

# Terms of Business for Intermediaries

## 1 Definitions

**1.1** In these Terms of Business the following expressions shall have the meanings defined in this clause, except where the context otherwise requires:

**"Business"** means any business in respect of a 'specified investment', as set out in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

**"DP Act"** means the Data Protection Act 1998.

**"Electronic Services"** means all services provided through electronic media, including our Extranet, email and all third party electronic services supported by us.

**"FSA"** means the Financial Services Authority.

**"FSA Rules"** means the obligations placed on the parties by the FSA pursuant to its powers under the Financial Services and Markets Act 2000, including the obligations set out in the FSA Handbook of Rules and Guidance and such other rules, regulations, codes of practice, guidance, practice requirements and appendices issued by the FSA from time to time.

**"Intermediary"** means an authorised person or authorised professional firm carrying on an insurance mediation activity as defined by the Insurance Mediation Directive and adopted by the European Parliament and Council Directive of 9th December 2002.

**"Regulated Activities"** means any and all regulated activities as defined in Section 22 of the Financial Services and Markets Act 2000 (The classes of activity and categories of investment).

**"Scottish Widows"** means Scottish Widows plc or such of its subsidiaries or companies within the Scottish Widows Group with whom you are submitting Business from time to time.

**"Services"** means the services, including the Electronic Services, we provide to you in order to facilitate our acceptance of the Business you place with us.

**"TCF"** means the FSA principles of Treating Customers Fairly.

**"Terms of Business"** means the terms set out herein, together with the Terms of Use for Electronic Services, as may be amended by us from time to time.

**"Terms of Use for Electronic Services"** means the terms referred to as such and set out on our Extranet provided as part of the Electronic Services.

**"you"** or **"your"** means the Intermediary from whom we accept Business and, in the case of a group, alliance or network of Intermediaries, means all such Intermediaries together with any other individual, company, partnership or other organisation associated with them.

**"us"** or **"our"** or **"we"** means such of Clerical Medical Investment Group Limited, Clerical Medical Managed Funds Limited, HBOS Investment Fund Managers Limited or Clerical Medical Investment Fund Managers Limited with whom you are submitting Business from time to time.

**1.2** In these Terms of Business the headings are for reference only and shall not affect the interpretation of any provision.

**1.3** In the event of any conflict between the provisions of these Terms of Business, but only to the extent necessary to resolve such conflict, these Terms of Business shall prevail over the Terms of Use for Electronic Services in respect of all matters except those specifically relating to use of the Electronic Services.

**1.4** Where you have agreed separate terms of business with a company within the HBOS Group other than Clerical Medical Investment Group Limited and there is a conflict between the provisions of those terms and these Terms of Business, the former will take precedence to the extent that they relate to your relationship with the relevant HBOS Group company and to the extent necessary to resolve such conflict.

**1.5** A reference in these Terms of Business to:

**1.5.1** the singular shall include the plural and vice versa;

**1.5.2** a gender shall include all genders;

**1.5.3** a person shall mean a natural or legal person, unincorporated association or partnership;

**1.5.4** a statute, order, regulation or other similar instrument shall include any amendment, extension or subsequent re-enactment of it and any subordinate instrument enacted pursuant to it; and

**1.5.5** the expression "including" shall mean including without limitation to the generality of any description, definition, word or phrase preceding it and the word "include" and its derivatives shall be construed accordingly.

## 2 Scope

- 2.1 These Terms of Business set out the basis on which we accept Business from you and govern the provision and use of the Services. These Terms of Business supersede any previously issued terms of business.
- 2.2 We reserve the right to carry out regulatory and financial checks prior to accepting Business from you for the first time. This will include ensuring that you have a UK bank account, without which you may not submit Business to us. We are not obliged to accept Business from you, regardless of whether you already submit Business with Scottish Widows, and regardless of whether you are applying to submit Business for the first time, or are already submitting Business to us.
- 2.3 Prior to submitting Business to us you will obtain your client's authorisation to be their agent in respect of the Business and you may not submit Business to us otherwise.
- 2.4 We reserve the right to require directors' guarantees to be provided prior to accepting Business from you for the first time.
- 2.5 You understand that we are required to report to the FSA the basis on which Business is conducted between you and your client (i.e., whether it is 'advised' or 'non-advised'). You acknowledge that we will treat Business as being conducted on an 'advised' basis unless you tell us otherwise when you submit the Business.
- 2.6 You are not and may not purport to be an agent of ours unless so specifically authorised in writing by us.
- 2.7 If you appoint an agent or authorised representative, we will not have any direct contractual relationship with them. You will ensure that your contract with them includes an obligation on them to comply with these Terms of Business in relation to any Business that they submit, directly or indirectly, to us.
- 2.8 Where you have a relationship with a non-authorized service provider, you acknowledge that the terms of that relationship are a matter for you and your service provider and that that you are solely responsible for payment of that service provider's fees and any other charges.
- 2.9 If you fail to comply with your respective legal or regulatory obligations and, because of this, we suffer loss or have to make any payment to a third party, you will make good such loss or payment if we ask you to do so. You shall be responsible for ensuring compliance with all legal and regulatory obligations which may exist where Business is conducted.

- 2.9 In accordance with the requirements of the FSA, we are committed to embedding the principles of TCF into our business. You are also subject to these requirements, and we expect such principles also to be embedded within your business. You must ensure that all business submitted is in accordance with the principles of TCF. Business submitted where it appears to us, acting reasonably, that TCF principles have not been met, will not be accepted. We may request information from you from time to time concerning your adherence to TCF and the measures that you have in place to ensure compliance, in order to comply with our own TCF obligations. If we do make such a request, you will use reasonable endeavours to meet the timescale requested and provide the required information.

## 3 Commission

- 3.1 If you receive commission, or if you waive your right to receive commission, you accept that you are solely responsible for advising your client on all financial matters associated with the Business you submit to us for that client.
- 3.2 All matters relating to our payment (and, where applicable, your repayment) of commission shall be governed by the FSA Rules.
- 3.3 We will pay you the appropriate commission on all Business we accept from you at the relevant rates, and subject to the relevant restrictions, in force from time to time. We shall endeavour to make the relevant rates and restrictions available to you via the Electronic Services or otherwise. However, our statement of account shall be the conclusive record of commission due to you. Where you have a choice of how you are paid commission, we will endeavour to pay you in accordance with your chosen option. To access details of the available commission options, go to the Clerical Medical Adviser Zone at [www.clericalmedical.co.uk](http://www.clericalmedical.co.uk).
- 3.4 We reserve the right to provide statements of account detailing commission due to you in respect of Business submitted by you to both us and Scottish Widows, and displaying the overall balance due to you or owed by you to us.
- 3.5 We reserve the right to aggregate commission payments and debit balances due to you and owing by you in respect of Business submitted by you both with us and with Scottish Widows, and, should we do so, any payment made to you will reflect the aggregate balance in one payment.

- 3.6** In certain circumstances, an enhanced level of commission and/or product enhancements may apply. Any enhancements will be advised to you in writing and your written agreement to these enhancements will be sought. We may withdraw any additional commission payable or product enhancement at any time for any reason whatsoever.
- 3.7** Where we accept a transfer from one of our products to another, commission may be payable at a reduced rate and may be payable on different terms, the rate and the terms to be determined by us on a case by case basis.
- 3.8** All commission quoted or otherwise stated is **not guaranteed** and, in the event that it is subsequently found to have been stated incorrectly, we may amend any error to reflect the correct commission, without any further liability.
- 3.9** Commission will be regarded as adequate payment for all services performed by you.
- 3.10** Any arrangement you reach with your client regarding the payment of commission is a matter entirely between you and your client and not an issue for negotiation with us.
- 3.11** We cannot accept premiums net of commission. You will become entitled to be paid commission on a piece of Business once our contract with your client has been concluded and we have collected the initial premiums.
- 3.12** We will pay commission via BACS and may defer payment to comply with our practice in relation to frequency and size of payments.
- 3.13** We will only pay commission to an Intermediary who holds the appropriate authorisation to conduct the Business accepted by us and who is able to service, and is servicing, the client to whom the Business relates at the time the commission for that Business is payable. If you are unable to service your client, we may withhold all commission on any Business introduced by you for that client. Scottish Widows may also withhold commission on any Business introduced by you to them for that client. Being unable to service your client shall include the following:
- 3.13.1** if you cease to act as an Intermediary for any reason;
  - 3.13.2** if you are, or we reasonably believe that you are likely to become, unable to pay your debts as and when they fall due;
  - 3.13.3** if you fail or refuse to repay commission clawback;
  - 3.13.4** if you are suspended by the FSA or other relevant authority;
  - 3.13.5** where we are notified or otherwise become aware that you are no longer to be the agent for a client;
  - 3.13.6** where we reasonably determine that you are no longer providing an ongoing financial advisory service to your client; or
  - 3.13.7** where we become aware of a dispute concerning your agency and have reasonable concerns about the authority of an individual to redirect payment of commission.
- 3.14** Where the commission withheld pursuant to the preceding clause has already been earned, we shall withhold it until all possible liability for commission clawback has expired. The clawback shall be set off against the commission and once there is no possibility of further clawback we shall pay the remaining commission owed to you. For the avoidance of doubt, even commission that is not subject to potential clawback may be withheld by us to set off against other potential clawback.
- 3.15** For the avoidance of doubt, we shall not withhold commission within any protection period applicable to, or, as the case may be, selected in respect of that Business and notified by us to you from time to time.
- 3.16** Where we agree to pay you commission on an indemnity basis, this is subject to review and we may withdraw or restrict our agreement at our discretion.
- 3.17** If you do not introduce Business to us for a period of at least three continuous years or are unable to service your client, we may stop paying servicing commission due on all Business already transacted.
- 3.18** We will stop paying you commission if these Terms of Business are terminated in accordance with clause 19.
- ## 4 Unearned commission
- 4.1** Where all or part of the commission paid to you is found subsequently not to have been earned (including where policies are cancelled through the exercise of the statutory "cooling-off" rights, through the non-payment of premiums, as a result of an instruction by a regulatory or government body or where you are unable to service your client) you will repay us the amount of commission which has not been earned.

- 4.2** We are required to monitor and record Business you submit. If you submit Business to us which is outside the scope of your FSA permissions, we are obliged under the FSA Rules to report this to the FSA. You acknowledge and agree that, where such Business is submitted, any commission paid to you in respect of such Business will be repaid by you in accordance with paragraph 4.1 above. In addition, you shall be liable for any costs incurred by us in respect of the cancellation of the Business.
- 4.3** Where applicable, you shall remain directly liable to us for any unearned commission in respect of Business submitted to us by any agent or authorised representative of yours.
- 4.4** You will not be required to pay interest on an unearned commission debt if it is repaid within 28 days of your receiving notice of the debt (including notice of non-payment of premium, reduction in premium or reduction in the term of the contract). Where you fail to repay such debt within 28 days of your receiving such notice, we will charge interest on such debt from 90 days after the date of such notice at the rate of 8% per annum above the Bank of England base rate (as varied from time to time) until such time as your account with us returns to zero or a credit balance.
- 4.5** You acknowledge that we may add to the amount of any unearned commission debt you owe us any costs we incur in trying to recover such debt, including the cost of instructing debt recovery agents.
- 4.6** We may deduct any debt you owe to us from any sum payable (or which may become payable) to you by us in respect of any account you have with us or with any other member of the Lloyds Banking Group with whom you transact Business. Where you are (or are a member of) a group, alliance or network of Intermediaries that has more than one Intermediary account with us, we may set off a debt in any one account in that group, alliance or network against any sum payable (or which may become payable) by us to any other account in that group, alliance or network.

## 5 Expectations you set

- 5.1** The rate of commission we pay to you may depend on the nature of the Business being submitted. Where you represent that the Business is of a particular nature (including the term, value or volume of the Business) and commission is paid on this basis but the Business does not conform to your representations, we may reclaim any commission paid.

- 5.2** We will be entitled to claw back any commission paid where we reasonably consider that arbitrage or short term trading strategies have been used that could be disruptive to fund management and potentially result in dilution in the relevant fund to the detriment of long-term investors.

## 6 Own life business

- 6.1** In respect of Business introduced on the lives of your principals, directors or partners (as applicable) and on the lives of staff or close relatives (as defined by the FSA Rules) of any of the aforementioned, if that Business is:
- 6.1.1** regular premium Business, then commission payable will be on a level basis;
- 6.1.2** single premium Business, then commission payable will either be fund-based or will be nil with enhanced allocation options or any suitable alternative, as may be determined by us at our sole discretion.

## 7 Transfer of business

- 7.1** The transfer of Business to another Intermediary is subject to our agreement and, unless we agree otherwise in writing, you will remain liable to us for any unearned commission paid to you.
- 7.2** We may require your client to confirm that he or she agrees to the transfer of servicing of Business relating to him or her from you to another Intermediary. We shall not be obliged to agree to any transfer if we do not receive such confirmation.
- 7.3** We shall not be obliged to agree to a transfer of Business to another Intermediary where that Intermediary is not authorised to conduct such Business.
- 7.4** In the event of a proposed transfer of Business to you from a third party, our agreement to any such transfer shall be subject to your acceptance of **all** Business held by the person that is selling or transferring the Business together with your acceptance of all potential commission liability relating to that Business. We shall not be obliged to accept partial or selective transfers of Business.
- 7.5** We shall not be obliged to agree to an assignment of a right to receive commission which is independent of an assignment of the Business to which the commission relates.

## 8 Customer Contact

- 8.1** We may contact customers in the following situations:
- 8.1.1** to undertake customer research in such areas as we may reasonably decide, which may include but are not limited to: customer service surveys, risk appetite and product preferences, opinions on product performance, general views on issues affecting the financial services industry including regulatory issues.
  - 8.1.2** to allow us to process new and existing business and to administer business on an ongoing basis including collecting and continuing the collection of premiums and providing information to customers on product options and benefits;
  - 8.1.3** if and when required under these Terms of Business or the FSA Rules;
  - 8.1.4** if and when we receive a complaint from a customer with reference to Business placed under these Terms of Business;
  - 8.1.5** if we wish to confirm that the principles of TCF have been met;
  - 8.1.6** if and when a customer requests us to make contact with them;
  - 8.1.7** to provide financial advice to customers introduced by you, but only with your prior consent.
- 8.2** Notwithstanding clause 8.1 above, in the event that we obtain customer details from an independent third party with no connection to you, we may contact such customers for any reason, without your consent.
- 8.3** Except in the circumstances outlined above, we shall not make direct contact with customers for the purpose of sales and promotions without your consent, unless any of the following apply:
- 8.3.1** if in our opinion, acting reasonably, a customer is an "orphan customer". By "orphan customer" we mean a customer whom you can no longer service because you no longer hold the appropriate FSA permissions; or who has made applications to us introduced by you, but subsequently has advised us that you no longer act as intermediary for them, or requested direct financial advice from us;
  - 8.3.2** where the customer responds directly to a promotion sent by us.

## 9 Payment of Premiums

If you undertake to pass monies to us on behalf of your client, you will do so promptly and without deduction. You will be responsible for the money until the money has been delivered into our possession.

## 10 Ex Gratia Payments

- 10.1** Subject to the FSA Rules, if we do not perform the Services to a reasonable standard and, as a result, you are required to carry out additional work of an exceptional nature which is not in the normal course of business, we may offer an ex gratia payment to compensate you for your reasonable loss of time in completing any such additional work.
- 10.2** The foregoing offer shall be your sole remedy for any such loss.
- 10.3** In determining whether additional work of an exceptional nature has been required, our decision shall be final.
- 10.4** Each case shall be considered on its own merits and payment will only be made if, in our opinion, it is both reasonable and prudent to do so.
- 10.5** Notwithstanding the rates you charge your clients, we shall endeavour to treat all Intermediaries on an equal basis and, therefore, any payments made will be subject to maximum hourly rates that we consider fair and reasonable.
- 10.6** Ex gratia payments shall be paid on a full and final settlement basis.

## 11 Documentation & Information

- 11.1** In your capacity as your client's agent you will pass on to us or the client, without amendment (unless otherwise agreed), any relevant documentation.
- 11.2** In your capacity as your client's agent you will pass on to us, without amendment, any material information provided by the client in relation to any Business that you submit to us, including an insurance contract.
- 11.3** You shall ensure that our current literature is used at all times and will destroy out of date stocks.
- 11.4** All books, documents and computer software provided by us and in your possession must at all times be available to us for inspection and be returned to us if we request you to do so.

**11.5** Where you request us to provide you with data relating to your customers and book of Business, including for the purposes of reconciling the data we hold with the data you hold, we reserve the right to charge you for our reasonable administration costs incurred in providing this data. These costs will reflect the nature and volume of the data you request.

## 12 Trade Marks

You will not produce or distribute any documentation (unless supplied by us for distribution) containing our name, logos, the image of the Widow or our other trade marks without our prior written consent.

## 13 Confidentiality

You will not divulge to any third party any documents or materials of any kind containing our confidential information or relating to our business or affairs.

## 14 Indirect Losses and Loss of Data/Profits

**14.1** In no event shall we be liable for any indirect, punitive, incidental, special or consequential loss or damage of any nature whatsoever.

**14.2** In no event shall we be liable for damages for loss of data or for loss of profits.

## 15 Use of Electronic Services

You agree that your use of the Electronic Services shall be subject to these Terms of Business and the Terms of Use for Electronic Services. The Terms of Use for Electronic Services can be accessed online at [www.scottishwidows.co.uk/terms](http://www.scottishwidows.co.uk/terms)

## 16 Data Protection

**16.1** By using the Services you will be deemed to have become an agent of ours for the purposes of the DP Act. You may process (as defined in the DP Act) personal data supplied to you by us. You shall maintain the security and integrity of that data and not make any disclosure of it to any third party whatsoever without our prior approval. For the avoidance of doubt, you may access only the personal data relating to your clients and only in respect of Business that you are responsible for servicing.

**16.2** You may have the opportunity to communicate personal and/or sensitive data (as defined in the DP Act) of customers to us through the use of the Services for the purposes of applying for products or quotes for products. We will process the data for those purposes but may also use it for market research, statistical purposes and the prevention and detection of fraud. The data may be shared with the Scottish Widows Group and Lloyds Banking Group companies for these purposes and, if necessary, the data may be provided to a reinsurance company who will share the risk of insurance products with us. Any data relating to the health or lifestyle of the customer is classified as sensitive data under the DP Act and is required by us for underwriting purposes. Any sensitive data will be held securely by us with access limited to those who need to see it.

**16.3** We may administer policies, including existing policies, and provide other services from centres in countries outside the European Economic Area (such as India and the USA) that do not always have the same standard of data protection laws as the UK. However, there will be a contract in place to ensure that information is adequately protected, and we shall remain bound by our obligations under the DP Act even when personal information is processed outside the European Economic Area.

**16.4** We may share information about you and your customers within the Lloyds Banking Group for administration purposes. In the event that you also submit Business to Scottish Widows, we may share information between us and Scottish Widows as regards your dealings with us.

**16.5** You warrant, represent and undertake to us that, prior to communicating a customer's personal and/or sensitive data through the Services:

**16.4.1** you will fully explain to the customer that their data may be used in the manner specified above; and

**16.4.2** you will obtain the customer's explicit consent to this.

## 17 Money Laundering

**17.1** In relation to all Business that you submit to us, you will ensure that:

**17.1.1** evidence of the identity of all third parties introduced by you will have been obtained and recorded under procedures maintained by you in accordance with the provisions of the European Council Directives, the UK Money Laundering

Regulations and the Prevention of Money Laundering Guidance Notes for the UK Financial Sector (and all Directives, Regulations and Guidance Notes issued in substitution, amendment or addition to these) and any of our requirements from time to time notified to you;

- 17.1.2** you will identify the third parties and will, without detracting from your obligations referred to above, forward to us with the documents for the transaction such as duly completed documentation relating to verification of the third party's identity as we shall require from time to time; and
- 17.1.3** where we ask you, in the interests of investigating or preventing financial crime, to provide information in respect of any third party for whom you have acted, you will use reasonable endeavours to do so.
- 17.1.4** We reserve the right to carry out further checks in order to verify client identity.

## 18 Amendments

- 18.1** We may amend these Terms of Business at any time by giving you one month's written notice, which may be by notice on our website.
- 18.2** Where there are changes in legislation or the FSA Rules or the rules of any relevant statutory regulatory authority, any relevant provisions in these Terms of Business will be deemed to be amended accordingly.

## 19 Termination

- 19.1** Either party may terminate these Terms of Business immediately by giving written notice to the other. Such notice must be sent to the other's principal place of business.
- 19.2** For the avoidance of doubt, clauses 2.7, 2.9, 4.1, 4.2, 4.3, 4.4, 5, 12, 13 and 14 will remain in full force and effect notwithstanding termination.
- 19.3** These Terms of Business will terminate immediately:
  - 19.3.1** on death, if you are a sole trader;
  - 19.3.2** if you are a partnership and are dissolved; or
  - 19.3.3** in the circumstances referred to in 20.5.3, 20.5.4 or 20.5.5.

## 20 General

- 20.1** We reserve the right at our discretion not to accept Business from you. We will not accept Business from you if you cease to be authorised to conduct Business.
- 20.2** We reserve the right at our discretion to appoint any agent, including Scottish Widows plc, to collect any debt or sums which may become payable by you to us or any member of the Lloyds Banking Group.
- 20.3** During the life of these Terms of Business, we may enter into a legal agreement with Scottish Widows to allow shared commission servicing, payment and the production of shared commission statements as referred to in clauses 3.4 and 3.5 above.
- 20.4** In the event of a breach of these Terms of Business or in the event you incur a FSA reportable debt, we may share this information with other financial institutions, the FSA and any other relevant regulatory authorities. FSA reportable debts may be reported via a database which is available to the FSA and other financial services companies.
- 20.5** A failure or delay by either party to enforce any right under these Terms of Business shall not be deemed to be a waiver of that right, or of any other right, at that time or in the future.
- 20.6** If any provision in these Terms of Business is held or made invalid by a court, statute or rule or otherwise, the remainder of these Terms of Business will not be affected.
- 20.7** You will notify us:
  - 20.7.1** of any change in any of your business details;
  - 20.7.2** if there are any material changes to the legal constitution of your business;
  - 20.7.3** if you, or any directors or partners in your business, have been charged with or convicted of any offence involving fraud or dishonesty;
  - 20.7.4** if you, or any directors or partners in your business, enter into a voluntary arrangement with creditors or where bankruptcy or liquidation proceedings are brought against you/them or a receiver is appointed; or
  - 20.7.5** if you are in material breach of the law, the FSA Rules or any applicable regulations.

- 20.8** You may not assign these Terms of Business. We reserve the right to assign these Terms of Business to any of our group companies.
- 20.9** Nothing in these Terms of Business is intended to confer on any third party any right to enforce any provision of these Terms of Business, either pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 21 Governing Law

- 21.1** These Terms of Business shall be governed and construed in accordance with either the law of England and Wales, the law of Scotland or the law of Northern Ireland depending on your principal place of business at the time you submit Business to us.

