

IUA Commentary: SMB and related arrangements

- **The broker owes a fiduciary duty to the end customer to be transparent in respect of all commissions, including Subscription Market Brokerage (SMB).**
- **The broker must always disclose details of commissions and related remuneration to non-commercial clients, and to commercial clients upon request.**
- **Insurers should understand the commission arrangements in place and whether they have been disclosed to the client.**

Failure to obtain appropriate disclosure and consent may expose brokers to allegations of conflicts of interest and, in certain circumstances, potential breaches of competition law.

This concept is not new, nor is it limited to the UK (though this is our primary focus). A notable precedent occurred in 2004, when insurer-broker remuneration practices became the subject of a significant regulatory investigation. Then-New York State Attorney General Eliot Spitzer led an inquiry into allegations that some brokers directed clients toward insurers offering contingent commissions and manipulated the bidding process to favour preferred insurers. This included the submission of fictitious or inflated quotes to create a false impression of market competition. Though that was more than 20 years ago and US focused, there have been periodic reviews by the European Union (EU) and Financial Conduct Authority (FCA) on wholesale insurance and commission disclosure, and it is evident that there is growing regulatory interest in the transparency of commissions.

More recently, the FCA has shown increasing interest and a willingness to intervene in cases relating to commission arrangements. In 2022, the regulator investigated commission arrangements in respect of multi-occupancy buildings insurance where leaseholders were the end payers; this has also led to ongoing group litigation in respect of alleged 'secret' commission arrangements. The introduction of 'fair value assessments' and the Consumer Duty has also been an important driver of the core principle that firms must evidence that commissions do not cause foreseeable harm, are transparent, and represent 'fair value'.

Most recently, the FCA intervened in the motor finance litigation that was appealed to the Supreme Court (*Johnson (Respondent) v FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant)*). Amongst other things, the October 2024 Court of Appeal judgment ruled that brokers must have customers' fully informed consent to receive a commission from lenders. The 1 August 2025 Supreme Court judgment overturned the Court of Appeal's ruling, establishing that lenders are not liable for hidden commission payments in car finance schemes. However, the Court ruled that in certain circumstances the failure to properly disclose commission arrangements could be unfair and therefore unlawful. The FCA are due to confirm whether a mass redress scheme will be implemented.

Though this legal case was not directly related to insurance commissions, and the case largely turned upon its own facts, the assessment of commission and headline principles may have relevance to comparable areas, such as premium finance (which is also currently under FCA review) and insurance commissions.

In this light, the IUA Board directed the Executive to draft a short guidance note on commission arrangements. We have also contributed financially to a King's Counsel (KC) Opinion (accessible to IUA Members via the [IUA Website](#)) commissioned by the Lloyd's Market Association (LMA) on this matter and highlight some key points arising from the advice below. Following the 1 August 2025 Supreme Court judgment, it was confirmed by the KC that the judgment did not give cause for the Opinion to be reassessed.

The intention of the IUA's guidance and circulation of the KC Opinion is to promote full transparency of commission arrangements to insureds and to facilitate greater understanding of the obligations of all parties in the insurance process in this regard. It should be made clear that this commentary and guidance is not opining on the payment of commissions, however so named and structured, or the quantum of such commissions. That is for the commercial and contractual parties to consider and is beyond the scope of any trade association operations.

Overview of the KC Legal Opinion (received May 2025)

1. Civil Law Position

A broker placing insurance in the London market acts as the insured's agent. As such, the broker owes fiduciary duties to act in good faith, avoid profiting from its position without consent, and not act for its own or a third party's benefit without the insured's informed consent.

If a broker receives commission from underwriters for placing business, depending on whether the insured is a commercial customer, it may be necessary to disclose to the insured:

- (i) that it received such payment,
- (ii) the services provided in return, and,
- (iii) potentially, the commission rate. The broker must also obtain the insured's informed consent to receive commission. Failure to disclose this information and obtain consent will likely be considered a breach of the broker's fiduciary duty.

Importantly, if underwriters are aware of the broker's breach and act dishonestly, they may be held liable as accessories. This could result in them being required to repay commissions or account for profits made through the broker's breach.

2. Managing Underwriter Risk

To mitigate liability risk, insurers could include clauses in agreements made with brokers. These clauses could require brokers to disclose all relevant details about any brokerage received and obtain the insured's informed consent. For SMB, underwriters should ensure the agreement mandates disclosure of (i), (ii) and (iii) above.

3. Regulatory and Criminal Enforcement

The Digital Markets, Competition and Consumers Act 2024 (DMCCA), effective from 6 April 2025, introduces a new regime against unfair commercial practices, which could apply to undisclosed or partially disclosed SMBs. The Bribery Act 2010 (BA) and the Economic Crime and Corporate Transparency Act 2023 (ECCTA) are the key criminal statutes in this area. In relation to SMB, the KC Opinion discusses steps underwriters can take to reduce the risk of prosecution under the BA and ECCTA.

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