

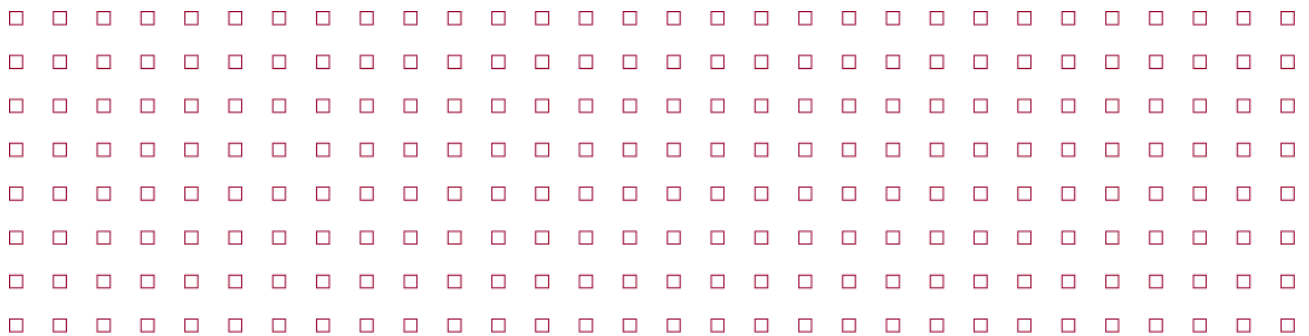


Ministry
of Justice

Claims Management Services Regulation

Conduct of Authorised Persons Rules 2014

Effective from October 2014





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This information is also available at www.gov.uk/moj

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Claims Management Services Regulation

Conduct of Authorised Persons Rules 2014

Introduction

These rules are effective from October 2014 and are made by the Regulator pursuant to Regulation 22 of the Compensation (Claims Management Services) Regulations 2006. These rules apply to the conduct of all regulated claims management companies and supersede the previous conduct rules which were implemented in July 2013.

Definitions

In these rules:

“**business**” means an individual, company, partnership or other organisation that is authorised to provide regulated claims management services.

“**client**” means any prospective or existing client of a business

“**document**” means a business must arrange for written, printed or electronic records to be kept which must be sufficient to enable the Regulator to monitor compliance with the requirements of regulation.

“**exempt introducer**” means an individual or corporate body that is exempted from the need to be authorised under Article 12 of the Compensation (Exemptions) Order 2007. In summary, an exempt introducer is a person who refers details of potential claims or potential claimants to an authorised business or to a legal practitioner or firm of legal practitioners where the following conditions are met:

- a) the service is incidental to his main business;
- b) of the cases that the introducer refers to such persons, he is paid, in money or money's worth, for no more than 25 cases per calendar quarter
- c) he provides no other regulated claims management service; and
- d) where cases are referred to authorised persons the authorised persons accept responsibility for ensuring that he complies with these rules.

General rules

The rules must be complied with at all times, and a business must be able to demonstrate and, where practicable, document that it complies with the rules.

Principles

1. A business shall conduct itself with honesty and integrity.
2. A business shall conduct itself responsibly overall including, but not limited to, acting with professional diligence and carry out the following:
 - a) Take all reasonable steps to investigate the existence and merits of each element of a potential claim before presenting it to a third party.
 - b) Make representations to a third party that substantiate and evidence the basis of the claim, are specific to each claim and are not fraudulent, false or misleading.
 - c) Claims referred to any recognised Ombudsman, dispute resolution scheme or compensation scheme must comply with those organisations' procedures, include specific, appropriate and relevant information on individual claims and take account of relevant past decisions.
 - d) Maintaining appropriate records and audit trails.
 - e) Take all reasonable steps in relation to any arrangement with third parties to confirm that any referrals, leads or data have been obtained in accordance with the requirements of the legislation and Rules.
 - f) Have appropriate procedures in place for early identification and protection of vulnerable consumers and give due consideration to obligations under any relevant legislation.
3. A business shall be directed by people with the necessary competence who must have a working knowledge of the legislation and rules relating to regulated claims management services.
4. A business shall ensure that any staff or other people working on its behalf have the necessary training and competence to perform their duties.
5. A business shall observe all laws and regulations relevant to its business.

Conduct of business

6. A business shall comply with the rules relevant to it and shall:
 - a) on applying for authorisation certify that it will do so, and
 - b) certify annually that it has done so, when requested by the Regulator.

Professional indemnity insurance

7. A business shall comply with the requirements of Regulations 21, 21A and 21B of the Compensation (Claims Management Services) Regulations 2006 (SI 2006/3322) for persons who provide representation to have and maintain professional indemnity insurance.

Complaints and redress

8. A business shall operate a complaints scheme in accordance with rules made by the Regulator. (There are rules on complaints and redress available separately – see Complaints Handling Rules.)

Training and competence

9. A business shall comply with any rules made by the Regulator in respect of training and competence. (There are currently no additional rules.)

Client accounts

10. A business shall comply with rules made by the Regulator on client accounts. (There are rules on client accounts available separately – see Client Account Rules.)

Monitoring and compliance

11. A business shall comply with the monitoring and enforcement arrangements of the Regulator.

Disciplinary arrangements

12. A business shall comply with the Regulator's disciplinary arrangements and shall comply with decisions of the Regulator subject to the right of appeal to the First-Tier Tribunal (Claims Management Services), and any subsequent decisions of the Tribunal.

Insurance

13. Where a business arranges insurance it must, where required, be authorised by the Financial Conduct Authority and comply with the requirements of that Authority.

Loan finance

14. Where a business arranges loan finance it must, where required, be licensed under the Consumer Credit Act 1974 and comply with relevant rules or guidance issued by the Office of Fair Trading or other government department or agency.

Data Protection

15. If required to do so the business must be registered under the Data Protection Act 1998 and comply with obligations imposed by that legislation.

Provision of information

16. A business shall provide to the Regulator the following information:

- a) notification within 20 working days of any changes to the information provided in the authorisation process or subsequently.
- b) any additional information that the Regulator determines it is reasonable for the business to provide within timescales provided for in the request.

The information provided must not be false or misleading.

Exempt introducers

17. Where a business accepts introductions from exempt introducers it shall:

- a) satisfy itself that the introducers are entitled to be exempt.
- b) be responsible for ensuring that the exempt introducers do not undertake any activity that, if carried out by a regulated person, would breach the client specific rules on advertising, marketing and soliciting business.
- c) supply to the Regulator on request details of payments made to, and other benefits provided to, exempt introducers.

Effect of regulatory action

18. Where the Regulator suspends or imposes conditions on the authorisation of a business such that it may no longer provide regulated claims management services, the business must comply with directions of the Regulator on giving notice to clients.

Client specific rules

These rules set out how a business regulated under the Act must conduct itself. The rules must be complied with at all times, and a business must be able to demonstrate and, where practicable, document that it complies with the rules.

General principles

1. A business shall:
 - a) Act fairly and reasonably in dealings with all clients.
 - b) Ensure that any service offered is one that meets the needs of the client and satisfies the requirements of these Rules.
 - c) Ensure that all information given to the client is clear, transparent, fair and not misleading.
 - d) Avoid conflicts of interest.
 - e) Where advice is given, advise the client to pursue cases only if it is in the interests of the client to do so.
 - f) Preserve the confidentiality of the claimant unless disclosure is required or permitted by law or by the claimant

Advertising, marketing and soliciting business

2. All advertising, marketing and other soliciting of business must conform to the relevant code:
 - The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code); or
 - The UK Code of Broadcast Advertising (BCAP Code).

These codes are accessible at www.cap.org.uk/advertising-codes.aspx

For the purposes of this rule, marketing communications on a business's website that are connected with the supply or transfer of goods, services, opportunities and gifts shall be deemed to constitute advertising, and must comply with the CAP Code.

3. A business must not engage in high pressure selling.
4. Cold calling in person is prohibited. Any marketing by telephone, email, fax or text shall be in accordance with the Direct Marketing Association's Code and any related guidance issued by the Direct Marketing Association.
5. Business must not be solicited in any way, including leaflets and advertising, in medical facilities or public buildings without the approval of the management of the facility or building.

6. In soliciting business through advertising, marketing and other means a business must:
 - a) Clearly identify the name of the advertiser.
 - b) Not offer any cash payment or a similar benefit as an inducement for making a claim.
 - c) Not promote the idea that it is appropriate that compensation may be used in a way that is not consistent with the cause of the claim.
 - d) Not imply that the business is approved by the Government or is connected with any government agency or any regulator. (If a business wishes to mention in advertising and marketing material that it is authorised it may use only the following words which must be used in their entirety: "*Regulated by the Claims Management Regulator in respect of regulated claims management activities*".)
7. Use of the expression "no win no fee" must be in accordance with the CAP Help Note on "No Win No Fee claims".
8. Where business is introduced to a solicitor, the business must not act in a way that puts the solicitor in breach of the rules governing solicitors' conduct.
9. A business must seek to ensure that any publicity for its services issued by a third party and which is intended to solicit business for it complies with these rules.

Taking on business

(This section applies only to businesses that have a contractual relationship for a regulated activity with a client.)

10. Before seeking to enter into a contract with a client a business must make reasonable enquiries as to whether the client has alternative mechanisms for pursuing a claim and must advise the client unambiguously of ombudsman schemes or other official means of redress.
11. A contract between a business and a client must be signed by the client and the business may not take any payment from the client until the contract is signed. The standard terms and conditions of any contract must be clear and also published prominently on the business's website (where a business operates a website). The business must provide the client with the following information in writing or electronically before a contract is agreed:
 - a) Honest, comprehensive and objective written information to assist the client to reach a decision including the risks involved in making a claim, in particular the possibility of losing money and, in the case of legal action, appearing in court.
 - b) The services that will be provided, in a way that does not misrepresent, either by implication or omission, any term or condition or by whom the service will be provided.
 - c) The procedures that will be followed.
 - d) Contracts, including for insurance or loans, that the client will be asked to agree to.

- e) Any charge the business makes. Where this is a percentage of compensation payable, the percentage must be indicated together with a typical example of the actual cost in pounds, or more than one example if the business makes differential charges.
 - f) Any referral fee paid to, or other financial arrangement with, any other person in respect of introducing the claim.
 - g) Any costs that the client may have to pay, including repayments on a loan taken out for any purpose and the purchase of a legal expenses insurance policy, and whether the client will be liable to pay any shortfall in recoverable costs or premiums from the losing defendant party.
 - h) Documentation needed to pursue the claim.
 - i) Any relationship to a particular solicitor or panel of solicitors.
 - j) Procedures to follow in the event of a complaint.
 - k) How the client may cancel the contract and the consequences of cancellation including the reimbursement of any costs paid during the cancellation period and any charges for work completed after the 14 day cooling off period.
 - l) The statement that the business is "*regulated by the Claims Management Regulator in respect of regulated claims management activities*" and the authorisation number of the business. This requirement applies one month after the date of authorisation of the business.
12. Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, the Financial Services Compensation Scheme, the Housing Ombudsman Service or any other recognised dispute resolution procedure, the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.
13. A business must make explicit to the client his right to seek further advice or to shop around, subject to any time limits within which a claim must be made.
14. A business must take reasonable steps to ensure that the client is able to understand the contract that he is being asked to agree to.
15. A business, unless subject to Regulation (8) of the Damages-Based Agreements Regulations 2013, must allow a 'cooling off' period of at least 14 days after signing any agreement, during which period the client may cancel the agreement and be entitled to a refund of any payments made to the business or in connection with any insurance policy, loan or other agreement taken out in relation to the agreement.
16. A business, unless subject to Regulation (8) of the Damages-Based Agreements Regulations 2013, must permit the client to withdraw from a contract at any time. Any charge to the client shall be limited to what is reasonable in the circumstances and shall reflect work undertaken by the business.

Representing a client

(This section does not apply where a business only refers cases on to a solicitor or other legal professional.)

17. In seeking information to help pursue a claim a business shall –
 - a) Advise the client that any claims documentation should be read carefully and retained.
 - b) Assist the client to fill in any necessary forms, or check details that have been provided, but not “coach” the client to answer questions inaccurately in a way to maximise possible compensation.
 - c) Make it clear that all the answers or statements given are the client’s responsibility.
 - d) Ask the client to provide all documents, including in electronic form, in his or her possession that are relevant to the claim and which give evidence of a fact in the claim, and to complete a disclosure statement confirming that he has given the business all documents that he knows about.
18. A business must keep the client informed of the progress of the claim, including any significant changes to costs that the client may have to meet and must inform the client of any suspension or variation of the business’s authorisation within 14 days of the imposition of such action. It must forward any relevant information received from the client without delay.
19. A business must give prompt advice to the client about any requirements concerning the claim and advise the client without delay of any demands for additional information that may have been requested by any party via the business.
20. A business must avoid conflicts of interest. In particular, a business must not act for a client whose interests are in conflict with those of another client.



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