

Duties of an insurance broker as agent

Insurance brokers are carrying out their duties as an agent of their principal when they:

- Establish their client's needs;
- Negotiate with insurers on their client's behalf;
- Take instructions from their client to place insurance;
- Negotiate with an insurer in the event of a claim;
- Make a mid-term adjustment to a client's policy;
- Cancel an insurance policy;
- Negotiate a renewal; and
- Provide advice and make recommendations to their client.

Under agency law, **the client is the principal** and the **broker is the agent**. The broker acts as an agent for their client in bringing them into contract with a **third party** (the insurer).

The law of agency imposes a number of legal duties on brokers when acting as agents for their principal. The law of agency requires brokers to act as follows:

- **Obedience** - the agent must obey instructions. Failure to comply may render the agent liable to be sued by their principal for damages.
- **Personal performance** - the agent must, as a general rule, perform the duties and not delegate them to others. Administrative tasks may be delegated. Some brokers do this, and it is known as **outsourcing**. Otherwise, the principal's authorisation is needed to delegate duties.
- **Due care and skill** - the agent must exercise due care and skill in performance of all acts done in the course of their duty as an agent.
- **Good faith** - the agent's relationship with their principal is one of trust. The agent must not allow his/her own interest to conflict with their duties to the principal and must not accept bribes or secret commissions.
- **Accountability** - the agent must account to the principal for all money they receive on the principal's behalf and must keep a proper record of all transactions.

Many brokers now disclose commissions to clients as a matter of course (they only **have to** disclose commissions for commercial insurance policies). Any additional payments must be disclosed automatically. In the commercial insurance sector, payment by fee rather than commission is becoming more common.

Agents stand in a **fiduciary relationship** with their principal, in other words it is a position of trust and they must act accordingly.

Duties of a principal

A principal has the following duties to their agent:

- **Remuneration** - the agent has the right to the remuneration or commission agreed by the principal.
- **Indemnity** - subject to any express terms in the agency agreement, an agent has the right to claim from their principal an indemnity against all losses or expenses incurred in acting on the principal's behalf.