Conflicts of Interest Gap Analysis

The following gap analysis is designed to assist firms in assessing where conflicts of interest might arise and what action is required. It is up to [Name of Firm] to consider whether the questions are appropriate to its own circumstances given the size of the firm and the size, range and type of business it undertakes.

Management information useful in monitoring conflicts of interest:

* Gifts and Hospitality register
* New business and renewal registers showing the spread of risk and provider. These should be cross referenced with information on profit shares, volume over-riders, binding authorities and enhanced commission arrangements
* File audits demonstrating the reasoning behind placing the business and the payment method recommended
* Training logs evidencing that training on the topic of conflicts of interest has been provided
* Meeting minutes evidencing that the topic has been discussed at all levels
* Documentary evidence that the firm’s Conflicts of Interest Policy has been reviewed annually
* External Directorships register
* Declaration of close links with other companies
* Training register showing provider
* Register of conflicts of interest for review annually at board level.

The conflicts of interest gap analysis should be reviewed at least annually at senior management level.

Produced by Cobra Network compliance for use by Cobra Network members.

**[Name of firm]**

**CONFLICTS OF INTEREST GAP ANALYSIS**

A firm must manage conflicts of interest fairly both between itself and its customers and between a customer and another client.

| **Area of Consideration** | **Present Position** | **Action Required**  (Detail further action or insert none and the reason why) | | **Review completed** |
| --- | --- | --- | --- | --- |
|  |  |  | |  |
| **High Level Standards**: It is no longer sufficient to have informal management controls in place to deal with potential conflicts of interest. The case for a detailed review of policies, procedures and strategy is an increasingly compelling one. It is the FCA’s view that managing conflicts of interest is the responsibility of senior management. Conflict management controls need to be carefully thought through and benchmarked against the sector. | | | | |
| Has responsibility for conflict identification and management been allocated clearly to an accountable and appropriately senior individual? (This should be formally documented in the Statement of Responsibility). |  |  | |  |
| How can senior management demonstrate that there are regular and systematic reviews of conflicts both within and across business lines?  Conflicts of interest must be reviewed at board level at least annually. |  |  | |  |
| Does the firm have a Conflicts of Interest policy in place including reference to unfair inducements? |  |  | |  |
| Has the Conflicts of Interest policy been reviewed in the last 12 months and the review date documented. |  |  | |  |
| Is there a register (record) of Conflicts of Interest which is reviewed at senior level annually? |  |  | |  |
| Is there a formal process for the referral of conflicts once identified? |  |  | |  |
| Does the firm understand the disclosure requirements to a customer should a conflict of interest arise?  Is there a formal process in place to disclose conflicts of interest including to residential leaseholders / policy stakeholders under the Multi Occupancy Buildings Insurance reforms? |  |  | |  |
| Has training been provided on the topic of conflicts of interest at induction and at regular intervals thereafter? Has training been recorded in training logs? |  |  | |  |
| Can the firm demonstrate that adherence to conflict procedures has been discussed with staff during their appraisals/meetings? |  |  | |  |
| Do any of the directors hold external directorships in other companies? (A register of all directors’ other directorships and what companies these are in). |  |  | |  |
| Do any staff or directors hold shares in other companies? (It is up to the firm to decide at what level this constitutes a conflict of interest). |  |  | |  |
| Is the firm aware of any close links with insurers or other third parties?  Are these disclosed in the customer TOBA/appropriate disclosure documents? |  |  | |  |
| Has the firm documented why membership of Cobra Network does not conflict with the interests of its customers? |  |  | |  |
| Does the firm have any associated companies who provide services to policyholders? Are referrals carried out on a commercial arm’s-length basis? |  |  | |  |
| Is the firm involved in premium financing through ownership or participation in a premium finance provider or through interest / administration charge sharing arrangements with such a provider.  (The firm must be able to show that policyholders are offered the most favourable premium payment option available to them). |  |  | |  |
| Is the firm aware of any personal relationships between its staff and insurers? |  |  | |  |
| What management information is produced to demonstrate compliance with the conflicts of interest mitigation strategies in place? |  |  | |  |
| Does the management information enable senior management to identify any unusual placement volumes or patterns? |  |  | |  |
| **Remuneration:** There exist a number of different ways in which an insurance distributor can be remunerated. If you structure your remuneration arrangements correctly you can protect your revenue streams and your customer base. If you do not you are likely to face regulatory sanctions (from the FCA), civil sanctions (from customers) and corporate governance sanctions (from shareholders and those providing funds) with potentially serious consequences for the firm and management.  Distributors must not be remunerated or remunerate or assess the performance of their employees in a way that conflicts with their duty to comply with the customer’s best interests rule. Within this context, customer includes residential leaseholders/policy stakeholders within the definition of customer with regards to Multi Occupancy Building Insurance. | | | | |
| Does the firm have any profit share agreements in place? |  | |  |  |
| What percentage of the firm’s total revenue is made up of income from profit commission? |  | |  |  |
| Does the profit commission income form part of the firm’s annual budget i.e. are you reliant on it? |  | |  |  |
| Who knows the details of any profit share arrangements and what influence do they have over the placing broker function? |  | |  |  |
| What systems are in place to monitor the performance of insurers including those offering profit shares? |  | |  |  |
| Does the firm have volume over-riders in place? (If yes consider the questions raised for profit shares). |  | |  |  |
| What functions does the firm perform for the insurers in return for the volume over rider? (Claims handling, issue of policy documentation, availability of your distribution network) (Is the remuneration a fair market value for these functions?) |  | |  |  |
| Has the firm completed fair value assessments in respect of the products it distributes?  Do the fair value assessment include assessment of conflicts of interest. |  | |  |  |
| Is the firm in receipt of any contingent commissions where payment of an enhanced commission depends upon the distributor securing an outcome favourable to the insurer? |  | |  |  |
| Are commercial customers reminded of their right to request information about the firm’s earnings at inception and at renewal? |  | |  |  |
| Is the firm disclosing remuneration to residential leaseholders/policy stakeholders via the contractual customer as required under the Multi-Occupancy Building Insurance reforms? |  | |  |  |
| Does the firm have procedures in place to provide commercial customers with accurate information on the amount of income generated from all sources by placing their business? |  | |  |  |
| Do insurers offer widely varying commission levels for similar products? |  | |  |  |
| Are customer facing staff aware of the commission levels? |  | |  |  |
| Are clients provided with comparable details of all the quotes and are clients advised of the markets approached? |  | |  |  |
| Are clients provided with clear fair and not misleading information on premium payment options including detailed information on any interest rates and the APR charged for premium finance arrangements? |  | |  |  |
| Who is responsible for the negotiation of commissions? Is the person, who signs off commission agreements or new insurers, of a suitably senior level? |  | |  |  |
| Is the firm able to monitor the spread of risk by provider/ commission received? |  | |  |  |
| Does the firm review the amount of work undertaken for the customer against the income generated to ensure that this is fair to the firm and to the customer? |  | |  |  |
| Does the firm offer staff bonuses?  Do producers of business get a cut of the commission and does this influence them at the expense of the client? |  | |  |  |
| Does the firm offer staff incentives to sell products which may not be suitable to the customer/may not best meet the customers needs? |  | |  |  |
| Is the firm offering incentives to third parties? – does this conflict with its obligations under the customer’s best interests rule? (with regard to Multi-Occupancy Building Insurance contracts, customers includes residential policyholders and policy stakeholders) |  | |  |  |
| **Corporate Hospitality and Gifts**: A strong relationship with your panel insurers, partners and customers developed through a combination of professional and personal interaction, delivers a real and direct benefit. Corporate hospitality and gifts are nonetheless inducements and must be managed correctly to avoid conflicts of interest. | | | | |
| Does the firm have in place a gifts and hospitality register recording gifts and hospitality given and received?  Is there a minimum level of activity which is not logged? |  | |  |  |
| What is the firm’s criteria for deciding what is appropriate and what may be construed as an unfair inducement? |  | |  |  |
| Is the gifts and hospitality register reviewed by senior management at regular intervals? |  | |  |  |
| Is the firm able to identify corporate hospitality against business placed / received? |  | |  |  |
| Has the firm received any training support which could amount to an inducement? |  | |  |  |
| Has the firm offered anything that could be construed as an inducement to an insurer, customer or third party? |  | |  |  |
| **Claims:**  Conflicts of interest can arise through a firm acting for two clients in relation to the same incident or from a dubious claim where the firm is unclear as to whether its loyalty is to the insurer or the customer or where the firm has authority to settle claims for any insurers under an agreement. It is not uncommon for these claims settling authorities to be linked to a profit share agreement. By rejecting claims or delaying payment of claims you could enhance the value of the firm’s profit share thus creating a conflict of interest. | | | | |
| Does the firm have written procedures in place for handling claims where a conflict of interest has been identified? |  | |  |  |
| Are profit commission arrangements disclosed to customers and has their informed consent been obtained? |  | |  |  |
| Does the firm have an internal audit system in place which covers claims? (Does the claims auditing procedure look at upheld and rejected claims to ensure correct handling?) |  | |  |  |
| Does the firm have in place systems that are capable of handling claims involving two or more clients? (Firms must ensure that all clients are treated fairly and separately). |  | |  |  |
| Does the firm have claims handling and binding authorities in place where the firm is unable to act in the best interests of both the customer and the insurer? |  | |  |  |
| Are the staff responsible for placing the business on a binding authority separate from those handling claims? |  | |  |  |
| Is the level of settlement so low that it is unlikely to affect the profit commission? |  | |  |  |
| Are claims handlers aware of the existence of details of the profit commission arrangement? |  | |  |  |
| Are customers aware of any arrangements the firm may have with insurers and has their informed consent been obtained? |  | |  |  |
| **Training and Support:** The availability of good quality training is likely to be of real benefit to a firm as it enables the firm to satisfy Training and Competency requirements, improve the level of service quality to customers and improve the technical capabilities the staff. When training is provided or funded by an insurer it could be seen as an inducement and must be managed correctly to avoid a conflict of interest arising. | | | | |
| Does the firm have a training register in place?  How frequently is the training register monitored? |  |  | |  |
| What criteria is in place for determining whether the training offered is appropriate or not? |  |  | |  |
| Is the training product specific and therefore relevant to customers’ needs? |  |  | |  |
| Does the training fit with the Training and Competency requirements of staff? |  |  | |  |
| What level of management approves the training? |  |  | |  |
| **Soft Loans:-** Loans are sometimes made available to insurance distributors from insurers on terms which are more favourable than those which would be available to the distributor from a commercial lending market. In certain circumstances these can translate into the lender taking an equity stake in the broking house. Such an arrangement is an inducement. Unless managed extremely carefully it is inevitable that this will create a conflict of interest. The terms negotiated between the insurance distributor and the lender must have the conflict of interest issue as paramount in those negotiations. | | | | |
| Does the firm have any soft loans? |  |  | |  |
| What influence do insurers providing the soft loan have over the placing broker function?  Are systems in place to monitor the performance of all insurers (including insurers with whom the firm has a soft loan?) |  |  | |  |
| **Has the firm set a review date for this Conflicts of Interest Gap Analysis?** | | | | |