

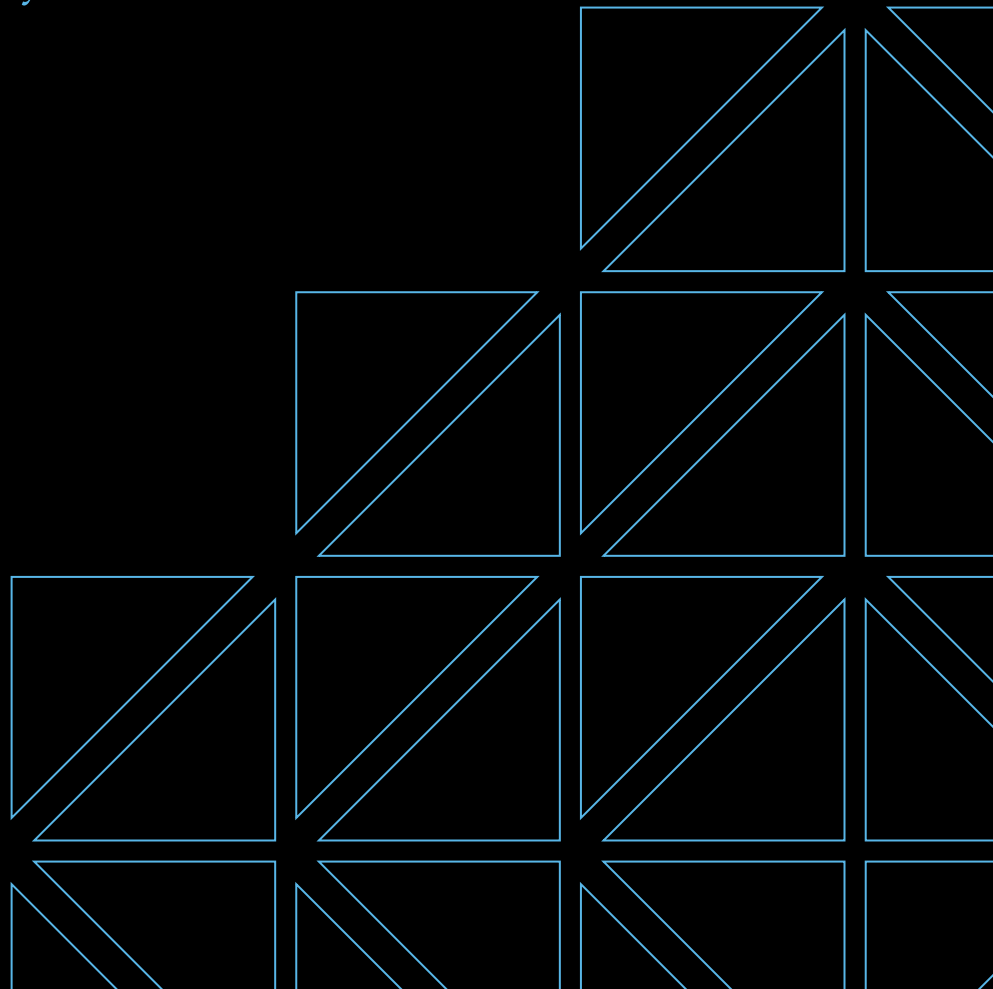


Ministry
of Justice

Claims Management Regulation

Enforcement Policy

Amended January 2012



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1. Introduction

- 1.1 Under current regulatory arrangements, formal decisions about regulatory matters, including those on enforcement, will be taken in the name of the Secretary of State for Justice (the 'Regulator') by the Head of Claims Management Regulation. The Regulator has delegated authority for specific enforcement actions to named officers of the Ministry of Justice's Claims Management Regulation Compliance Office.
- 1.2 For the purposes of this Policy, references to the Regulator include references to the Head of Claims Management Regulation, to the Compliance Office operated under contract by Staffordshire County Council, and to authorised officers of the Compliance Office acting under the Regulator's direction.
- 1.3 This Policy is intended to provide guidance for the Regulator, businesses, consumers and the public. It does not affect the discretion of the Regulator to take a range of formal and informal enforcement actions in relation to compliance with the Compensation Act 2006 and the relevant regulations and orders made under the Act. . Actions taken by the Regulator may be made public where it is appropriate to do so.

2. Basic Principles

- 2.1 The role of the Regulator is to ensure that in regulation and enforcement, the interests of the public are protected.
- 2.2 The purpose of this Policy is to ensure that the law is applied in a fair, equitable and consistent manner and to guide the Regulator into taking the appropriate action.
- 2.3 This Policy reflects the principles of The Regulators' Compliance Code and officers shall have due regard to these principles and to any other published and relevant guidance, including:
- the Code for Crown Prosecutors¹
 - Home Office Circular 30/2005 (The Cautioning of Adult Offenders)²
- 2.4 The Regulator intends to work pro-actively with all stakeholders, and in particular with businesses providing regulated claims management services to help them comply with the legislation.
- 2.5 Consideration will be given to alternatives to formal action, for example giving advice and assistance, or obtaining undertakings about future conduct.
- 2.6 Before formal action is taken, the Regulator will normally provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, to prevent evidence being destroyed).
- 2.7 All decisions will be impartial, objective and in accordance with our Public Sector Equality Duties³ under the Equality Act 2010³.
- 2.8 The Regulator will take into account the comments of any consumer directly affected or other relevant person to establish:
- his or her views about the circumstances in which enforcement action is deemed appropriate
 - the nature and extent of any consumer detriment and
 - its significance relative to the circumstances of a particular case
- 2.9 The MoJ and the Compliance Office are public authorities for the purposes of the Human Rights Act 1998. Officers will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

¹ http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

² <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2005/030-2005/>

³ <https://www.gov.uk/equality-act-2010-guidance>

3. The Range of Actions Available

3.1 The action taken in each case will be decided on its merits. In most cases businesses will have the opportunity to provide a written statement before formal enforcement action is taken and will be given reasonable time in which to respond. What is reasonable will be determined on a case by case basis depending on the severity of the situation. In addition, the Regulator may decide to refer a matter to another agency or service where appropriate.

3.2 The range of options available in relation to **authorised** persons include:

- Informal action and advice (para 4, below)
- Informal letters of warning (para 5, below)
- Informal written undertakings (para 6, below)
- Directions (para 7, below)
- Cancellation, suspension or variation of authorisation (para 8, below)

And in any case where an **authorised** person obstructs the Regulator:

- Simple Caution (para 11, below)
- Prosecution (para 12, below)

3.3 The range of options available in relation to unauthorised persons include:

- Informal action and advice (para 4, below)
- Informal letters of warning (para 5, below)
- Informal written undertaking (para 6, below)
- Refusal of authorisation (para 9, below)
- Injunction (para 10, below)
- Simple Caution (para 11, below)
- Prosecution (para 12, below)

4. Informal Action and Advice

- 4.1 Before deciding to adopt this course, the Regulator will need to be satisfied:
- that the organisation or individual will remedy the situation, without formal action being taken;
 - that previous advice has not been ignored;
 - that the organisation or individual has not acted deliberately or negligently; and
 - that there has not been a similar previous alleged offence or breach committed by the same organisation or individual.
- 4.2 The advice will be set out clearly and simply in writing, with an explanation of and timescale for any remedial work required. Legal requirements will be clearly distinguished from advice about how this can best be achieved.

5. Letters of Warning

- 5.1 The Regulator may use a letter of warning to reinforce informal advice or as an alternative to informal advice in a situation where a breach is believed to have occurred or is ongoing.
- 5.2 The letter of warning will be set out clearly and simply in writing, with an explanation of any remedial action required and the timescale within which the action should be taken. Legal requirements will be clearly distinguished from advice about how this can best be achieved.
- 5.3 The letter will include a clear explanation of the possible consequences of a failure to take remedial action.

6. Informal Written Undertakings

- 6.1 Where an individual or organisation persistently fails to comply with legal requirements or with the terms and conditions of authorisation, the Regulator may seek a written undertaking from that person that they will comply in future.
- 6.2 Where the person gives such an undertaking, the Regulator may determine that no further formal action will be taken.

7. Directions

- 7.1 The Regulator may give a direction to an authorised person about the future handling of complaints in general or about any other aspect of the person's claims management procedures. Before giving a direction, the Regulator must notify the person of the proposed direction, and the reasons for giving it, and consider any submissions that the person may make.
- 7.2 Where the Regulator is satisfied that a complaint against an authorised person is well founded, the Regulator may give a direction to the person about the future handling of the complaint. The Regulator may use this power, for example, to direct a person to issue apologies to consumers. Before issuing a direction, the Regulator must notify the person of the proposed direction, and the reasons for giving it, and consider any submissions that the person may make.

8. Cancellation, Suspension or Variation of Authorisation

- 8.1 Where the Regulator is satisfied, following an investigation of an alleged or suspected failure by an authorised person to comply with a condition of authorisation that an authorised person has failed to comply with a condition of authorisation, the Regulator may cancel the authorisation or suspend it for a period. The Regulator must be satisfied that such action is necessary for the protection of the public. Cancellation of authorisation has serious consequences for an authorised person as they will no longer be able to undertake regulated claims management activities. For this reason the decision to cancel an authorisation will not be taken lightly.
- 8.2 As an alternative to cancellation or suspension, the Regulator may vary the authorisation, for example by imposing a new condition or by varying an existing condition of the authorisation. The Regulator must be satisfied that such action is necessary for the protection of the public.
- 8.3 Before cancelling, suspending or varying an authorisation, the Regulator must notify the authorised person of the proposed action, and the reasons for taking it, and must consider any submissions that the person may make. If the Regulator cancels, suspends or varies an authorisation, the Regulator must give the authorised person written notice of the decision and the reasons for it, and must advise the authorised person of the right to appeal.
- 8.4 An authorised person may appeal against decisions of the Regulator to the First Tier Tribunal (Claims Management Services) and, with leave from the Tribunal, to the Court of Appeal.

9. Refusal of Authorisation

- 9.1 Where the Regulator is not satisfied that an unauthorised person which has applied for authorisation is competent and suitable to provide regulated claims management services, the Regulator may refuse to grant an authorisation.
- 9.2 Where an application for authorisation is refused, the Regulator must give a written notice to the applicant of the decision and the reasons for it, and must advise the applicant of the right to appeal.
- 9.3 A person whose application for authorisation is refused may appeal to the First-tier Tribunal (Claims Management Services).

10. Injunctions

- 10.1 Where an investigation confirms that an individual or organisation is providing regulated claims management services that is not an authorised or exempt person, or subject to a waiver provided for in the regulations an injunction may be sought, restraining the person from providing the regulated services. This power could be used, for example, to stop an unauthorised person from providing services pending a prosecution.

11. Simple Caution (adults only)

- 11.1 A simple caution (which is explained in Home Office Circular 30/2005) is a serious matter and will be kept on record. This will influence future decisions as to whether or not to institute proceedings if the person/business re-offends. It may also be cited in any subsequent court proceedings.
- 11.2 In order to safeguard the offender's interests, the following conditions must be met before a caution can be administered:
- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
 - the offender must admit the offence;
 - the Regulator must be prepared to commence formal proceedings if the caution is not accepted;
 - the offender must understand the significance of a caution and give informed consent to being cautioned.
- 11.3 If the first two of the above requirements are met, consideration will be given as to whether a caution is in the public interest. The Regulator will take into account the public interest factors described at paragraph 4.17 of the Code for Crown Prosecutors⁴.

⁴ http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

12. Prosecution

- 12.1 Prosecution has potentially serious consequences: a criminal record, adverse publicity, an adverse effect upon a business' trading position and even imprisonment. For this reason the decision to prosecute is not taken lightly.
- 12.2 Prosecution will normally only be considered where one or more of the following "public interest" criteria are satisfied:
- deliberate fraudulent or reckless practice, or a threat of a significant economic disadvantage to consumers or businesses;
 - threats of violence to a person or to an officer acting on behalf of the Regulator, or the obstruction of an officer acting on behalf of the Regulator;
 - the consumer affected is part of a vulnerable group, for example children, disabled or the elderly;
 - a prosecution would have a significant positive impact on maintaining community confidence or on the social or economic well-being of communities;
 - the law is being flouted or the actions in issue are irresponsible;
 - the matter in issue is seen as being widespread or of sufficient significance to justify formal action to prevent general disregard for the law and/or public Policy, following appropriate notices being given.
- 12.3 It is also important that there should not be undue delay between the date of the alleged offence and the institution of legal proceedings.
- 12.4 The decision on whether to prosecute lies with the Regulator. The Regulator must weigh each factor in the circumstances of the case and then make an overall assessment. In particular, the following factors may influence this decision:
- whether the alleged offence was the result of a genuine mistake and, if so, has the matter been satisfactorily rectified
 - a realistic prospect of conviction resulting in appropriate penalty
 - a conviction is likely to result in a confiscation or any other order
 - whether the prosecution is likely to have an adverse effect on the physical or mental health of any other person who may have been directly affected by the alleged offence
 - any relevant information or intelligence held by the Compliance Office or partner organisations relating to the history or trading practices of the business
 - any extenuating circumstances, in particular where the business has demonstrated that all reasonable precautions were taken and all due diligence exercised to avoid the commission of the offence.

13. Review and Availability of the Policy

13.1 The policy will be subject to periodic review to ensure it takes account of experience of enforcing claims management regulation.

13.2 A copy of this Policy, and relevant guidance or policies will be made available upon request and are also available online at:

www.justice.gov.uk/claims-regulation/forms-policy-and-guidance

Alternative formats are also available upon request.

13.3 Enquiries should be made to:

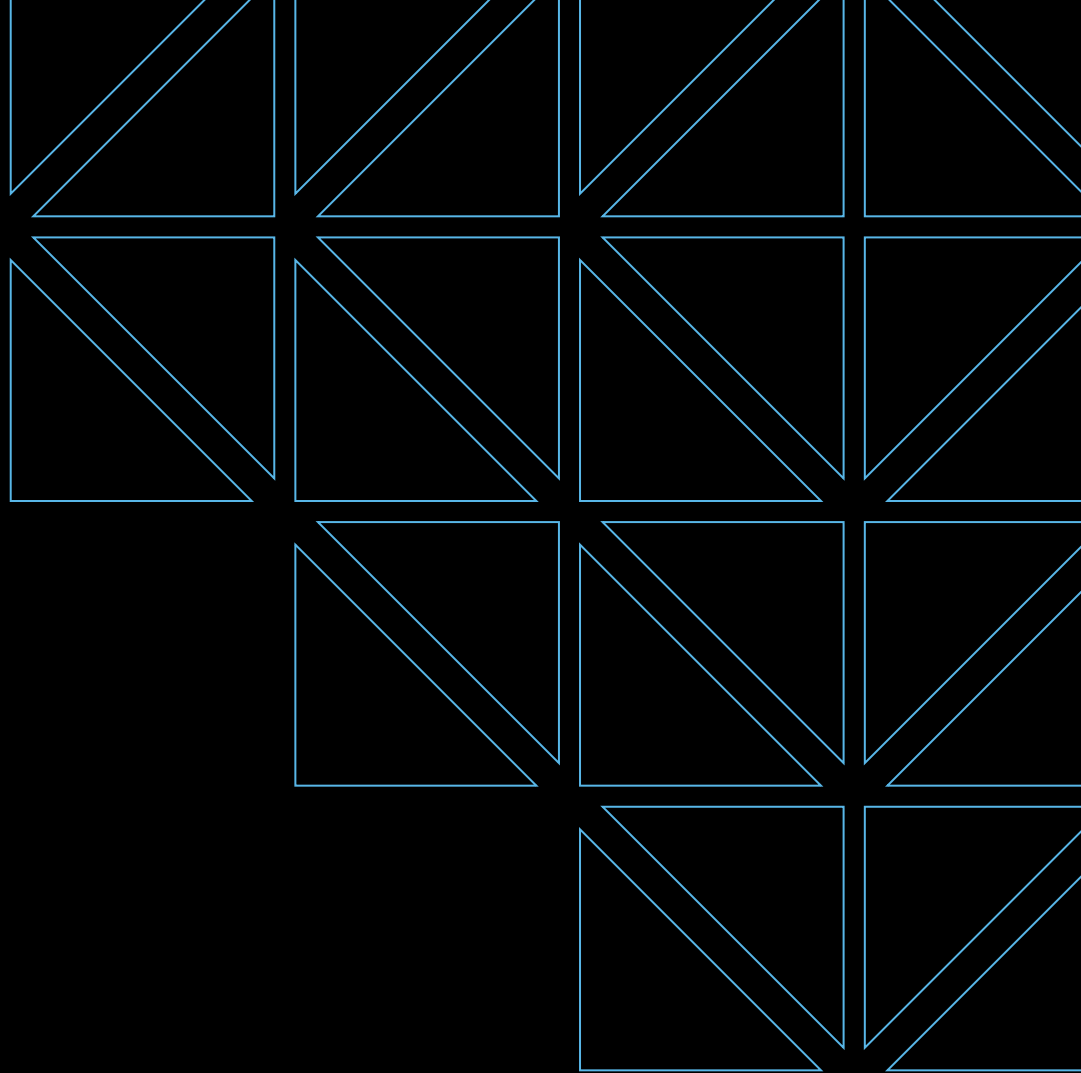
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