

# Claims Management: Conduct of Business sourcebook

## Schedule 3 Rights of action for damages

### Sch 3.1 G

The table below sets out the *rules* in *CMCOB* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

### Sch 3.2 G

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

### Sch 3.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the rule may be actionable is given.

Chapter / Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
		The clear, fair and not misleading <i>rule</i> in <a href="#">CMCOB 3.2.3 R</a>	Yes	In part (Note 1)	No
		The prudential <i>rules</i> for <i>firms</i> carrying on <i>regulated claims management activity</i> in <a href="#">CMCOB 7.2</a> and <a href="#">7.3</a>	No	Yes, <a href="#">CMCOB 7.1.2R</a>	No
		All other <i>rules</i> in <i>CMCOB</i>	Yes	No	No

Note: [CMCOB 3.2.3R](#) provides that if, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

