licence* (or in the case of an *APF* a class of person which would have included the *firm* were it not an *authorised person*); and
  - 6.3.8 if a *DPB firm*, there is no order against the *firm* under section 329 of *FSMA 2000* that the exemption from the general prohibition shall not apply to the *firm* in respect of activities to be covered by its *licence*.
- 6.4 In addition to the requirements of paragraph 6.3, a *firm* wishing to undertake *insurance mediation activities* shall satisfy the *Institute and Faculty* on application and at any time thereafter that all of the persons in its management structure and any staff directly involved in *insurance mediation activities*:
- 6.4.1 have not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent

convictions under the Rehabilitation of Offenders Act 1974 or any national equivalent); and

- 6.4.2 have not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the *United Kingdom* or under the law of a country or territory outside the *United Kingdom*.

#### General

6.5 Each *Licensed Firm*, as a *licence* condition:

- 6.5.1 undertakes to be bound by and comply with all applicable provisions of this *Handbook*, including this part 6, at all times;
- 6.5.2 undertakes, if a *DPB firm*, and without prejudice to the generality of 6.5.1, only to undertake *regulated activities* to the extent permitted by parts 2 and 3 of this *Handbook*;
- 6.5.3 undertakes, if a *Licensed APF*, and without prejudice to the generality of 6.5.1, to comply with the requirements of part 4 of this *Handbook*;
- 6.5.4 undertakes to deal with the *Institute and Faculty* in an open and cooperative manner and inform the *Institute and Faculty* promptly about any matter relevant to the provisions of this *Handbook* or its status, obligations and duties as a *Licensed Firm*;
- 6.5.5 undertakes to carry out an appropriate review, at least once a year, in order to verify that it is complying fully with this *Handbook*;
- (i) For amplification: The annual compliance review consists of a number of parts. The first part covers a *Licensed Firm's* obligations under this *Handbook*, including, as applicable, the requirements of Parts 2, 3 and 4 and its ongoing eligibility to be a *Licensed Firm* and compliance with the terms and conditions set out in this part 6.
- (ii) For amplification: A key part of the review for a *DPB firm* is a check that the only *regulated activities* undertaken are those permitted by this *Handbook*. It should then be checked that the provision of these are both incidental to the *firm* and arise out of or are complementary to other *professional services* provided to the particular *client*. Because of the need to establish these points the focus of the review will be all services provided to a *client*, rather than the selection of a particular service to a particular *client*. The review should include checking that any such *regulated activities* were completed in accordance with the provisions of this *Handbook*, and in particular Part 6.
- (iii) For amplification: *Licensed APFs* should undertake equivalent checks, ensuring in particular that they continue to comply with Part 4 of this *Handbook*.
- (iv) For amplification: *Client* files should be selected and reviewed to ensure appropriate compliance by the *Licensed Firm* with the requirements of this *Handbook*.
- 6.5.6 undertakes to complete and provide to the *Institute and Faculty* such annual or other returns as the *Institute and Faculty* may reasonably require;
- 6.5.7 accepts and agrees that none of the *Institute and Faculty*, its officers, staff, members of its *Council* or Committees or Tribunals or any agent of the *Institute and Faculty*, can be held liable in damages for anything done or not done in connection or in dealing with any of the functions connected with the granting of a *licence* or the carrying out of any of the powers, duties or obligations of

the *Institute and Faculty* under this *Handbook* or enforcing the terms and conditions of a *licence* or the monitoring of compliance with those terms and conditions in any respect, (or purportedly in connection or in dealing with any such matters), unless the act or omission is shown to have been in bad faith;

- 6.5.8 accepts and agrees that the *Institute and Faculty* or its agents may make enquiries of or about the *firm* as it deems necessary;
- 6.5.9 accepts and agrees that the *Institute and Faculty* may disclose information about the *firm* as set out in paragraph 6.7.13;
- 6.5.10 shall appoint a *principal* as a *contact partner* to be the person who:
- (i) will be responsible for ensuring the *firm* has procedures and practices to enable it to comply with this *Handbook*;
  - (ii) will correspond with the *Institute and Faculty* in relation to activities which are governed by these terms and conditions;
  - (iii) will give an annual declaration in the form from time to time determined by the *Institute and Faculty* that the *firm* continues to fulfil the criteria in paragraphs 6.3 and (if applicable) 6.4 and has complied with its responsibilities under this *Handbook*. Such declaration may if the *Institute and Faculty* so requires include undertakings and acknowledgements in the terms of paragraph 6.5 or such other additional or revised terms as the *Institute and Faculty* determines;
  - (iv) will supply the *Institute and Faculty* or its agents with information from time to time as required; and
  - (v) will ensure that an annual compliance review as required under this *Handbook* is undertaken;
- 6.5.11 undertakes not to carry out *insurance mediation activities* unless specifically permitted to do so by the *Institute and Faculty* and the *firm* is registered on the *Insurance Intermediaries Register*;
- 6.5.12 if a *DPB firm licensed to carry on insurance mediation activities*, shall provide the following information to the *Institute and Faculty*:
- (i) the name or trading name of the *firm*;
  - (ii) the *registered address* of the *firm*;
  - (iii) if not a *sole practitioner* the name(s) of the individuals within the management of the *firm* who are responsible for the management of the business of the *firm*, so far as it relates to *insurance mediation activities*; and
  - (iv) whether the *firm* has established a *branch* or is providing *cross border services* in an *EEA State* under an *EEA Right* derived from the *Insurance Mediation Directive*.
- 6.5.13 shall inform the *Institute and Faculty* as soon as practicable, but in any event within ten *business days*:
- (i) if the *firm* is no longer complying with the *Pll requirements* set out at paragraphs 6.18 to 6.27 below;
  - (ii) of any other changes which might affect the *firm's* eligibility to be *licensed*;

- (iii) of any change to:
- the *firm's registered address*;
  - the name or trading names of the *firm*;
  - the addresses of the *firm's offices*;
  - the names and/or principal business address of any of the *firm's principals*;
  - the name of the *contact partner*; or
  - the information in paragraph 6.5.10 (iii) or (iv);
- (iv) if a *DPB firm licensed to carry on insurance mediation activities*, if it ceases to carry on such activities;
- (v) for *Licensed APFs*, any withdrawal, suspension, or restriction of FSA authorisation.

6.5.14 shall pay charges, as prescribed in Part 6 of this *Handbook*, as required by the *Institute and Faculty* within 30 days from the date of issue of that charge. Such charges may be levied at any time, including after the termination of the *licence*;

6.5.15 when required, shall respond to enquiries made by the *Institute and Faculty* or its agent (whether by writing, visiting the *firm's offices*, using a periodic return, or in any other way) about its application, its activities or its dealings with any of its *clients*, including the production of, and if required the supply of copies of, relevant records or documents in its possession or control;

6.5.16 shall subject the *firm* and all its *principals* to any monitoring or quality review specified by the *Institute and Faculty*;

6.5.17 shall inform the *Institute and Faculty* in writing if the *firm* cannot, or expects not to be able to, fulfil one or more of the obligations and responsibilities in this Part 6. This must be within ten *business days* of the situation arising. The notification must say what has happened and the action that the *firm* proposes to take to remedy the situation;

6.5.18 shall comply with the *Disciplinary Process* including any disciplinary measures imposed on the *firm* under the *Disciplinary Process*;

6.5.19 shall comply with the *PII requirements* set out in paragraphs 6.18 to 6.27 below; and

6.5.20 shall send any notice or any other document to be served on the *Institute and Faculty* to the *Institute and Faculty* at the address last notified to the *firm*;

#### Record keeping

6.5.21 A *DPB firm* shall ensure that it has appropriate records of work undertaken on behalf of *clients*.

6.5.22 For amplification: Records should evidence the work undertaken or expected to be undertaken, on behalf of *clients*. These records need to show the work carried out and any specific instructions from the *client*. The papers should document matters that are important in arriving at the conclusion or output of a particular assignment, and record the reasoning on all significant matters that require the exercise of judgement.

- 6.5.23 For amplification: In the case of any **advice** on or recommendation of a particular **investment** the records should evidence the steps required by paragraphs [3.54, 3.56, 3.61 and 3.62].
- 6.5.24 For amplification: Records should also assist in demonstrating that a **DPB firm** has only provided **regulated activities** to a **client** that arise out of or are complementary to other **professional services** provided to that **client** and have otherwise been carried on in accordance with part [2] of the handbook.
- 6.5.25 For amplification: The records do not have to be on paper but could instead be held on microfilm or on computers. Whatever method of storage is used, the **DPB firm** must also keep a mechanism for gaining access to those papers.
- 6.5.26 For amplification: It is likely that the **Institute and Faculty** would only be satisfied if the **DPB firm** kept its records relating to work performed under these requirements for at least 6 years. **DPB firms** should bear in mind that some records need to be retained for longer, such as records relating to tax.

### **Obligations, powers and rights of the *Institute and Faculty* under this contract**

#### Obligations

6.6 **The *Institute and Faculty* shall:**

- 6.6.1 **consider an application for a *licence* having regard to the information supplied under paragraphs 6.3 to 6.5 together with such other information as it considers necessary and;**
- (i) **grant the *licence*;**
  - (ii) **grant the *licence* subject to restrictions or conditions; or**
  - (iii) **reject the application;**
- 6.6.2 **save that the *Institute and Faculty* may, pending verification of any information or while it makes enquiries or for any other reason reasonably regarded by it to be relevant, postpone consideration of the application, provided that it advises the *firm* accordingly.**

#### Powers

6.7 **The *Institute and Faculty* shall have power to:**

- 6.7.1 **withdraw or suspend a *licence* under paragraphs 6.9 to 6.11;**
- 6.7.2 **accept at its discretion the voluntary surrender by a *firm* of its *licence*;**
- 6.7.3 **impose, cancel or vary restrictions or conditions it considers appropriate on a *Licensed Firm*, including on the extent or how a *Licensed Firm* provides *exempt regulated activities* or *non-mainstream regulated activities* (as the case may be);**
- 6.7.4 **grant, on the written application of the *firm*, where it considers it reasonable to do so and having regard to all of the relevant circumstances, including the public interest, the *firm* a dispensation from any of the requirements in paragraph 6.5 (except those in paragraph 6.5.12 and in paragraph 6.5.13(iii)) and, for not more than 90 days, to grant a dispensation from the requirements of paragraphs 6.3.5 and 6.3.6;**

- 6.7.5 extend, whether on the application of a *firm* or on its own initiative, the extent of the *exempt regulated activities* or *non-mainstream regulated activities* (as the case may be) a *firm* may carry on under its *licence*;
- 6.7.6 review the returns and reports made under this part of this *Handbook*, and investigate failures to make returns or reports;
- 6.7.7 make appropriate enquiries, as determined by the *Institute and Faculty*, into an applicant for a *licence*, a *Licensed Firm* or any of the *firm's* records concerning its *clients* (whether by writing, visiting a *firm's* offices, using a periodic return, or in any other way);
- 6.7.8 publish, in any manner it considers appropriate, information about a *firm's licence*;
- 6.7.9 make such changes to this *Handbook* as and when it deems necessary, which changes shall bind a *Licensed Firm*.
- 6.7.10 impose, at the *Institute and Faculty's* absolute discretion, any charge, as laid down in Part 6 of this *Handbook*, and as notified from time to time;
- 6.7.11 delegate the performance of any of its responsibilities to Committees, Tribunals, staff or other agents and may issue directions or guidance to such as it deems necessary or appropriate;
- 6.7.12 consider in the discharge of its functions any disciplinary findings, orders, pending investigations, regulatory matters or any other information concerning a *firm* or a *Licensed Firm* or any of its *principals*, shareholders or staff;
- 6.7.13 co-operate as it sees fit with, other *DPBs* or *APFs*, the *FSA*, HM Treasury and any other regulatory body in relation to the exercise by that other body of its functions or if otherwise required to do so by law. This shall include, but not be limited to, the right to share information about a *Licensed Firm*, with any such other regulatory body, as the *Institute and Faculty* shall see fit; and
- 6.7.14 undertake the performance of all other functions and responsibilities conferred on the *Institute and Faculty* by this *Handbook*.

#### **Effective date and term of the licence**

- 6.8 The *licence* will be effective from the date of issue by the *Institute and Faculty* and will remain in place until it is withdrawn by the *Institute and Faculty*, surrendered by the *Licensed Firm* with the consent of the *Institute and Faculty* or the *Licensed Firm* ceases to exist.

#### **Withdrawal or suspension of the licence and termination of the contract**

##### **Withdrawal or suspension of a licence by the Institute and Faculty**

- 6.9 The *Institute and Faculty* may withdraw a *licence*:
  - 6.9.1 if the *Licensed Firm* fails to satisfy the *Institute and Faculty* that it has complied and can continue to comply with its obligations under this contract, within thirty days of service of written notice from the *Institute and Faculty*; or
  - 6.9.2 without notice if the *FSA* makes a direction under section 328 of *FSMA 2000* in relation to a class of person which includes the *firm* (or in the case of a *Licensed APF*, would have included the *firm* if it had not been an *authorised person*) or in the case of a *DPB firm* an order against the *firm* under section 329 of *FSMA 2000* that the exemption from the general prohibition shall not apply to the *DPB firm*.

- 6.10 The *Institute and Faculty* may by serving written notice on the *Licensed Firm* suspend a *licence* (in respect of all or some *regulated activities*) with immediate effect (or from a specified date) and for such period or until further notice from the *Institute and Faculty* if:
- 6.10.1 it appears to the *Institute and Faculty* that the *Licensed Firm* has not complied with and/or is not likely to comply with its obligations under this contract; and
  - 6.10.2 the *Institute and Faculty* reasonably considers that the suspension is necessary in order to protect *clients* or potential *clients*, having regard to all of the circumstances, including the public interest.
- 6.11 The *Licensed Firm* may, by written notice served on the *Institute and Faculty* within five *business days* after the *Institute and Faculty* has given the *Licensed Firm* notice of a decision to suspend pursuant to paragraph 6.10, request a review of the decision on the ground that the suspension is not justified in the circumstances. Such review is to be held within 14 days of the receipt by the *Institute and Faculty* of the request for review and the *Licensed Firm* has a right to an oral hearing at this review. The *Institute and Faculty* may on review remove, vary or confirm the suspension as it considers appropriate.

Appeal by *firm* against *licence* decision

- 6.12 A *firm* or a *Licensed Firm* may by written notice received by the *Institute and Faculty* not later than:
- 6.12.1 10 *business days* after the *Institute and Faculty* has given the *firm* notice of a decision to refuse a *licence* application, grant a *licence* with restrictions, suspend or withdraw a *licence* under paragraphs 6.9 or 6.10 otherwise impose *licence* restrictions; or, if later
  - 6.12.2 five *business days* following a decision of the *Institute and Faculty* on a review under paragraph 6.11;

require the *Institute and Faculty* to refer such decision to the *DPB Tribunal*. The *DPB Tribunal* shall deal with the reference, to the extent possible and appropriate, in accordance with the procedure for the hearing of appeals set out at paragraphs 5.25.1 to 5.25.4 of this *Handbook*. Having considered the matter, the *DPB Tribunal* may affirm the decision, or substitute such other decision as it considers appropriate in all of the circumstances. The decision of the *DPB Tribunal* shall be notified in writing to the *DPB firm* and shall be final. The decision which is the subject of referral shall continue in effect pending determination by the *DPB Tribunal*.

Consequences of suspension of a *licence*

- 6.13 A *firm* whose *licence* is suspended shall not be a *Licensed Firm* as respects carrying on *regulated activities* for which the *licence* is withdrawn but shall (except as expressly directed by the *DPB Committee*) otherwise remain subject to all of the duties and obligations of a *Licensed Firm* as provided for in this *Handbook* and, for the avoidance of doubt, the *Institute and Faculty*, the *DPB Committee* and the *DPB Tribunal* shall retain all the powers and rights provided for in this *Handbook* as regards such a firm as would apply in relation to a *Licensed Firm*. These powers and rights include, but are not limited to, the provisions of this *Handbook* relating to investigation, reporting, monitoring, discipline, enforcement and the payment of levies or charges during or by reference to the period of such suspension. References in this *Handbook* to a *Licensed Firm* or the period of a *licence* shall be construed accordingly.

Surrender of a *licence* by a *Licensed Firm*

- 6.14 A *Licensed Firm* may surrender its *licence* by notice in writing to the *Institute and Faculty*. The surrender will be effective when notice is served by the *Institute and Faculty* consenting to the surrender. The *Institute and Faculty* may require information or undertakings from the *firm* before consenting to a surrender. A *DPB firm* must immediately surrender its *DPB licence* if it becomes an *authorised person* (without prejudice to any right of the *firm* to apply for an *APF licence*). If a *DPB firm* surrenders its *licence* then, without limitation of the powers of the *Institute and Faculty*, the *Institute and Faculty* may require the *DPB firm* to confirm that it is no longer carrying on any *regulated activity*.

Consequences of withdrawal or surrender of a *licence*

- 6.15 On withdrawal or surrender of a *licence* the *firm* has continuing obligations to deal with enquiries or complaints in relation to the period of the *licence*. The powers and rights of the *Institute and Faculty* under this *Handbook* shall continue to apply with respect to matters relating to the period of the *licence*. The *firm* remains under the duty to pay any levy or other charges raised in respect of the *firm's* period of *licence* and to comply with the *PII Requirements* set out at paragraphs 6.18 to 6.27.
- 6.16 If a *firm* is no longer *licensed*, disciplinary action may still be taken for any failure to comply with this *Handbook* during the period it was *licensed*, or failure to comply with any part of this *Handbook* that continues to be applicable.

Service of notices on a *firm*

- 6.17 Any notice or any other document to be served on the *firm* under this contract will be delivered by hand, or sent by fax or post.
- 6.17.1 If delivered by hand, it must be handed to a *principal* and service will take effect immediately.
- 6.17.2 If sent by fax, it must be sent to the latest fax number given by the *firm* to the *Institute and Faculty* and service will take effect immediately.
- 6.17.3 If sent by post, it must be sent by first class recorded delivery to the latest *registered address* given by the *firm* and service will be deemed to be effected the *business day* following the date of posting. Evidence of posting shall be sufficient to establish effective service.

*Professional Indemnity Insurance (PII) Requirements*

Scope of policy cover

- 6.18 *Licensed Firms* shall effect and maintain *Professional Indemnity Insurance* in accordance with the following paragraphs.

### Sum Insured

- 6.19 All *Licensed Firms* shall effect and maintain *Professional Indemnity Insurance* so that the total annual *Sum Insured*, both in aggregate and per claim, taking into account the amount of the *Aggregate Excess* and the *Per Claim Excess*, is (subject to paragraphs 6.20 and 6.21) not less than the lower of the following two figures:
- 6.19.1 £5,000,000; or
- 6.19.2 £250,000 per *Relevant Person* in the *Licensed Firm*.
- 6.20 While the minimum requirements for *Licensed Firms* are set out in paragraph 6.19 above, a *firm* is strongly recommended to consider (and discuss with its broker) what would be an appropriate level and scope of cover in the light of its practice and *clients*. In particular, where a *Licensed Firm* advises *clients* with significant assets (e.g. a large pension scheme or insurance company) it will almost invariably be appropriate to have in place a policy where the total *Sum Insured* far exceeds minimum levels. It should also consider whether the scope of cover should include, for example, defence costs, loss or damage to documents, liability for fraudulent acts of employees, or other heads of loss. Without prejudice to this general position, *Licensed Firms* carrying on *insurance mediation activities* must additionally comply with the requirements set out in paragraph 6.21.
- 6.21 Subject to paragraphs 6.22 and 6.23, *Licensed firms* which carry on *insurance mediation activities* must additionally ensure that they maintain *Professional Indemnity Insurance* with territorial coverage extending to the whole of the European Community, such that the total annual *Sum Insured*, taking into account the amount of the *Aggregate Excess* and the *Per Claim Excess*, is at least:-
- 6.21.1 1,120,200 Euros for a single claim; and
- 6.21.2 1,680,300 Euros in aggregate;
- or, in each case, the sterling equivalent, calculated at the exchange rate prevailing at the time the policy is effected and on each extension and/or renewal.
- 6.22 The requirements set out in paragraph 6.21 do not apply to *Licensed Firms* which only carry on *insurance mediation activities* which would be excluded for the purposes of Article 72C of the *Regulated Activities Order* were it not for the fact that the relevant information is provided to insurers as well as, or instead of, policyholders.
- 6.23 The requirements set out in paragraph 6.21 only apply in relation to policies of insurance commenced, extended or renewed on or after 1 March 2009, with effect from the date of such commencement, extension or renewal.

### Aggregate Excess levels

- 6.24 A *Licensed Firm* may effect and maintain *Professional Indemnity Insurance* which contains a provision in its policy for an *Aggregate Excess*, provided that the *Aggregate Excess* is no greater annually than the lower of the following two figures:
- 6.24.1 15% of the annual *Sum Insured*; or
- 6.24.2 £37,500 per *Relevant Person*.

### Per Claim Excess levels

- 6.25 A *Licensed Firm* may effect and maintain *Professional Indemnity Insurance* which contains a provision in its policy for a *Per Claim Excess*, provided that the *Per Claim Excess* is no greater than the lower of the following two figures:
- 6.25.1 5% of the annual *Sum Insured*; or

6.25.2 £12,500 per Relevant Person.

6.26 Depending on the terms of the *Professional Indemnity Insurance*, the *Per Claim Excess* may erode the *Aggregate Excess*, or it may be an amount additional to the *Aggregate Excess*, which the *Licensed Firm* is required to bear.

Retroactive cover

6.27 The policy shall include retroactive cover for liabilities arising from work carried out in the previous five years except in respect of claims or circumstances which may give rise to a claim which are known at the inception of the policy.

Run-off cover

Reorganisation

6.28 In the event of a merger, amalgamation, division, incorporation or any other reorganisation of a *Licensed Firm*, it is the responsibility of the *Licensed Firm(s)* affected to ensure that cover is maintained in respect of any potential run-off liabilities arising from activities of the *firm* while it held a *licence* under this Part 6 of this *Handbook* or a certificate issued by the *Institute and Faculty* under its Investment Business Rules for a period of at least two years following such merger, amalgamation, division, incorporation or reorganisation. The terms and extent of this cover must, at a minimum, be equivalent to that which had previously been held by the *Licensed Firm(s)* affected prior to the merger, amalgamation, division, incorporation or reorganisation or, if less, the requirements for a continuing *Licensed Firm* under paragraphs 6.18 to 6.27.

Surrender or cessation of *Licence*

6.29 A *Licensed Firm* which surrenders, or otherwise ceases to hold, its *licence* must ensure that it maintains cover in respect of any potential run-off liabilities arising from activities of the *firm* while it held a *licence* under this Part 6 of this *Handbook* or a certificate issued by the *Institute and Faculty* under its Investment Business Rules for a period of at least two years following such cessation. The terms and extent of this cover must, at a minimum, be equivalent to that which had previously been held by the *Licensed Firm* prior to the *Licensed Firm* ceasing to hold its *licence* or, if less, the requirements for a continuing *Licensed Firm* under paragraphs 6.18 to 6.27.

Cessation of practice

6.30 A *Licensed Firm* which ceases to practise must ensure that it maintains cover in respect of any potential run-off liabilities arising from activities of the *firm* while it held a *licence* under this Part 6 of this *Handbook* or a certificate issued by the *Institute and Faculty* under its Investment Business Rules for a period of at least two years following such cessation. The terms and extent of this cover must, at a minimum, be equivalent to that which had previously been held by the *Licensed Firm* prior to the cessation of practice of the *Licensed Firm* or, if less, the requirements for a continuing *Licensed Firm* under paragraphs 6.18 to 6.27.

Contracts (Rights of Third Parties) Act

6.31 With the exception of paragraph 6.5.7, none of these terms and conditions are enforceable by a person other than the *Institute and Faculty* and the *firm*. Section 2(1) of the Contracts (Rights of Third Parties) Act 1999 will not apply to these terms and conditions.

### Passporting Under the Insurance Mediation Directive

- 6.32 For amplification: **Licensed Firms** which are **UK firms** and registered with the **FSA** to conduct **insurance mediation activities** are entitled to apply under the **Insurance Mediation Directive** for a passport entitling them to establish a **branch** or provide services relating to **insurance mediation activities** in another **EEA state**.
- 6.33 For amplification: "UK firm" means a **firm** whose head office is in the **United Kingdom**. A **sole practitioner** shall be treated as having his head office where his residence is situated and he carries on business. A corporate **firm** which has a registered office shall be treated as having its head office in the same country.
- 6.34 For amplification: The Professional Firms (PROF 7.2) and Supervision (SUP 13) Manuals of the **FSA** contain respectively a general description of passporting and the detailed application procedure. The text may be obtained by accessing the **FSA's** website.
- 6.35 For amplification: It is a criminal offence for a **DPB firm** to establish a **branch** or provide services relating to **insurance mediation activities** in another **EEA State** until it has completed the passporting process (paragraph 21 of part III of Schedule 3 to **FSMA 2000**).
- 6.36 For amplification: **Firms** with **UK** offices only should be particularly careful to ensure that they do not provide **insurance mediation activities** in another **EEA State** until they have given the **FSA** the necessary notice of their intention to do so.

### Charges for licences

- 6.37 A fee is payable on submission by a firm of an application for a **licence** or an extension to the **regulated activities** permitted by the **licence**. If the application is not accepted, the fee may be returned, less an administration charge.
- 6.38 An annual charge is payable each year by a **Licensed Firm**. The charge is payable with effect from the date a **licence** is granted in respect of the annual period until the following 31st March and then annually thereafter.
- 6.39 A special charge may be levied on a **Licensed Firm** where the **Institute and Faculty** has performed additional work in respect of the **Licensed Firm**. The circumstances in which such a charge may be levied include, but are not limited to:
- 6.39.1 obtaining information for or about the **Licensed Firm**;
  - 6.39.2 responding to enquiries or complaints regarding the **Licensed Firm**,
  - 6.39.3 reviewing the continuation of the **Licensed Firm's licence**;
  - 6.39.4 where the **Institute and Faculty's** agent has made a second or subsequent visit to a **Licensed Firm** as a result of an earlier visit; and
  - 6.39.5 responding to enquiries by the **Licensed Firm**.

The charge shall be assessed by the **Institute and Faculty** by reference to the cost to the **Institute and Faculty** (including its general overheads) of dealing with the matter. Alternatively, the **Institute and Faculty** may publish a scale of fixed fees for particular matters.

- 6.37 Such charges may be levied at any time, including after the termination of the **licence** provided in the case of the annual charge it does not relate to a year commencing after the date of termination of the **licence**.
- 6.38 Charges and levies are reviewed periodically by the **Institute and Faculty** and details of current charges and levies are available from the **Institute and Faculty**.

- 6.39 The fees, charges and levies above referred to may be assessed on a different basis or at different rates in the case of *Licensed APFs and DPB firms* and in the case of *firms* whose *licenses* cover different types of *regulated activities*.
- 6.40 For amplification: A *Licensed Firm* which is the subject of consideration under the *Disciplinary Process* may additionally require to meet an award of costs under paragraph 5.21.

## Part 7

### Interpretation and Definitions

#### Interpretation

Words and expressions have the meanings given by **FSMA 2000** and the Interpretation Act 1978 unless defined below. The definitions below take precedence.

In each part words importing the singular number includes the plural number and vice versa. Words importing any gender include all other genders. Headings do not affect the interpretation of this **Handbook**. The provisions of this **Handbook** and a **licence** will be governed by, and interpreted according to, the laws of England and Wales.

Any references to legislation, regulations, requirements, **bye-laws**, **rules**, the provisions of this **Handbook**, the **FSA Handbook** or other documents, will apply to any re-enactment, re-issue or amendment.

#### Definitions

In each part of this **Handbook**, unless the context otherwise requires, the following words and phrases have the meaning shown next to them whenever they appear in **bold** and *italics*.

2001 Order	Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227).
Actuarial APF	An <b>APF</b> which derives its status as Professional Firm (as defined in Glossary of definitions section of the <b>FSA Handbook</b> ) from the fact that an individual or individuals are subject to the rules of the <b>Institute and Faculty</b> .
Advice	any <b>regulated activity</b> defined as advice under Articles 53 to 55 of the <b>Regulated Activities Order</b> and <b>advising</b> should be construed accordingly.
Affiliate member	an <b>Institute and Faculty Member</b> who is an Affiliate pursuant to the <b>Charter</b> and <b>Bye-laws</b> .
Aggregate Excess	irrespective of the number of claims made which are covered under the <b>Professional Indemnity Insurance</b> , the amount which the <b>Licensed Firm</b> is required to bear overall, pursuant to the terms of the <b>Professional Indemnity Insurance</b> , before (subject to any additional <b>Per Claim Excess</b> ) it is entitled to be indemnified by the Insurer(s), as set out in paragraph 6.24 of part 6 of this <b>Handbook</b> .
APF licence	a <b>licence</b> granted under part 6 of this <b>Handbook</b> to a <b>firm</b> which is an <b>Authorised Professional Firm</b> .
Appointed representative	a person other than an <b>authorised person</b> in accordance with section 39 of <b>FSMA 2000</b> who: <ul style="list-style-type: none"> <li>(a) is a party to a contract with an <b>authorised person</b> (his <b>principal</b>) which: <ul style="list-style-type: none"> <li>(i) permits or requires him to carry on business of a description prescribed in the <b>Appointed Representatives Regulations</b>; and</li> <li>(ii) complies with such requirements as are prescribed in the</li> </ul> </li> </ul>

**Appointed Representatives Regulations;** and

(b) is someone for whose activities in carrying on the whole or part of that business his **principal** has accepted responsibility in writing;

and who is therefore an **exempt person** in relation to any **regulated activity** comprised in the carrying on of that business for which his **principal** has accepted responsibility.

Appointed Representatives Regulations	the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (SI 2001/1217).
Approved person	means a person approved by the <b>FSA</b> under section 59 of <b>FSMA 2000</b> (Approval for particular arrangements) for the performance of a controlled function.
Arranging	any <b>regulated activity</b> defined as arranging under Articles 25 to 36 of the <b>Regulated Activities Order</b> and <b>arrange, arrangements</b> and <b>arranged</b> should be construed accordingly.
Assisting	any <b>regulated activity</b> defined as assisting in the administration and performance of a <b>contract of insurance</b> under Articles 39A to 39C of the <b>Regulated Activities Order</b> .
Authorised Person	a person who is authorised by the <b>FSA</b> to undertake regulated activities under <b>FSMA 2000</b> as set out in the <b>FSA Handbook</b> .
Authorised professional firm or APF	a firm which satisfies the <b>FSA's</b> definition of an "Authorised Professional Firm" as set out in the Glossary of definitions section of the <b>FSA Handbook</b> .
Authorised person exemption	the exemption under Articles 22 or 29 of the <b>Regulated Activities Order</b> which relates to an activity that would otherwise constitute <b>dealing as agent</b> or <b>arranging</b> .
Branch	for the purposes of the Insurance Mediation Directive, any place of business, not being the principal place of business, which has no separate legal personality and which provides insurance mediation for which the insurance intermediary has been registered.
Business client	a <b>client</b> who is not an individual or a <b>client</b> who is an individual but who is either:  (a) acting in connection with the carrying on of a business of any kind by himself or by an undertaking of which he is, or would become as a result of the transaction to which the activity relates, a <b>controller</b> ; or  (b) acting in his capacity as a trustee of an occupational pension scheme.
Business day	a day when banks generally are open for business (excluding weekends) in England and Wales.
Bye-laws	the bye-laws of the <b>Institute and Faculty</b> .
Charter	the Royal Charter of 29 <sup>th</sup> July 1884 granted to the <b>Institute</b> , as varied from time to time, particularly the amendment agreed by The Queen in Council on 9 <sup>th</sup> June which changed the name of the body to the <b>Institute and Faculty of Actuaries</b> .

Client	<p>any <b>person</b> to whom a <b>firm</b> provides services.</p> <p>For an estate, the personal representative is regarded as the <b>client</b> for all purposes. For a trust or pension scheme, the trustees are regarded as the <b>clients</b>. However, a <b>client</b> does not include:</p> <ul style="list-style-type: none"> <li>(a) any shareholder in, or officer of, a corporate body which is a <b>client</b> unless he or she is, separately, a <b>client</b> of the <b>firm</b>;</li> <li>(b) where services are provided for an estate, trust or pension scheme, any <b>person</b> interested or potentially interested in that estate, trust or pension scheme unless that <b>person</b> is, separately, a <b>client</b> of the <b>firm</b></li> </ul>
Complainant	a person who submits a <b>Complaint</b> in relation to a <b>Licensed Firm</b> .
Complaint	for the purposes of Part 5 of this <b>Handbook</b> , a statement in writing addressed to the <b>DPB Manager</b> to the effect that a <b>Licensed Firm</b> has or may have breached one or more requirements of this <b>Handbook</b> .
Complaints Reviewer	the person appointed by the <b>Institute and Faculty</b> in that capacity under Part 5 of this <b>Handbook</b> being a lay person of appropriate experience and qualification.
Compliance route 1	has the meaning given to it in paragraph 1.2.1.
Compliance route 2	has the meaning given to it in paragraph 1.2.2.
Compliance route 3	has the meaning given to it in paragraph 1.2.3.
Conduct of Business Code	the provisions as set out (in relation to <b>DPB firms</b> ) in Part 3 and (in relation to <b>Licensed APFs</b> ) Part 4 of this <b>Handbook</b> .
Contact partner	the <b>principal</b> appointed by a <b>Licensed Firm</b> to carry out the functions in paragraph 6.5.10 of this <b>Handbook</b> .
Contracts for difference	<p>the investment, specified in article 85 of the Regulated Activities Order (Contracts for differences etc), which is in summary, rights under:</p> <ul style="list-style-type: none"> <li>(a) a contract for differences; or</li> <li>(b) any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in: <ul style="list-style-type: none"> <li>(i) the value or price of property of any description; or</li> <li>(ii) an index or other factor designated for that purpose in the contract ; or</li> </ul> </li> <li>(c) a derivative instrument for the transfer of credit risk to which article 85(3) of the Regulated Activities Order applies.</li> </ul>
Contract of insurance	(in accordance with Article 3(1) of the ( <b>Regulated Activities Order</b> ) any contract of insurance which is a <b>long-term insurance contract</b> or a <b>general insurance contract</b> . [but not including a funeral plan contract (as defined by Article 59) (or a contract that would be a funeral plan contract but for the exclusion in Article 60)].

Contracts of large risk	<p><b>contracts of insurance</b> covering risks within the following categories, in accordance with Annex A of the <b>First Non-Life Directive</b>:</p> <ul style="list-style-type: none"> <li>(a) railway rolling stock, aircraft, ships (sea, lake, river and canal vessels), goods in transit, aircraft liability and liability of ships (sea, lake, river and canal vessels);</li> <li>(b) credit and suretyship, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;</li> <li>(c) land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following three criteria: <ul style="list-style-type: none"> <li>(i) balance sheet total: € 6.2 million;</li> <li>(ii) net turnover: €12.8 million; or</li> <li>(iii) average number of employees during the financial year: 250.</li> </ul> </li> </ul>
Contractually Based Investment	a contractually based investment as defined in Article 3(1) of the <b>Regulated Activities Order</b>
Controller	a controller as defined in section 422 of <b>FSMA 2000</b> .
Council	the Council of the <b>Institute and Faculty of Actuaries</b> referred to in Clause 4 of the <b>Charter</b> .
Cross border services	services provided within an <b>EEA state</b> other than the <b>United Kingdom</b> under the freedom to provide services.
Dealing as Agent	any <b>regulated activity</b> defined as dealing as agent under Articles 21 to 24 of the <b>Regulated Activities Order</b> .
Designated Professional Body or DPB	a body designated as such by HM Treasury under section 326 of <b>FSMA 2000</b> for the purposes of Part XX of <b>FSMA 2000</b> .
Disciplinary Process	the disciplinary process set out in Part 5 of this <b>Handbook</b> .
Distance Marketing Directive	the Directive of the Council and Parliament of 23 September 2002 on distance marketing of consumer financial services (2002/65/EC).
DPB Committee	the DPB Committee appointed under the <b>Bye-laws</b> of the <b>Institute and Faculty</b> .
DPB firm	a <b>Licensed Firm</b> which is not an <b>authorised person</b> .
DPB licence	a <b>licence</b> granted under Part 6 of this <b>Handbook</b> to a <b>firm</b> which is not an <b>authorised person</b> .
DPB Manager	the person appointed as such by the <b>Institute and Faculty</b> .
DPB Tribunal	a panel of three or five members selected for the purpose by the Chairman of the Appeals Tribunal at his discretion from the members of the Appeals Tribunal appointed under the <b>Institute and</b>

**Faculty's** disciplinary scheme. The Chairman of the Appeals Tribunal shall select the Chairman of such Panel. The Panel shall include at least one Fellow of the **Institute and Faculty** and one lay person.

Durable medium as defined by the **FSA Handbook** including, according to the context:

- (1) media in a form which enables the recipient to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored; and
- (2) floppy disks, CD-ROMs, DVD's and hard drives of personal computers on which electronic mail is stored.

**Durable medium** does not include Internet sites unless such a site meets the requirements of (1) above.

EEA Rights (in accordance with paragraph 7 of Schedule 3 to **FSMA 2000**) the entitlement of a **person** to establish a **branch** or provide services in an **EEA State** other than that in which he has his head office:

- (a) in accordance with the Treaty establishing the European Community as applied in the area established by the agreement on the European Economic Area signed at Oporto on 2 May 1992 and which consists of the **EEA States**;
- (b) subject to the conditions of the **Insurance Mediation Directive**.

EEA State (as defined in paragraph 8 of Schedule 3 to **FSMA 2000**) a State which is a contracting party to the agreement on the European Economic Area (EEA) signed at Oporto on 2 May 1992, as it has effect for the time being; as at 1 January 2001, the following are EEA States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the **United Kingdom**.

Exempt exempt from the general prohibition imposed by Section 19 of **FSMA 2000** which states that no **person** may carry on a **regulated activity** in the **United Kingdom**, or purport to do so.

Exempt person a **person** who is **exempt** under sections 38, 39 or 285 of **FSMA 2000**.

Exempt regulated activities as defined in the **FSA Handbook**, the **regulated activities** which a **DPB firm** may be entitled to undertake under Part XX of **FSMA 2000** subject to the restrictions and conditions imposed under this **Handbook**.

Financial Promotion communicating or causing to be communicated an invitation or inducement to engage in investment activity as defined in section 21 of the **FSMA 2000**.

Financial Promotion Order the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529).

Financial Services (Distance Marketing) Regulations 2004	the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095).
Firm	a firm, including: <ul style="list-style-type: none"> <li>(a) a partnership;</li> <li>(b) a limited liability partnership;</li> <li>(c) a <b>sole practice</b>; or</li> <li>(d) a corporate body</li> </ul> <p>which carries on professional actuarial work.</p>
First Non-Life Directive	the Council Directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life insurance (No 73/239/EEC).
FSA	the Financial Services Authority.
FSA Handbook	the handbook of rules and guidance published by the <b>FSA</b> .
FSA Register	the public record, as required by section 347 of <b>FSMA 2000</b> .
FSMA 2000	the Financial Services and Markets Act 2000.
Future	the investment, specified in article 84 of the <b>Regulated Activities Order</b> , which is in summary: rights under a contract for the sale of a commodity or property of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made.
General insurance contract	(in accordance with Article 3(1) of the <b>Regulated Activities Order</b> ) any <b>contract of insurance</b> within Part 1 of Schedule 1 to the <b>Regulated Activities Order</b> .
Generic advice	professional <b>advice</b> which is not a <b>regulated activity</b> because it does not relate to a particular <b>investment</b> , but relates to an <b>investment</b> type.
Handbook	all or any part of the <b>Institute and Faculty's</b> handbook for <b>Designated Professional Body Firms</b> and <b>Licensed APFs</b> as from time to time amended.
Qualifying contract of Insurance	a qualifying contract of insurance as defined in Article 3(1) of the <b>Regulated Activities Order</b> .
Independent	In relation to financial <b>advice</b> , <b>advice</b> which is provided on a full range of financial products to a <b>Client</b> in return for a fee.
Institute and Faculty	the Institute and Faculty of Actuaries.
Institute and Faculty Member	a member of the <b>Institute and Faculty</b> including an <b>affiliate member</b> pursuant to the <b>Charter</b> and <b>Bye-laws</b> .
Insurance Intermediaries Register	the record maintained by the <b>FSA</b> under section 347 of the <b>FSMA 2000</b> (the public record) by virtue of Article 93 of the <b>Regulated Activities Order</b> .

Insurance mediation activities	<p>any of the following <b>regulated activities</b>, which is carried on in relation to a <b>contract of insurance</b>:</p> <ul style="list-style-type: none"><li>(a) dealing in investments as agent (Article 21 of the <b>Regulated Activities Order</b>);</li><li>(b) <b>arranging</b> (bringing about) deals in <b>investments</b> (Article 25(1) of the <b>Regulated Activities Order</b>);</li><li>(c) making <b>arrangements</b> with a view to transactions in <b>investments</b> (Article 25(2) of the <b>Regulated Activities Order</b>);</li><li>(d) assisting in the administration and performance of a <b>contract of insurance</b> (Article 39A of the <b>Regulated Activities Order</b>);</li><li>(e) <b>advising</b> on <b>investments</b> (Article 53 of the <b>Regulated Activities Order</b>);</li><li>(f) agreeing to carry on a <b>regulated activity</b> outlined in (a) to (e) above (Article 64 of the <b>Regulated Activities Order</b>).</li></ul>
Insurance Mediation Directive	the European Parliament and Council Directive of 30 September 2002 on Insurance Mediation (No. 2002/92/EC).
Insurance Undertaking	an undertaking, whether or not an <b>authorised person</b> , which carries on the business of effecting or carrying out <b>contracts of insurance</b> .
Investment	an asset, right or interest falling within Part III (Specified Investments) of the <b>Regulated Activities Order</b> but excluding a deposit.
Large Risk	an insurance contract of the type defined by Annex A of the <b>First Non-Life Directive</b> .
Licence	a licence granted under Part 6 of this <b>Handbook</b> and <b>licensed</b> and, <b>licensing</b> should be construed accordingly.
Licensed APF	An <b>Authorised Professional Firm</b> which is licensed under Part 6 of this <b>Handbook</b> .
Licensed Firm	a <b>firm</b> licensed under Part 6 of this <b>Handbook</b> whether, unless the relevant provision or the context otherwise requires, as a <b>DPB firm</b> or an <b>APF firm</b> .
Long-term insurance contract	(in accordance with Article 3(1) of the <b>Regulated Activities Order</b> ), any <b>contract of insurance</b> within Part II of Schedule 1 to the <b>Regulated Activities Order</b> .

Long-term care insurance contract

a **long-term insurance contract** which:

- (a) (i) provides (or would at the policyholder's option provide) benefits for the policyholder which are payable or provided in the event that the policyholder's mental or physical health has deteriorated to the extent that he is incapacitated so that he is unable to live independently without assistance, and is not expected to recover to the extent that he can live independently without assistance; and
  - (ii) those benefits are payable or provided in respect of:
    - (A) services;
    - (B) accommodation; or
    - (C) goods;which are necessary or desirable for the continuing care of the policyholder because of the incapacity referred to in (i); and
  - (ii) the benefits under the contract are capable of being paid periodically for all or part of the period during which the policyholder is unable to live independently without assistance;
- or
- (b) is sold or held out as providing benefits for the policyholder as set out in (a).

Mainstream regulated activities

any **regulated activities** which do not constitute **non-mainstream regulated activities**.

Market making

where a **firm** holds itself out as willing, as **principal**, to buy, sell or subscribe for **investments** of the kind to which the transaction relates at prices determined by the **firm** generally and continuously rather than in respect of each particular transaction.

Markets in Financial Instruments Directive (MiFID)

the European Parliament and Council Directive of 21 April 2004 on Financial Markets and Instruments (No. 2004/39/EC).

Money Laundering Regulations 2007

the Money Laundering Regulations 2007 (SI 2007/2157).

Non-investment insurance contract

a **contract of insurance** which is a **general insurance contract** or a **pure protection contract** but which is not a **long term care insurance contract**.

Non-mainstream regulated activities

as defined in the FSA Handbook, regulated action undertaken by an **APF** in relation to which the conditions in PROF 5.2.1 R of the **FSA**

**Handbook** are satisfied.

Non-real time financial promotion	in accordance with article 7(2) of the <b>Financial Promotion Order</b> a <b>financial promotion</b> that is not a <b>real time financial promotion</b>
Option	<p>the investment, specified in article 83 of the <b>Regulated Activities Order</b>, which is an option to acquire or dispose of:</p> <ul style="list-style-type: none"> <li>(a) a designated investment (other than an option or one to which (d) or (e) applies); or</li> <li>(b) currency of the <b>United Kingdom</b> or of any other country or territory; or</li> <li>(c) palladium, platinum, gold or silver; or</li> <li>(d) a commodity to which article 83(2) of the <b>Regulated Activities Order</b> applies; or</li> <li>(e) a financial instrument in paragraph 10 of Section C of Annex 1 to MiFID to which article 83(3) of the <b>Regulated Activities Order</b> applies; or</li> <li>(f) an option to acquire or dispose of an option specified in (a), (b), (c), (d) or (e).</li> </ul>
Packaged Product	<ul style="list-style-type: none"> <li>(a) a life policy;</li> <li>(b) a unit in a regulated collective investment scheme;</li> <li>(c) an interest in an investment trust savings scheme;</li> <li>(d) a stakeholder pension scheme;</li> <li>(e) a <b>personal pension scheme</b>;</li> </ul> <p>whether or not (in the case of (a), (b) or (c)) held within a PEP, an ISA or a CTF and whether or not the packaged product is also a stakeholder product (as those terms are defined in the <b>FSA Handbook</b>).</p>
Pension policy	a contract under which a right to benefits results from contributions made to an occupational pension scheme or to a <b>personal pension scheme</b> , where the contributions are paid to a long-term insurer.
Per Claim Excess	the amount per individual claim which the <b>Licensed Firm</b> is required to bear pursuant to the terms of the <b>Professional Indemnity Insurance</b> before it is entitled to be indemnified by the Insurer(s), as set out in paragraphs 6.25 and 6.26 of Part 6 of this <b>Handbook</b> .
Person	(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or incorporate (that is, a natural person, a legal person, and, for example, a partnership).
Personal pension scheme	<p>a scheme of arrangement which is not an occupational pension scheme or stakeholder pension scheme and which is comprised in one or more instruments or agreements having or capable of having effect so as to provide benefits to or in respect of people:</p> <ul style="list-style-type: none"> <li>(a) on retirement; or</li> </ul>

- (b) on having reached a particular age; or
  - (c) on termination of service in an employment.
- PII Requirements the professional indemnity insurance requirements set out in Part 6 of this **Handbook**.
- Practitioner member a member of a **Designated Professional Body** who is entitled to practice the profession in question and, in practising it, is subject to the rules of that **Designated Professional Body**.
- Principal As the context requires:
- (a) a **sole practitioner**, a partner of a partnership, a member of a limited liability partnership, or a director of a company; or
  - (b) where used in the context of **appointed representatives**, the **authorised person** who is party to a contract with the **appointed representative** and who is responsible for the acts of the **appointed representative** resulting in them being exempt under section 39 of **FSMA 2000** (Exemption of appointed representatives).
- Professional dealer
- (a) an investment firm or credit institution which is providing or performing investment services and activities on a professional basis;
  - (b) a management company which is providing, in accordance with Article 5(3) of the **UCITS** directive, the investment service specified in paragraph 4 or 5 of Section A, or the ancillary service specified in paragraph 1 of Section B, of Annex I to the Markets in Financial Instruments Directive, or
  - (c) a market operator which is providing the investment service specified in paragraph 8 of Section A of Annex I to the Markets in Financial Instruments Directive.
- Professional Firm a **person** which is:
- (a) an individual who is entitled to practise a profession regulated by a **designated professional body** and, in practising it, is subject to its rules, whether or not he is a member of that body; or
  - (b) a **person** (not being an individual) which is controlled and managed by one or more such individuals.
- Professional services all services provided by a **firm**.
- Professional Indemnity Insurance a contract or contracts of insurance whereby the Insurer(s) will indemnify the **Licensed Firm** in respect of, as a minimum, the **Licensed Firm's** liability to third parties for breach of duty (arising by contract or as a matter of general law) to exercise reasonable care and skill in the conduct of its professional activities.
- Pure Protection Contract a **long-term insurance contract** in respect of which the following conditions are met:
- (a) the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or

	infirmity;
	(b) the contract has no surrender value, or the consideration consists of a single <b>premium</b> and the surrender value does not exceed that <b>premium</b> ; and
	(c) the contract makes no provision for its conversion or extension in a manner which would result in it ceasing to comply with any of (a) or (b).
Qualifying Contract of Insurance	a qualifying contract of insurance as defined in Article 3(1) of the <b>Regulated Activities Order</b> .
Qualifying interest in land	(in accordance with article 63B(4)(a) of the <b>Regulated Activities Order</b> ) land (other than timeshare accommodation) in the <b>UK</b> which is:  (a) in relation to land in England and Wales, an estate in fee simple absolute or a term of years absolute whether subsisting at law or in equity; or  (b) in relation to land in Scotland, the interest of an owner in land or the tenant's right over or interest in a property subject to a lease; or  (c) in relation to land in Northern Ireland, any freehold estate or any leasehold estate whether subsisting at law or in equity.
Real time financial promotion	in accordance with article 7(1) of the <b>Financial Promotion Order</b> , a <b>financial promotion</b> made in the course of a personal visit, telephone conversation or other interactive dialogue.
Registered Address	the address of the <b>firm</b> registered with the <b>Institute and Faculty</b> as the principal place of business.
Regulated Activities Order	the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI2001/544).
Regulated activity	an activity that falls within the Part II (Specified Activities) of the <b>Regulated Activities Order</b> , including <b>insurance mediation activities</b> .
Regulated home purchase plan	(in accordance with article 63F(3) of the <b>Regulated Activities Order</b> ) an arrangement comprised in one or more instruments or agreements which meets the following conditions at the time it is entered into:  (a) the arrangement is one under which a person (the 'home purchase provider') buys a <b>qualifying interest in land</b> or an undivided share of a <b>qualifying interest in land</b> ;  (b) where an undivided share of a <b>qualifying interest in land</b> is bought, the interest is held on trust for the home purchase provider and the individual or trustees in (c) as beneficial tenants in common;  (c) the arrangement provides for the obligation of an individual or trustees (the home purchaser) to buy the interest bought by the home purchase provider during the course of or at the end of a specified period; and

- (d) the home purchaser (if he is an individual) or an individual who is a beneficiary of the trust (if the home purchaser is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling during that period and intends to do so.

In this definition "related person" means:

- (a) that person's spouse or civil partner;
- (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
- (c) that person's parent, brother, sister, child, grandparent or grandchild.

Regulated home reversion plan

an arrangement comprised in one or more instruments or agreements which meets the following conditions at the time it is entered into:

- (a) the arrangement is one under which a person (the reversion provider) buys all or part of a **qualifying interest in land** from an individual or trustees (the reversion occupier);
- (b) the reversion occupier (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion occupier is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling and intends to do so; and
- (c) the arrangement specifies that the entitlement to occupy will end on the occurrence of one or more of:
  - (i) a person in (b) becoming a resident of a care home;
  - (ii) a person in (b) dying; or
  - (iii) the end of a specified period of at least twenty years from the date the reversion occupier entered into the arrangement.

In this definition "related person" means:

- (a) that person's spouse or civil partner;
- (b) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
- (c) that person's parent, brother, sister, child, grandparent or grandchild.

Regulated mortgage contract

a contract which

- (a) (in accordance with article 61(3) of the **Regulated Activities Order**) at the time it is entered into, meets the following conditions:
  - (i) a lender provides credit to an individual or to trustees (the 'borrower'); and

	<p>(ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the <b>United Kingdom</b>, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:</p> <p>(A) that person's spouse or civil partner; or</p> <p>(B) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or</p> <p>(C) that person's parent, brother, sister, child, grandparent or grandchild; and</p>
	<p>(b) is not a <b>regulated home purchase plan</b>.</p>
Reinsurance contract	a <b>contract of insurance</b> covering all or part of a risk to which a person is exposed under a <b>contract of insurance</b> .
Relevant Person	a relevant person is, in relation to a <b>firm</b> , an individual who is a <b>sole practitioner</b> , partner, (or in the case of a limited liability partnership only) member, director, officer or employee of that <b>firm</b> and who is entered on the <b>Institute and Faculty's</b> roll as a Fellow, Affiliate or Associate of the <b>Institute and Faculty</b> .
Relevant professional services	a <b>firm's</b> core <b>professional services</b> .
Resolution letter	a letter from the <b>Licensed Firm</b> expressing the view that the <b>Complaint</b> against it has been resolved.
Respondent firm	the <b>Licensed Firm</b> against whom a <b>Complaint</b> has been submitted.
Retail consumer	in accordance with the meaning of 'consumer' in article 2(d) of the <b>Distance Marketing Directive</b> an individual who is acting for purposes which are outside his trade, business or profession.
Rights or interests in life policies	(in accordance with the definition of 'qualifying contract of insurance' in article 3(1) of the <b>Regulated Activities Order</b> ) a <b>long-term insurance contract</b> (other than a <b>reinsurance contract</b> and a <b>pure protection contract</b> ); and
	<p>(a) a <b>long-term care insurance contract</b>; and</p> <p>(b) (in COBS) a <b>pension policy</b>;</p>
Security	an <b>investment</b> of the kind specified by any of Articles 76 to 82 or, so far as relevant to any such <b>investment</b> article 89 of the Regulated Activities Order.
Sole practitioner	an <b>Institute and Faculty Member</b> which is the sole <b>principal</b> of a <b>firm</b> , and <b>sole practice</b> shall be construed accordingly.
Sum Insured	the level of cover obtained by a <b>Licensed Firm</b> , as set out in

paragraphs 6.19 to 6.23 of Part 6 of this **Handbook**.

Undertakings in  
Collective Investments in  
Transferrable Securities  
(UCITS)

The European Parliament and Council Directives of on collective  
investments as amended.

United Kingdom or UK

The United Kingdom of Great Britain and Northern Ireland.

## Annex 2.1

### Non Regulated Activities

The purpose of this annex is to provide **DPB firms** with guidance as to activities which the **Institute and Faculty** does not consider to be **regulated activities** (that is, non-regulated activities). It should, however, be noted that the listed activities may often be conducted in conjunction with **regulated activities**.

In addition, it is extremely important for **DPB firms** to note that this annex represents the **Institute and Faculty's** understanding of what it believes to be non-regulated activities. It is not, and could not be, authoritative as to the legal position and **DPB firms** are advised to contact the **FSA** in case of doubt, and if necessary to seek their own legal advice.

It is the responsibility of a **DPB firm** to satisfy itself whether any particular activity is a **regulated activity**.

In general terms, the **Institute and Faculty** considers that any activities which are only **generic advice** or use the **authorised person exemption** are not **regulated activities**. However, it should be noted that the requirements on trustees under section 36 of the Pensions Act 1995 to seek investment advice would generally exclude the possibility of using the **authorised person exemption** for trustees of pension schemes unless the **authorised person** provides the written advice required by that section. Also, the **authorised person exemption** cannot be used in the case of insurance policies.

Examples of activities which the **Institute and Faculty** considers to be non-regulated activity for **business clients** include the following:

- **generic advice to trustees on the method of funding an occupational pension scheme: self-invested; managed fund or insured;**
- **recommending an asset allocation, by asset class, appropriate to an occupational pension scheme's or insurance company's liabilities and objectives, and reviewing this allocation as circumstances change;**
- **examining, explaining and recommending strategic investment policies and methods of management, including the use (or not) of core holdings, indexed funds, active or passive management, specialist funds (including, but not limited to OEICS, authorised and unauthorised unit trusts), in-house and external management so long as no particular *investments* are mentioned;**
- **recommendations of and/or advice and assistance in selection of *investment* managers for segregated funds, including negotiation of terms of appointment;**
- **recommendations of and/or advice and assistance in selection of authorised custodians with a view to custody services being provided in the *UK* including negotiation of terms of appointment;**
- **advice relating to Statements of Investment Principles for *UK* approved occupational pension schemes;**
- **advice on the suitability in principle of using *options, warrants, futures, contracts for differences* so long as the advice does not relate to any particular derivative contract;**
- **monitoring the portfolio performance of assets, including the testing of *investment* strategies and the monitoring of individual managers; and advice to managers on relating fee to performance;**
- **advice on, and analysis of, portfolios by geographical area, by type of industry and by risk characteristic;**

- asset liability studies
- advice on reporting systems and presentation of results;
- drafting and providing *investment* related information on behalf of trustees to be supplied to *UK* approved occupational pension scheme members, including benefit illustrations;
- attending on, and advising, trustees or a board of directors as an independent expert in institutional *investment*, so long as no advice on particular *investments* is given;
- membership of, or consultancy to, advisory committees that meet regularly with internal or external fund managers, so long as no advice on particular *investments* is given;
- advice given to an employer on comparisons between occupational pension schemes, stakeholder pension schemes and personal pension plans in general terms, so long as no advice is given about a stakeholder pension scheme or personal pension plan from a particular provider;
- advice on the design of a defined contribution pension scheme (contributions, retirement, *investment* options in generic terms etc);
- a *DPB firm* or *principals* or employees of the *DPB firm* acting as a trustee of a trust which includes or may include *investments* so long as:
  - (a) the *DPB firm* does not hold itself out as providing an *investment* management service and does not receive any remuneration for managing the trust assets in addition to any remuneration received as trustee. A *DPB firm* is not regarded as receiving additional remuneration merely because its remuneration is calculated by reference to time spent; and
  - (b) if the assets of the trust are held for the purposes of an occupational pension scheme, all routine or day to day decisions, relating to the management of the *investments*, are taken by an *authorised person*.
- advice that a *person* should take out insurance of a particular class, e.g. Directors & Officers or warranty insurance, without identifying any particular insurer.

Examples of activities which the *Institute and Faculty* considers to be non-regulated activity for *business clients* where the *investments* are or will be acquired by individuals include the following:

- advice to an employer or an individual, including making presentations to employees, on comparisons between occupational pension schemes, stakeholder pension schemes and personal pension plans in general terms so long as no particular product or product provider is mentioned (see article 17 of the *Financial Promotion Order*);
- advice to an employer on designing the features (e.g. contribution scale, investment funds to make available in generic terms) of a group personal pension or stakeholder pension scheme to which it will contribute, and drafting information to be provided to employees by the employer on these aspects (but not information on a particular product);
- introducing employees seeking non-insurance *investments* to an *authorised person*, which is not in the same group as the *DPB firm* and where the *DPB firm* receives no pecuniary reward or advantage from the introduction, for the provision of *independent* advice. (Introducing employees to an *authorised*

***person for advice on insurance products may be regulated activity but is allowed under paragraph 2.22 of this Handbook)***

Examples of activities which the ***Institute and Faculty*** considers to be non-regulated activity for individuals include the following:

- any advice relating to an individual member's rights in an occupational pension scheme, including advice relating to additional voluntary contributions into such a scheme (but not a Free Standing AVC), transfers between occupational schemes and retirement options under such a scheme which does not involve *investment* (this is excluded under Article 89 of the *Regulated Activities Order*; and
- making a recommendation to an individual that they buy a particular type of *investment* (e.g. a personal pension), but making it clear that the individual will have to seek advice from an *authorised person* if the individual wishes to obtain *advice* on which particular product may be suitable (an example of *generic advice*).

## Annex 2.2

## List of Prohibited Activities

The list of prohibited **regulated activities** below is derived from the Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227) as amended.

Please note, however, that the **Institute and Faculty** has not adopted all of the exceptions to the prohibitions in that Order.

- 1 No **DPB firm** can carry on, or agree to carry on, the following types of **regulated activity**:
- **accepting deposits;**
  - **issuing electronic money;**
  - **effecting or carrying on contracts of insurance as *principal*;**
  - **market making in securities or qualifying contracts of insurance;**
  - **buying, selling, subscribing for or underwriting *securities* or *contractually based investments* as *principal* where the *firm*:**
    - (i) holds itself out as engaging in the business of buying such ***investments*** with a view to selling them;
    - (ii) holds itself out as engaging in the business of underwriting ***investments*** of the kind to which the transaction relates; or
    - (iii) regularly solicits members of the public with the purpose of inducing them, as ***principals*** or agents, to enter into transactions involving the buying, selling, subscribing or underwriting of ***investments*** and the transaction is entered into as a result of the ***DPB firm*** having solicited a member of the public in that manner.
  - **acquiring or disposing of contractually based investments as principal except with or through an *authorised person*;**
  - **establishing, operating or winding up a collective investment scheme;**
  - **acting as trustee of an authorised unit trust scheme;**
  - **acting as the depositary or sole director of an open-ended *investment* company or *investment* company with variable capital;**
  - **establishing, operating or, winding up a *personal pension scheme*;**
  - **establishing, operating or, winding up a stakeholder pension scheme;**
  - **providing basic *advice* to a *retail consumer* on a stakeholder product;**
  - **managing the underwriting capacity of a Lloyd's syndicate as a managing agent;**
  - ***advising* a *person* to become a member of a particular Lloyd's syndicate unless such *advice* is an endorsement of the *advice* of an *authorised person*;**
  - **entering as provider into a funeral plan contract;**

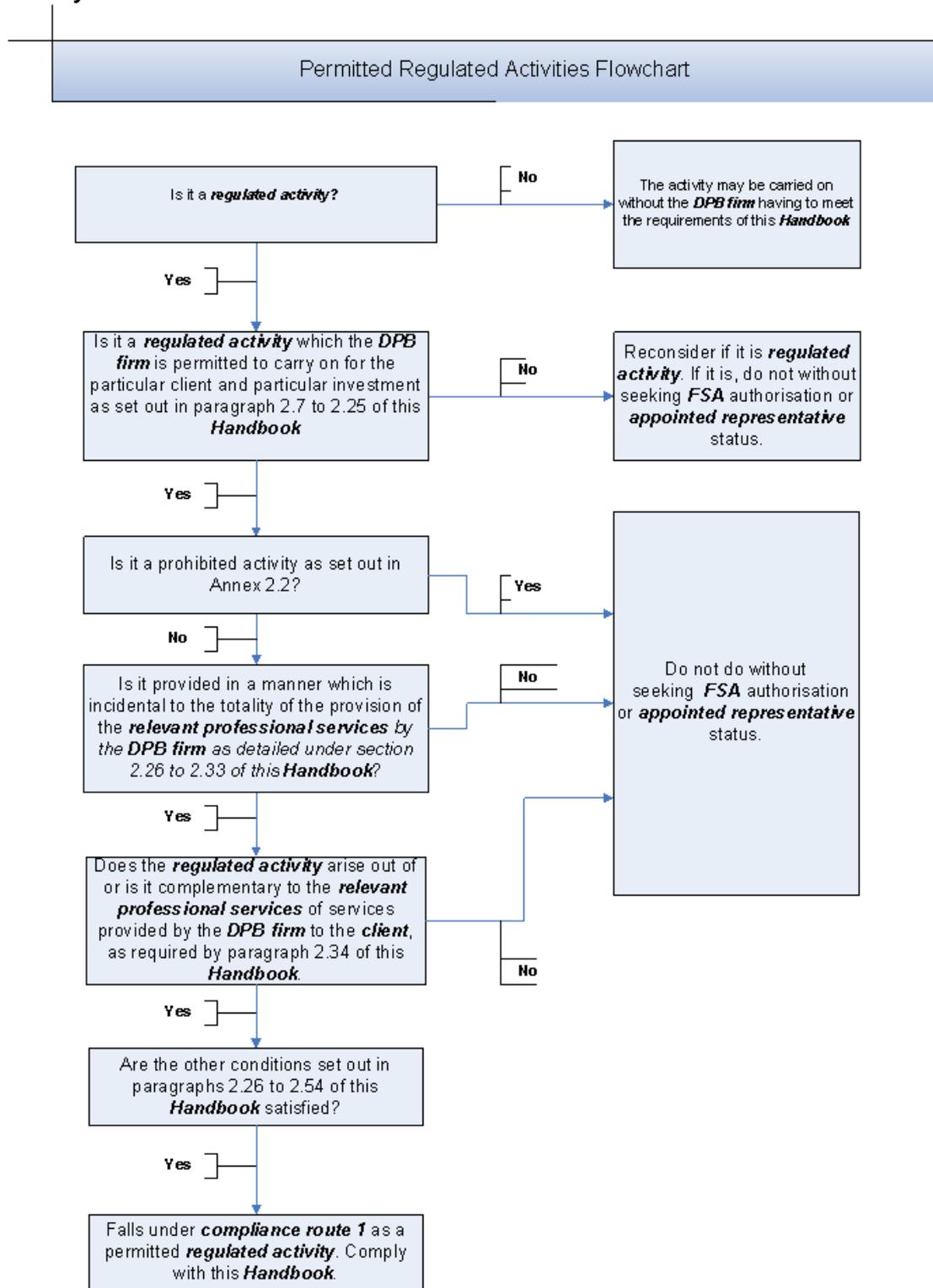
- entering into a *regulated home reversion plan* as plan provider, unless acting in the capacity of a trustee or personal representative and the borrower is a beneficiary under the trust, will or intestacy;
  - administering a *regulated home reversion plan* where the plan was entered into on or after 6 April 2007, unless acting in the capacity of a trustee or personal representative and the borrower is a beneficiary under the trust, will or intestacy;
  - entering into a *regulated home purchase plan* as home purchase provider, unless acting in the capacity of a trustee or personal representative and the borrower is a beneficiary under the trust, will or intestacy;
  - administering a *regulated home purchase plan* where the plan was entered into by way of business on or after 6 April 2007, unless acting in the capacity of a trustee or personal representative and the borrower is a beneficiary under the trust, will or intestacy;
  - entering into a *regulated mortgage contract* as a lender, unless acting in the capacity of a trustee or personal representative and where the borrower is a beneficiary under the trust, will or intestacy; or
  - administering a *regulated mortgage contract* where the contract was entered into by way of business, except in the circumstances described in the preceding bullet point.
2. A **DPB firm** cannot manage or agree to manage any assets which consist of or includes **securities** or **contractually-based investments**.
3. A **DPB firm** may not give or agree to give any **advice** which:
- (a) consists of a **recommendation** to an individual (or their agent) to buy or subscribe for any particular **security** or **contractually-based investment** other than:
    - **investments which are securities, options, futures and contracts for differences that are not tradable or about to become tradable on a public market and where the counterparty to the transaction is not a professional dealer in securities or contractually based investments; or**
    - **where the advice endorses that of an authorised person;**
  - (b) consists of a **recommendation** to a member (or their agent) of a **personal pension scheme** to dispose of any rights or interests that the member has in or under the scheme other than where the **advice** endorses that of an **authorised person** with permission to give **advice** in relation to the proposed transaction.
- The prohibition in (a) of this Item 3 does not apply if the individual is a **business client**. (**DPB firms** should note that in the case of other individuals all **advice**, except to the extent that it refers to the **advice** of an **authorised person**, is prohibited and the exception in the first bullet point under (a) is not therefore relevant).
4. No **DPB firm** may carry on, or agree to carry on, the following types of **regulated activity** unless the **DPB firm** is included in the **Insurance Intermediaries Register**:
- **buying or selling as agent or arranging for the buying or selling of rights under a contract of insurance;**
  - **assisting in the administration and performance of a contract of insurance; or**
  - **advising in relation to a transaction for the sale or purchase of rights under a contract of insurance.**

- **establish a *branch* or provide services relating to *insurance mediation activities* in another *EEA State***
5. Subject to paragraph 1, no ***DPB firm*** may ***advise***, or ***arrange*** a transaction for, a borrower or potential borrower in relation to a ***regulated mortgage contract*** if such ***advice*** or ***arranging*** is a ***regulated activity***.
  6. A ***DPB firm*** may not (i) ***advise*** a home purchaser or potential home purchaser on the merits of entering into a particular ***regulated home purchase plan*** or varying the terms of a ***regulated home purchase plan*** entered into on or after 6 April 2007 by them in such a way as to vary their obligations under that plan or (ii) ***arrange*** a transaction for or in relation to a ***regulated home purchase plan***.
  7. A ***DPB firm*** may not (i) give ***advice*** to a reversion seller or potential reversion seller or a plan provider or potential plan provider on the merit of entering into a particular ***regulated home reversion plan***, or varying the terms of a ***regulated home reversion plan***, entered into on or after 6 April 2007 by them, in such a way as to vary their obligations under that plan or (ii) ***arrange*** for a transaction for or in relation to a ***regulated home reversion plan***.

Annex 2.3

Permitted Regulated Activities Flowchart

**DPB firms** may find the following flowchart of assistance in determining if a **DPB firm** can carry on an activity under the **DPB** regime. In cases of doubt seek legal advice or advice from the **Institute and Faculty**.



### Annex 3.1

#### Suggested Paragraphs for an Engagement Letter and Specimen Letterhead Legend

The following suggested paragraphs may be included within a **DPB firm's** engagement letter:

##### Suggested paragraphs

###### For a **business client**

"We are licensed by the Institute and Faculty of Actuaries to provide a range of insurance mediation and investment advice services to business clients where these are complementary to or arise out of the professional services we are providing to you. In the normal course of events, we would expect this range to cover all the services you may require from us. However, if during the provision of professional services to you, you need advice relating to certain investment activities, we may have to refer you to someone who is authorised by the Financial Services Authority, as we are not."

###### For an individual **client**

"If, during the provision of professional services to you, you need advice on a particular investment or insurance contract, we may have to refer you to someone who is authorised by the Financial Services Authority, as we are not. However, as we are licensed by the Institute and Faculty of Actuaries, we may be able to comment on advice provided to you by a person authorised by the Financial Services Authority where this service is complementary to or arises out of the professional services we are providing to you."

###### For **insurance mediation activities** for all **clients**

"[This firm is]/ [We are] not authorised by the Financial Services Authority. However, we are included on the register maintained by the Financial Services Authority so that we can carry on insurance mediation activity, which is broadly the 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 Institute and Faculty of Actuaries. The register can be accessed via the Financial Services Authority website at [www.fsa.gov.uk/register/home.do](http://www.fsa.gov.uk/register/home.do)".

"If we recommend a contract of insurance (not being a contract of large risk or of reinsurance) we will do so on the basis of a fair analysis of a sufficiently large number of contracts of insurance which are available on the market."

[If applicable, details of holdings in **insurance undertakings** and/or of **insurance undertakings** in the firm required by paragraph 3.76.6 or 3.76.7.]

###### For all **clients**

"If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting [            ].

We will carefully consider any complaint as soon as we receive it and do all we can to explain the position to you. If we do not answer your complaint to your satisfaction, you may of course take up the matter with the Institute and Faculty of Actuaries, which can order us to provide redress.

[We maintain professional indemnity insurance which complies with the rules of the Institute and Faculty of Actuaries<sup>5</sup>] However, our business is not covered by, and our clients do not have access to, any compensation scheme in the event of our being unable to meet claims against us."

##### Letterhead legend

If a **DPB firm** wishes to use a letterhead, the following specimen may be used:

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<sup>5</sup> [Firms should satisfy themselves this statement does not conflict with their PI Cover. Firms which have been granted a temporary waiver by the Institute and Faculty of the PI requirements while maintaining escrow arrangements must not include this statement].

"Regulated by the Institute and Faculty of Actuaries in respect of a range of investment business activities."

### **Financial promotions**

For a **DPB firm** to provide a proper service to a **client** it may be necessary to contact the **client** without specific permission. In these cases the **FSA** considers it advisable for the engagement letter to draw specific attention to the possibility of the **DPB firm** making real time communications which are **financial promotions**. In order that such communications should be permitted as "solicited **real time financial promotions**", the **DPB firm** should obtain the **client's** specific acceptance of this. A suitable paragraph for the engagement letter would be:

"To enable us to provide you with a proper service there may be occasions when we will need to contact you without your express permission concerning investment business and/or insurance mediation matters. For example it may be in your interests to consider a transaction in a particular investment or insurance contract and we would wish to inform you of this. It may also be appropriate for us to suggest you should seek the advice of a person authorised by the Financial Services Authority [, including our associated firm [ ]]. We may therefore contact you in such circumstances. [We would however only do so in our office hours of .....]. We shall of course comply with any restrictions you may wish to impose which you notify to us in writing."

Where this provision is included the **client** must countersign or otherwise expressly indicate its acceptance of this provision. Generally this will be by way of countersigning and returning a copy of the engagement letter, in which case in the place where the **client** signs the engagement letter there should be a specific reference back to the above paragraph.

In addition, when a **DPB firm** may wish to pass matters to an **authorised person** in the same group from time to time, the following paragraph may be of assistance:

"If the services you require include investment or insurance mediation services which we are not permitted to provide we will refer the matter to [ ] unless you instruct us otherwise."

### **Brochures**

The **Financial Promotion Order** deals with the advertising of **investment** services and products. Any such promotion has to be made by a **person authorised** by the **FSA** or approved by such a **person** or covered by an exemption.

A brochure (a '**non-real time financial promotion**') describing a **DPB firm's regulated activities** is, a **financial promotion**. As a **DPB firm** is not an **authorised person** the brochure would need approval by an **authorised person** or fall under one of the exemptions.

The **Financial Promotion Order** contains an exemption which allows a **DPB firm** to advertise the **regulated activities** without approval from an **authorised person**. This is provided the brochure includes the following statement:-

"This [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are licensed by the Institute and Faculty of Actuaries. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide."

The **financial promotion** may also set out the **regulated activities** which the **DPB firm** is able to offer its **clients**, provided it is clear that these are the incidental services to which the statement relates.

This exemption should enable **DPB firms** to issue brochures, websites and other **non-real time financial promotions** without any need for approval by an **authorised person** provided the **financial promotion** is only about **regulated activities** permitted by the **Institute and Faculty** to be carried on.

It is not necessary for the description of the activities to be set out in one place or adjacent to the statement. A brochure or website, for example, may contain details of the activities in various places so long as it is made clear that they will be incidental **investment** activities as referred to in the statement (which, as a result, needs to be set out only once in the brochure or website).

### Annex 3.2 Qualification Lists

Where a **Licensed Firm** conducts **regulated activity in its capacity as either a DPB firm or a Licensed APF**, only individuals who are suitably qualified can present **advice** (others may jointly present) or, provide written confirmation of **advice** (others may jointly sign written confirmation of **advice**). Such individuals must have at least one of the following qualifications, unless they were an **approved person** by the **Institute and Faculty** on 30 November 2001 under the **Recognised Professional Body** regime:

- **Institute and Faculty** or Faculty of Actuaries Subject 301 (or any replacement thereof, such as CA1, or any **Institute and Faculty** or Faculty of Actuaries paper which was replaced by Subject 301 or any predecessor thereof); or
- One of the examinations from any of the following Financial Services Skills Council (FSSC) appropriate examination lists:
  - Advising on (but not dealing in) Securities (which are not stakeholder pension schemes or broker funds)
  - Advising on (but not dealing in) Derivatives
  - Advising on Packaged products (which are not broker funds)

To make the examination lists more manageable, the FSSC has moved some older qualifications into "legacy qualification" lists. The legacy qualifications for the above examination lists continue to be acceptable.

Any of the examinations in the above FSSC lists are potentially acceptable. Those FSSC lists include the following qualifications:

- Fellow or Associate of the Faculty or **Institute and Faculty** of Actuaries
- the Investment Management Certificate,
- the Certificate in Financial Planning,
- the Advanced Financial Planning Certificate.
- the Chartered Financial Analyst qualification, supplemented by an examination module that covers the **UK** regulatory scene - these are marked in the FSSC list with Key=3.

It should be noted that possession of one of the above qualifications does not automatically qualify an individual to conduct a particular **regulated activity**. The individual must also be assessed by the **Licensed Firm** to be suitably competent and experienced in that particular **regulated activity**. It is expected that this list will be revised from time to time.

If a **Licensed Firm** feels able to assess an individual as competent, but that individual does not satisfy the above, then the **Licensed Firm** may submit an application to the **DPB Committee** for a dispensation for the individual from these requirements (see paragraph 6.7.4).