

Chapter 2

Conduct of business

2.1 General principles

- 2.1.1** **R** A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *customer* (the *client's best interests rule*).
- 2.1.2** **R** A *firm* must establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable *customers*.
- 2.1.3** **G** *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.
- 2.1.4** **R** A *firm* must not engage in high pressure selling in relation to *regulated claims management activity*.
[Note: CAPR CSR 3]
- 2.1.5** **R** A *firm* must not carry out a *cold call* in person.
[Note: CAPR CSR 4]
- 2.1.6** **G** ■ CMCOB 2.2 sets out further *rules* and *guidance* in relation to generating, obtaining, and passing on leads.
- 2.1.7** **R** A *firm* must not make or pursue a *claim* on behalf of a *customer*, or advise a *customer* to make or pursue a *claim*, if the *firm* knows or has reasonable grounds to suspect that the *claim*:
- (1) does not have a good arguable base; or
 - (2) is fraudulent; or
 - (3) is frivolous or vexatious.
- 2.1.8** **G** (1) A *firm* should take all reasonable steps to investigate the existence and merits of each element of a potential *claim* before making or pursuing the *claim* or advising the *customer* themselves to make or pursue the *claim*.
[Note: CAPR GR 2(a)]

- (2) In accordance with *Principle 1* (Integrity) and *Principle 2* (Skill, care and diligence), the *firm's* investigations should be such that it is able, in presenting a *claim*, to make representations which:
 - (a) substantiate the basis of the *claim*;
 - (b) relate to the nature of the *claim* and are specific to the *claim*; and
 - (c) are not false or misleading, or an exaggeration-
- (3) In complying with ■ CMCOB 2.1.7R *firms* should have regard to:
 - (a) relevant guidance, including about their decisions, published by the *Financial Ombudsman Service*, any other relevant statutory ombudsman, or statutory compensation scheme; and
 - (b) decisions by the *Financial Ombudsman Service*, or any other relevant statutory ombudsman, or statutory compensation scheme concerning similar claims in respect of which the *firm* acted for the *claimant* to whom the decision was addressed.

2.1.9 **R** A *firm* must publish on its website (if it operates a website) the standard terms and conditions of the contracts it enters into with *customers*.

[Note: CAPR CSR 11]

2.1.10 **R** A *firm* must not take any payment from a *customer* until the *customer* has signed an agreement with the *firm* which provides for such a payment to be made.

[Note: CAPR CSR 11]

2.1.11 **G**

- (1) ■ CMCOB 2.1.10R prohibits a *firm* from taking a payment from a *customer* before the *customer* has signed an agreement with the *firm*. It is not sufficient for the *firm* to enter into an agreement with the *customer* orally for this purpose: the agreement should be signed.
- (2) The signature should be on a hard copy of the agreement which may be given or posted to the *firm*, else sent by fax, or scanned or photographed and sent electronically. Alternatively, the *customer* could insert a digital image of their handwritten signature into an electronic copy of the agreement before returning the agreement to the *firm* by email.
- (3) The *FCA* would not view an agreement as having been signed for the purposes of ■ CMCOB 2.1.10R where the *customer* does no more to indicate their acceptance of the *firm's* terms and conditions than to send a text message or email or to tick a box on a website or web-based form.
- (4) The *firm* will also need to have complied with the requirements of ■ CMCOB 4 (Pre-contractual requirements), including the requirement to take reasonable steps to ensure that the *customer* understands the agreement (see ■ CMCOB 4.3.1R(3)). Where an agreement is entered into electronically, those steps should include the *firm* satisfying itself that the *customer* has had the opportunity to familiarise themselves with the contract.

2.1.12

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- (1) This *rule* applies in respect of an agreement entered into between the *customer* and the *firm* under which the *firm* is to provide *claims management services*.
- (2) The *firm* must:
 - (a) allow the *customer* to cancel the agreement during a period of 14 *days* beginning on the day that the agreement is entered into; and
 - (b) permit the *customer* to terminate the agreement at any time after that period.
- (3) Where the *customer* cancels an agreement under (2)(a), the *firm* must provide the *customer* with a refund of any payments made to the *firm*.
- (4) Where the *customer* terminates an agreement as in (2)(b), the *firm* must not charge the *customer* an amount in excess of what is reasonable in the circumstances and reflects the work undertaken by the *firm*.
- (5) This *rule*:
 - (a) does not apply if regulation 8 (Terms and conditions of termination in an employment matter) of the Damages-Based Regulations 2013, or any equivalent provision made under the law of Scotland, applies; and
 - (b) is subject to:
 - (i) ■ CMCOB 2.1.13R and ■ CMCOB 2.1.14R; and
 - (ii) the *claims management fee cap* (see ■ CMCOB 5).

[Note: CAPR CSR 17 and 18]

2.1.13

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- (1) A *firm* must not charge a fee to a *customer* in relation to a financial services or financial product *claim* before the provision of a *claims management service* to the *customer* other than *seeking out, referrals and identification of claims or potential claims*.

[Note: CAPR CSR 15]

This *rule* is subject to ■ CMCOB 2.1.14R.

2.1.14

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- (1) A *firm* must not charge a fee to a *customer* in relation to a *claim* in respect of a *payment protection contract* prior to the later of:
 - (a) the *customer* withdrawing or deciding not to pursue the *claim*; or
 - (b) the settlement of the *claim*.
- (2) A *firm* must not charge a fee to a *customer* in relation to a *claim* in respect of a *payment protection contract* if there was no such contract between the *customer* and the *person* whom it was alleged was the counterparty to the contract.

[Note: CAPR CSR 15 and 16]

Requirements relating to firms with relevant connections to the claim or potential claim

- 2.1.15** **R**
- (1) A *firm* must not carry on the *regulated activity* of *seeking out, referrals and identification of claims or potential claims* in relation to a claim or potential *claim* if:
 - (a) the *firm* has a relevant connection to the *claim* or potential *claim*; and
 - (b) if valid, the *claim* or potential *claim* would be a *protected claim*.
 - (2) A *firm* must not carry on the *regulated activity* of *advice, investigation or representation in relation to a financial services or financial product claim* in respect of a *claim*, or potential *claim*, to the FSCS, if the *firm* has a relevant connection to that *claim* or potential *claim*.
 - (3) The prohibition in (2) does not apply to *regulated claims management activity* carried on pursuant to an agreement entered into before 7 July 2022 except where:
 - (a) the *regulated claims management activity* is carried on in relation to a *claim* or potential *claim* which was added to the agreement after the date above; or
 - (b) the *customer's* first authorisation or instructions to the *firm* to act in relation to the *claim* or potential *claim* were given after the date above.
- 2.1.16** **G**
- (1) Relevant connection is defined in **CMCOB 2.1.17R(1)** to **(5)**. That definition refers to FSCS-eligible activities. That term is defined in **CMCOB 2.1.17R(6)**.
 - (2) Activities which could give rise to a *protected claim* are the activities referred to in **COMP 5.2.1R**, when carried on by a *participant firm*, or an *appointed representative* of such a *firm*. Those activities include, for example, the *regulated activities* which constitute *designated investment business* (referred to as part of the definition of *protected investment business* in **COMP 5.5.1R(1)**).
- 2.1.17** **R**
- A *firm* has a relevant connection to a *claim* or potential *claim* for the purposes of **CMCOB 2.1.15R** if one of the conditions in (2) to (4) is met.
- A *person* who is:
- (a) a member of the *firm's governing body*;
 - (b) a *controller* of the *firm*; or
 - (c) an *employee* of the *firm*,
- was directly involved in, or responsible for the carrying on of, the FSCS-eligible activity giving rise to the *claim* or potential *claim*.
- An individual 'A', who is:
- (a) a member of the *firm's governing body*; or
 - a *controller* of the *firm*,

is related to an individual 'B' who was directly involved in, or responsible for the carrying on of, the FSCS-eligible activity giving rise to the *claim* or potential *claim*.

The *firm*, or a member of the *firm's governing body*, has provided, or agreed to provide, a financial benefit to a *person* who was directly involved in, or responsible for the carrying on of, the FSCS-eligible activity giving rise to the *claim* or potential *claim*.

A is related to B for the purposes of (3), and ■ CMCOB 2.1.21R(5)(b), if:

A is B's spouse or civil partner;

A's relationship to B has the characteristics of the relationship between spouses or civil partners; or

A is B's parent, brother, sister, child, grandparent or grandchild (including step-relations in these categories).

An activity is an FSCS-eligible activity for the purposes of ■ CMCOB 2.1.15R to ■ CMCOB 2.1.22G if it falls into one of the categories of activity which could give rise to a *protected claim*.

2.1.18

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- (1) For the purposes of ■ CMCOB 2.1.17R to ■ CMCOB 2.1.21R:
 - (a) a *person* is not directly involved in, or responsible for an activity if the *person* has a purely administrative or support function (e.g. IT support);
 - (b) a *person* may be responsible for the carrying on of an activity without being approved as an *SMF manager*;
 - (c) a *person* may be directly involved in or responsible for the carrying on of an activity if they are an *appointed representative* of a *participant firm*;
 - (d) an independent contractor may be directly involved in or responsible for the carrying on of an activity; and
 - (e) *firms* are reminded that the *glossary* definition of *employee* includes independent contractors.
- (2) For the purposes of ■ CMCOB 2.1.17R(4), the financial benefit could be provided while the *firm* carrying on the FSCS-eligible activity is still a going concern.
- (3) An activity may be an FSCS-eligible activity regardless of whether it has given rise to a *claim* or potential *claim*.

2.1.19

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- (1) The prohibition in ■ CMCOB 2.1.15R(2) means that a *firm* cannot carry on the *regulated activity* of *advice, investigation or representation in relation to a financial services or financial product claim* in respect of a *claim*, or potential *claim*, to the FSCS, if the *firm* has a relevant connection to that *claim* or potential *claim*.
- (2) In some cases, ■ CMCOB 2.1.15R(2) will have the effect of requiring a *firm* to stop managing a *claim* where it has already started carrying on *regulated claims management activities* in relation to the *claim* or potential *claim*. For example, this could happen where the *firm* to

which an existing *claim* relates becomes insolvent and the *customer's claim* becomes one to the FSCS as a result.

2.1.20 **R** Where a *firm* is required to stop carrying on *regulated claims management activity* in relation to a *claim* or potential *claim* as a result of **CMCOB 2.1.15R**, the *firm* must take the steps in (1) to (5) within 5 *business days* of becoming aware of the circumstances which result in the *firm* being required to stop carrying on *regulated claims management activity* in relation the *claim* or potential *claim*:

- (1) notify the *customer* they have ceased managing the *claim* and explain why;
- (2) explain to the *customer* what options are available for them to continue with their *claim*;
- (3) explain to the *customer* that they may be able to make their *claim* to the FSCS;
- (4) provide the *customer* with a link to the FSCS webpage; and
- (5) explain that the *customer* is not required to use the services of a *claims management company* to pursue their *claim* and that it is possible for the *customer* to present the *claim* themselves for free.

2.1.21 **R** (1) This *rule* applies to a *firm* which carries on, or has *permission* to carry on, the *regulated activity* of:

- (a) *seeking out, referrals and identification of claims or potential claims*; or
- (b) *advice, investigation or representation in relation to a financial services or financial product claim*.

(2) A *firm* to which this *rule* applies must provide annual notifications to the FCA, containing the information set out in (3) to (6), about its connections to FSCS-eligible activities.

(3) The notification must cover any individual who is:

- (a) a member of the *firm's governing body*;
- (b) a *controller* of the *firm*; or
- (c) an *employee* of the *firm*; and

is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity.

For an individual described in (3), the notification must contain:

- (a) the name of the individual, and individual's role in the *firm* providing the notification;
- (b) the name of the *firm* at which the individual is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity; and
- (c) the individual's role at the *firm* described in (b), and the dates between which the individual performs or performed that role.

- (5) The notification must also cover any individual 'A' who:
 - (a) is a member of the *firm's governing body* or is a *controller* of the *firm*; and
 - (b) is related to an individual 'B' who is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity.
- (6) For an individual described in (5), the notification must contain:
 - (a) A's name and role in relation to the *firm* providing the notification;
 - (b) B's name, and the relationship between A and B;
 - (c) the name of the *firm* at which B is or was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity; and
 - (d) B's role at the *firm* described in (c), and the dates between which B performs or performed that role.
- (7) The first notification submitted by a *firm* under ■ CMCOB 2.1.21R must.
 - (a) be submitted within 60 *business days* of the later of:
 - (i) 7 July 2022; and
 - (ii) the date on which the *firm* is first granted *permission* to carry on the *regulated activities* specified in (1); and
 - (b) cover the previous 6 years (including whether any individual described in (3) or (5) was directly involved in, or responsible for the carrying on of, an FSCS-eligible activity within the previous 6 years).
- (8) After the first notification is submitted in accordance with (7), all future notifications under ■ CMCOB 2.1.21R must be submitted by a *firm*, within 30 *business days* of the *firm's accounting reference date*, in accordance with ■ SUP 16.25.
- (9) When submitting a notification under ■ CMCOB 2.1.21R, *firms* must report all instances of relevant connections which occurred at any point during the reporting period even if those individuals are no longer relevant connections, e.g., because the individual is no longer employed by the *firm* at the time the notification is submitted.

2.1.22

- G The requirement to provide a notification under ■ CMCOB 2.1.21R applies in relation to an FSCS-eligible activity regardless of whether such activity has led to a *claim* or potential *claim*.