

Chapter 4

Pre-contractual requirements

4.3 Pre-contract requirements

4.3.1

R Before entering into an agreement with the *customer* that relates to regulated claims management activity, the *firm* must:

- (1) take reasonable steps to:
 - (a) ascertain whether the *customer* has other methods for pursuing the *claim*, and if so:
 - (i) ensure that the *customer* understands that those methods are available to them;
 - (ii) seek confirmation in writing from the *customer* that the *customer* does not wish to use those methods, and the *customer's* reasons for not wishing to do so;
 - (iii) record the *customer's* confirmation and reasons; and
 - (b) draw the *customer's* attention to the information provided under ■ CMCOB 4.2.2R(2)(g) and (h), if that information is relevant to the *claim*;

[Note: in part, CAPR CSR 10]

- (1A) where the information provided under ■ CMCOB 4.2.2R(2)(g) or (h) is relevant to the *claim*, obtain a "standalone" signed statement in a durable medium from the *customer*, dealing only with this issue, confirming that the *customer*:
 - (a) is aware of the matters in ■ CMCOB 4.2.2R(2)(g) or ■ (h) (or both (g) and (h) where both are relevant); and
 - (b) wishes to use the services of the *firm* to make the *claim*.

- (2) make it clear to the *customer* that the *customer* may seek further advice or look for another *person* to assist the *customer* with the *claim*, subject to any time limits within which a *claim* must be made; and

[Note: CAPR CSR 13]

- (3) take reasonable steps to ensure that the *customer* understands the agreement;

[Note: in part, CAPR CSR 14]

- (4) ask the *customer* whether they have outstanding liabilities with the *person* against whom the *claim* is to be made and explain that if they do:

- (a) that any damages, compensation or settlement monies might, in certain circumstances, be off-set against those outstanding liabilities; and
 - (b) the customer will, where necessary, need to pay the *firm's* fees from their own funds;
- (5) in the case of pension related *claims* explain:
- (a) that the *firm's* fee may become payable before the *customer* has access to their pension; and
 - (b) that the *customer* will, where necessary, need to pay the *firm's* fees from their own funds;
- (6) ask the *customer* if they, whether in *Great Britain* or in another jurisdiction:
- (a) have ever been declared bankrupt;
 - (b) are subject to a bankruptcy petition;
 - (c) are subject to, or have ever been subject to, an individual voluntary arrangement;
 - (d) have proposed an individual voluntary arrangement which is yet to be approved or rejected by creditors;
 - (e) are currently subject to, or have ever been subject to, a debt relief order; or
 - (f) are or have ever been subject to any other process or arrangement which is similar to those listed in (a) to (e) including but not limited to sequestration; and
- if so, explain that any damages, compensation or settlement monies might, in certain circumstances be off-set against the *customer's* outstanding debts; and that the *customer* will, where necessary, need to pay the *firm's* fees from funds that are not subject to the processes or arrangements listed above at (a) to (f).
- (7) record the *customer's* response to questions (4) and (6) and where the customer does not know the answer, advise them to check.

4.3.2

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- (1) For the purposes of ■ CMCOB 4.3.1R(1)(a) a *firm* will have complied with its obligations if it has provided relevant examples of potential alternative methods of pursuing the *claim* and has asked the *customer* whether any such methods are available to them.
- (2) A *customer* should be treated as having other methods for pursuing a *claim* for the purposes of ■ CMCOB 4.3.1R(1) if, for example:
 - (a) the *claim* is for personal injury and the *customer* has legal expenses cover under a contract of insurance relating to their car or home and that cover includes legal advice, assistance and representation; or
 - (b) the *customer* is entitled to legal advice, assistance and representation by virtue of their membership of a trade union.
- (3) Where the *customer* does have other methods for pursuing a *claim*, the *firm* should explore whether the *customer* has investigated whether they might pursue the *claim* through those methods (for

instance, by using any advice, assistance and representation available under a contract of insurance or through their trade union membership).

- (4) Where a *customer* is unable to confirm whether they have other methods for pursuing the claim or is unaware of whether they have suitable cover in place, the *firm* should advise the *customer* to check whether they have such cover in place and inform the *customer* that it is possible to pursue a claim through such alternative arrangements if they are in place.
- (5) *Firms* are reminded that ■ DISP 1.2.1R(4) requires *firms* to provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service* (including the *Financial Ombudsman Service's* website address):
 - (a) on the *firm's* website, where one exists; and
 - (b) if applicable, in the general conditions of the *firm's* contract with the *eligible complainant*.

4.3.3

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- (1) The *firm* may need to take additional steps under ■ CMCOB 4.3.1R(3) to ensure that the *customer* understands the agreement where the *customer* is one whom the *firm* understands or reasonably suspects to be vulnerable.
- (2) *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.