

Claims Management: Conduct of Business Sourcebook

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Chapter 1

Application and purpose

1.1 Application

Application

- 1.1.1 **G** The Claims Management: Conduct of Business sourcebook (*CMCOB*) is the specialist sourcebook for *regulated claims management activities*.
- CMCOB* applies as described in this chapter, unless the application of a chapter, section or a *rule* is described differently in the chapters, sections or *rules* in *CMCOB*.

Purpose

- 1.1.2 **G** The purpose of *CMCOB* is to set out the detailed obligations that are specific to *regulated claims management activities* and activities connected to those activities carried on by *firms*. These build on and add to the high-level obligations, for example, in *PRIN*, *GEN* and *SYSC*.
- 1.1.3 **G** Other parts of the *FCA Handbook* also apply to *regulated claims management activities*. For example, the arrangements for supervising *firms*, including applicable reporting obligations, are described in the Supervision manual (*SUP*) and the detailed requirements for handling complaints are set out in the Dispute Resolution: Complaints sourcebook (*DISP*). The Client Assets sourcebook (*CASS*) also contains *rules* about *client money* that apply in certain circumstances.
- 1.1.4 **G** *Firms* are reminded that they may require permissions to carry on *regulated activities* other than *regulated claims management activities*: for example, *credit broking*, *entering into a regulated credit agreement as lender* or *insurance distribution activity*.



1.2 Who? What? Where?

- 1.2.1 **R** (1) *CMCOB* applies to a *firm* (including to a Gibraltar-based firm or a *TP firm*) with respect to carrying on *regulated claims management activities* and *ancillary activities*, unless otherwise stated in, or in relation to, a *rule*.
- (2) In (1) "Gibraltar-based firm" has the same meaning as in the *Gibraltar Order*.
- 1.2.2 **G** For an activity to amount to a *regulated claims management activity* it must be carried on in *Great Britain*. *Firms* should note that *regulated claims management activities* (and activities ancillary to *regulated claims management activities*) can be carried on in *Great Britain* whether or not they are carried on from an establishment maintained in the *United Kingdom* (see ■ PERG 2.4A).
- 1.2.3 **R** A *firm* must:
- (1) ensure that its *employees* and agents comply with *CMCOB*; and
 - (2) take reasonable steps to ensure that other persons acting on its behalf comply with *CMCOB*.

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 ■ CMC0B 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) ■ CMC0B 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 ■ CMC0B 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 ■ CMC0B 4 (Pre-contractual requirements), including the requirement to take reasonable steps to ensure that the *customer* understands the agreement (see ■ CMC0B 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*.

2.2 Generating, obtaining and passing on leads

2.2.1

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- (1) The *Principles* (in particular *Principle 6* and *Principle 7*) apply to actions of a *firm* dealing with a *claim* or a *customer* whose details the *firm* has obtained from a *lead generator*. For example, where there is a possibility that the *lead generator* is using misleading information, advice or actions to obtain a *customer's* personal data, acting on those sales leads could amount to a breach by the *firm* of *Principle 6* and *Principle 7*.
- (2) The definition of "*customer*" in the *Glossary* includes a *person* who may have a *claim* and either (i) may use the services of a *person* who carries on a *regulated claims management activity* or an activity which would be a *regulated claims management activity* but for the exclusion in the *Regulated Activities Order*; or (ii) in respect of whom a *person* carries on the *regulated activity of seeking out, referrals and identification of claims or potential claims* or an activity which would be the *regulated activity of seeking out, referrals and identification of claims or potential claims* but for an exclusion in the *Regulated Activities Order*. An individual who is contacted by a *lead generator*, or whose details are obtained by a *lead generator* and passed on to another *firm*, is, therefore, a *customer* of both the *lead generator* and, where relevant, that other *firm*.

Requirements relating to use of a lead generator

2.2.2

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- (1) A *firm* that accepts or proposes to accept sales referrals, leads or data (including details of *claims* or of *customers*) from a *lead generator* must:
 - (a) ascertain whether the *lead generator* is an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims or potential claims*; and
 - (b) satisfy itself as to whether the *lead generator* has appropriate systems and processes in place to ensure compliance with (i) and (ii) (including that the referrals, leads or data have been obtained in compliance with (i) and (ii)):
 - (i) *data protection legislation*; and
 - (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (or, if the *lead generator* is established in an *EEA State* but has no establishment in the *United Kingdom*, the equivalent legislation in that *EEA State*).
- (2) The *firm* must take the steps required by (1):

2.2.3

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- (a) before accepting sales referrals, leads or data from a particular *lead generator* for the first time; and
 - (b) if the *firm* continues to accept sales referrals, leads or data from that *lead generator*, at appropriate intervals.
- (3) If the *lead generator* is not an *authorised person* with a *permission* to carry on seeking out, referrals and identification of claims or potential claims, the *firm* must take reasonable steps to satisfy itself that the *lead generator* may carry on that *regulated activity* without breaching the *general prohibition*.
- (4) The *firm* must keep a record of the steps it has taken under (1), and its conclusions in relation to (1)(a) and (1)(b).
- (1) A *firm* may ascertain whether a *person* is an *authorised person* by checking the *Financial Services Register* on the *FCA* website.
- (2) In order to comply with ■ CMCOB 2.2.2R(1)(b) the *FCA* expects *firms* and *lead generators* to ensure that they are aware of any requirements to obtain consent under:
- (a) regulation 21A of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the cold calling ban);
 - (b) *data protection legislation*; and
 - (c) any guidance published by the Information Commissioner's Office in relation to *data protection legislation* and the cold calling ban.
- (3) In satisfying itself as to whether a *lead generator* has appropriate systems and processes in place to ensure compliance with *data protection legislation*, a *firm* should consider, in particular, the procedures by which the *lead generator* obtains *customers'* personal data and *customers'* consent to the use (including the acquisition, storage and sharing) of that data and whether there is consent to use it in the *firm's* intended marketing.
- (4) *Firms* are reminded that, under *data protection legislation*, they must have consent from the *customer* to process the *customer's* personal data, for example to contact the *customer* or to pass their details on to a third party, unless one of the other conditions which renders the processing of that data lawful is satisfied. In this context, the *FCA* would normally expect *firms* to obtain consent and would only expect *firms* to be able to rely on the legitimate interests condition (under article 6(1)(f) of the *General data protection regulation* very occasionally. Where the *firm* relies on consent which has been obtained by a *lead generator*, the *firm* should satisfy itself that the consent was properly obtained, and clearly covers both the *firm* and the use that the *firm* intends to make of the *customer's* personal data. In relation to consent, *firms* are also reminded of the requirements in article 7(2) of the *General data protection regulation*.
- (5) In satisfying itself as to whether a *lead generator* has appropriate systems and processes in place to ensure compliance with the Privacy and Electronic Communications (EC Directive) Regulations 2003, a *firm* should consider, in particular, the systems and processes the *lead generator* has in place to ensure compliance with the prohibition of cold-calling in relation to *claims management services* (regulation

21A) and the requirements in relation to the use of electronic mail, including text messages, for direct marketing purposes (regulation 22). The Regulations also contain restrictions on marketing by fax, email and text message and apply to both the caller/sender of the marketing (e.g. the *lead generator*) and the instigator (e.g. the *firm*, where the *lead generator* is acting on behalf of the *firm*). Both the instigator of the marketing and the business carrying out the marketing may be subject to enforcement action if any breaches occur. *Firms* should therefore ensure that any marketing carried out on their behalf by a *lead generator* is compliant.

- (6) A *firm* should have regard to the frequency with which it accepts leads from a *lead generator* when determining what an appropriate interval is at which it should take the steps required by
- CMC0B 2.2.2R: the more frequently it accepts leads from that *lead generator*, the shorter should be the interval; and where the *firm* accepts leads from the *lead generator* on an ongoing basis, it should take those steps regularly.

Recording the source of sales referrals, leads or data

2.2.4 **R** Where a *firm* accepts a sales referral, lead or data, or details of a *claim* or of a *customer*, from a *lead generator*, the *firm* must keep a record of the *lead generator* from whom it accepted that lead or those details for at least three years.

2.2.5 **I** [Not used]

2.2.6 **R** If the *firm* is not satisfied as to the matters in ■ CMC0B 2.2.2R(1)(b), it must neither accept sales referrals, leads or data from that *lead generator* nor use sales referrals, leads or data obtained from that *lead generator*.

Notifying the FCA if a lead generator is not authorised

- 2.2.7 **R**
- (1) If the *lead generator* is not an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims or potential claims* and the *firm* is not satisfied that the *lead generator* may carry on that *regulated activity* without breaching the *general prohibition*, the *firm* must:
 - (a) promptly notify the *FCA* in writing, using the form at ■ SUP 15 Annex 4R; and
 - (b) neither accept sales referrals, leads or data from that *lead generator* nor use sales referrals, leads or data obtained from that *lead generator*.
 - (2) A notification under (1)(a) must include:
 - (a) the identity of the *lead generator* and, if known, contact details for the *lead generator*; and
 - (b) the *firm's* reasons for not being satisfied that the *lead generator* may carry on *seeking out, referrals and identification of claims or potential claims* without breaching the *general prohibition*.

Provision of information by lead generators

2.2.8

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- (1) This *rule* applies to a *firm* from the time at which it could reasonably be expected to know or suspect that it is going to:
 - (a) pass the *customer*, or details of a *customer* or of a *claim*, to a third party, or give details about the third party to a *customer*; and
 - (b) receive a payment from the third party in relation to the *firm* doing so.
- (2) The *firm* must, in its *financial promotions* and in any communication with the *customer*, include a prominent statement to the effect that the *firm* receives payments from third parties to whom it passes *customers*, or the details of *customers* or of *claims*, or whose details it passes to *customers*, in respect of doing so.
- (3) If a communication relates to a *claim* which may be made by a *customer*, without using the services of the *firm* and without incurring a fee, to a statutory ombudsman or statutory compensation scheme the *firm* must ensure that the communication contains a prominent statement to the effect that:
 - (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
 - (b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the relevant statutory ombudsman or statutory compensation scheme.
- (4) Where the communication is made by voice telephony, the *firm* must comply:
 - (a) with (2) at the start of the call; and
 - (b) with (3) as soon as the *firm* knows the sort of *claim* to which the communication relates.
- (5) The *firm* need not comply with (2) or, as relevant, (3) if it has previously complied with those *rules* in respect of that *customer* within the previous *month*.

2.2.9

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- (1) ■ CMCOB 2.2.8R applies to *lead generators*, and to other *firms* which generate leads, as soon as there is a possibility of *customers*, or the details of *customers* or of *claims* being passed to another *person*.
- (2) Examples of a *firm* receiving a payment from a third party in relation to doing any of the things mentioned in ■ CMCOB 2.2.8R(1)(a) include (but are not limited to):
 - (a) the third party paying the *firm* a fee for each sales referral or lead it passes on; and
 - (b) the third party making a monthly, occasional or a one-off payment to the *firm* irrespective of how many sales referrals, or leads or data the *firm* actually passes on and irrespective of how this might be described (for example as a 'marketing budget').

- (3) Where that *rule* applies to telephone calls, it applies in respect of both incoming and outgoing calls, including voice telephony over the internet.
- (4) The *guidance* at ■ CMCOB 3.2.8G also applies in relation to ■ CMCOB 2.2.8R(3).
- (5) *Firms* are reminded that section 56 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 prohibits the payment and receipt of fees for the referral of legal services in cases involving personal injury or death.

Disclosure to other firms by lead generators

2.2.10 **R** Where a *lead generator* passes *customers*, or details of a *customer* or a *claim*, to a third party, the *lead generator* must disclose to the third party any charges imposed or to be imposed on the *customer* concerned in relation to the *customer's claim*.

2.2.11 **G** Where more than one *lead generator* is involved, *lead generators* should disclose charges imposed or to be imposed by the preceding *lead generators*. *Firms* receiving *claims* from *lead generators* should take reasonable steps to ascertain the entirety of the charges payable or paid in relation to a *claim*.

2.3 Recording and retention of telephone calls and electronic communications

Recording and retention of telephone calls and electronic communications

- 2.3.1** **R** This section applies to telephone calls and *electronic communications* between the *firm* and a *customer* made for the purposes of, or in connection with, a *regulated claims management activity* carried on by the *firm* ("relevant communications").
- 2.3.2** **R** *Firms* must record all telephone calls and retain all other relevant communications.
- 2.3.3** **G** The requirement to record and retain all relevant communications applies to incoming and outgoing calls, text messages, emails, and other *electronic communications* between the *firm* (or a *person* acting for the *firm*) and a *customer*, including calls and communications relating to complaints about the *firm*.
- 2.3.4** **R** A *firm* must take all reasonable steps to prevent an *employee* or contractor from making, sending, or receiving relevant communications:
- (1) on equipment owned by a *person* other than the *firm*; and
 - (2) which the *firm* is unable to record or retain.
- 2.3.5** **R** A *firm* must notify a *customer* at the start of each telephone call (including a call made by voice telephony via the internet) that the call will be recorded.
- Retention period**
- 2.3.6** **R** The *firm* must retain telephone call recordings (including recordings of calls made by voice telephony via the internet) for a minimum of 12 *months*, from the latest of:
- the *customer* withdrawing or deciding not to pursue the *claim*;
 - the settlement of the *claim*;

the conclusion of any legal proceedings commenced in connection with the *claim*;

- (4) the conclusion of the handling of any complaint made by the *customer* to or about the *firm*, including the handling of the complaint by an alternative dispute resolution scheme (such as the *Financial Ombudsman Service*);
- (5) the termination of the agreement between the *firm* and the *customer*; and
- (6) the date of the *firm's* last contact (by whatever method) with the *customer*.

2.3.7

G

- (1) For the purposes of ■ CMCOB 2.3.6R(2), a *claim* is settled when the *customer* receives compensation, damages or redress in respect of the *claim*.
- (2) The effect of ■ CMCOB 2.3.6R is that where, for example, the only contact with the *customer* is a telephone call made with a view to selling the *firm's* services, but the *customer* does not engage the *firm*, the *firm* is required to keep a record of that call for at least 12 *months*. (*Firms* are reminded that, in relation to cold calling by telephone, the Privacy and Electronic Communications (EC Directive) Regulations 2003 prohibit unsolicited calls for the purposes of direct marketing in relation to *claims management services* without the consent of the subscriber of the line being called (regulation 21A).)
- (3) The effect of ■ CMCOB 2.3.6R(4) is as follows. Where the *firm* would otherwise become entitled to cease to keep the record absent that provision but at that time there is a complaint that has been made and not concluded, the *firm* must retain that record for a minimum of twelve *months* from the point at which the complaint has been concluded.

2.4 Record keeping

2.4.1

G

- (1) *Firms* are reminded that ■ SYSC 9.1.1R requires a *firm* to arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FCA* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.
- (2) *Firms* are also reminded that ■ SYSC 9.1.5G states that in relation to the retention of records, a *firm* should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the *firm* may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made. For these purposes retaining records would include keeping all text messages, emails, and other *electronic communications* between the *firm* (or a *person* acting for the *firm*) and a *customer*.
- (3) As a minimum, *firms* should retain records in their files of any advice given to, and correspondence with, their *customers*, and of any correspondence with third parties in the course of their providing services to their *customers*.
- (4) *CMCOB* also imposes a number of specific record-keeping requirements: see Schedule 1.

Chapter 3

Financial promotions, and communications with customers

3.1 Application

- 3.1.1** **G** This chapter sets out *rules* and *guidance* on *financial promotions* and communications with *customers* that relate to *regulated claims management activity*.
- 3.1.2** **G**
- (1) In accordance with *Principle 7*, a *firm's financial promotions* and communications with its *customers* should be fair, clear and not misleading.
 - (2) The *guidance* in this chapter is relevant to all stages of a *firm's* interaction with its *customers*: from seeking out and obtaining *customers*, whether for itself or for another *firm*; negotiating and entering into contracts with its *customers*; advising its *customers*; investigating *claims*; presenting *claims* and representing *customers*; keeping its *customers* informed of progress; and through to settling a *claim*, being paid and the relationship with the *client* coming to an end.

3.2 Financial promotions and communications – general standards

The fair, clear and not misleading rule

3.2.1

R

- (1) A *firm* must ensure that each of its communications and *financial promotions* is fair, clear and not misleading (the *fair, clear and not misleading rule*).
- (2) This *rule* applies in relation to all communications with *customers*, including:
 - (a) communications intended to generate leads either for the *firm* or for another *person*;
 - (b) pre-contract disclosures and other information which ■ CMCOB 4 requires a *firm* to give to a *customer*; and
 - (c) post-sales communications with *customers*, including:
 - (i) communications intended to keep the *customer* up to date, in accordance with ■ CMCOB 6.1;
 - (ii) communications of or about fees, charges, invoices and payments; and
 - (iii) communications about complaints relating to the *firm*.
- (3) This *rule* and the other *rules* in this *chapter* apply when a *firm* approves a *financial promotion* in the same way as when a *firm* communicates a *financial promotion* itself. Before a *firm* approves a *financial promotion* it must confirm that it complies with the *rules* in this *chapter* and if, at any time after the *firm* approves a *financial promotion*, it becomes aware that the *financial promotion* no longer complies with the *rules* in this *chapter*, it must withdraw its *approval* and notify any *person* it knows to be relying on its *approval* as soon as practicable.

3.2.1A

G

- (1) The effect of section 55NA of the *Act* is that a *firm* is unable to approve a *financial promotion* unless:
 - (a) the *firm* is a *permitted approver* in relation to the *financial promotion*; or
 - (b) an *approver permission exemption* applies.
- (2) ■ SUP 6A contains *guidance* on applying for *approver permission*.

- 3.2.2** G (1) The *fair, clear and not misleading rule* means that *firms* should communicate with their *customers* in a way that is appropriate, taking into account the means of communication, the information the communication is intended to convey and the nature of the *customer* and of the *claim*.
- (2) In complying with that *rule*, *firms* should:
- (a) have regard to the average *customer's* understanding of the services that the *firm* provides;
 - (b) present information in a logical order;
 - (c) use plain and intelligible language and, where the use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms;
 - (d) make key information prominent and easy to identify, including by means of headings and the layout, display and font attributes of text, and by the use of design devices such as tables, bullet points and graphs; and
 - (e) avoid unnecessary disclaimers.
- 3.2.2A** G A *firm* is reminded of its obligations under ■ ESG 4.3.1R when it *communicates* or *approves* a *financial promotion* that references the *sustainability characteristics* of a product or service.
- 3.2.3** R 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*.
- 3.2.4** R A *firm* must ensure that each of its *financial promotions* and communications with a *customer*:
- (1) identifies the *firm* and that it is a *claims management company*;
 - (2) does not offer a cash payment or any benefit in money or money's worth (for example, a 'free' gift) as an inducement for entering into an agreement with the *firm* or making a *claim*;
 - (3) does not promote the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the *claim*;
 - (4) does not falsely imply that the business is approved by the Government or is connected with any government agency or any regulator.
- [Note: CAPR CSR 6]
- 3.2.5** G (1) The *firm* may identify itself by using a trading name or shortened version of the legal name of the *firm* (provided the *customer* can identify the *firm* communicating the information) and that it is a *claims management company*.

3.2.6

R

(2) The FCA would view a *financial promotion* or communication as promoting the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the *claim* if the *financial promotion* or communication states or implies that a *claim* is a means of making money, rather than being for the purpose of compensating the *customer* for damage, injury or loss.

(1) Where a *claim* is one that falls within the province of a statutory ombudsman or statutory compensation scheme such as the *Financial Ombudsman Scheme*, the *compensation scheme*, the Criminal Injuries Compensation Authority, a *housing complaint service* or any other such body, the *firm* must not suggest that a *customer* will have a more favourable outcome if the *customer* uses the services of the *firm*.

[Note: CAPR CSR 12]

(2) Where (1) does not apply, a *firm* must not state or imply in any *financial promotion* or communication with a *customer* that a *claim* will be resolved more quickly, or with a better prospect of success, or with a better outcome for the *customer*, than if the *customer* were to make the *claim* themselves, unless the statement or implication is true and the *firm* can provide evidence to substantiate the statement or implication.

3.2.7

R

If a *claim* to which a *financial promotion* relates is of a sort that may be made by a *customer* to a statutory ombudsman or statutory compensation scheme, without using the services of the *firm* and without incurring a fee, the *firm* must ensure that the *financial promotion* contains a prominent statement to the effect that:

- (1) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
- (2) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the relevant statutory ombudsman or the statutory compensation scheme.

3.2.8

G

(1) Where a *claim* can be made to a statutory ombudsman or statutory compensation scheme, **CMCOB 3.2.7R** requires *firms* to name the relevant ombudsman or compensation scheme.

(2) The relevant statutory ombudsmen or statutory compensation schemes that the *firm* should name should include those specified in the following table. If there are other statutory ombudsmen or compensation schemes relevant to the nature of *claims* to which the *financial promotion* relates, the *firm* should name them in addition.

Claim	Ombudsman or compensation scheme
<i>criminal injury claim</i>	the Criminal Injuries Compensation Authority
<i>employment-related claim</i>	none specified

Claim	Ombudsman or compensation scheme
financial services or financial product claim	<p>the <i>Financial Ombudsman Service</i>: for any <i>financial promotion</i> which is generic in nature or where the <i>firm</i> would expect those to whom the <i>financial promotion</i> is addressed to be eligible to pursue their <i>claim</i> with the <i>Financial Ombudsman Service</i></p> <p>the <i>compensation scheme</i>: for any <i>financial promotion</i> addressed to <i>persons</i> who may have a <i>claim</i> against a <i>person</i> which is no longer in business, where the <i>firm</i> would expect those to whom the <i>financial promotion</i> is addressed to be eligible to pursue their <i>claim</i> with <i>compensation scheme</i></p> <p>the Pensions Ombudsman: for any <i>financial promotion</i> addressed to <i>persons</i> who may be eligible to pursue their <i>claim</i> with the Pensions Ombudsman, for example where the <i>financial promotion</i> relates to <i>claims</i> against an occupational pension provider</p>
housing disrepair claim	a <i>housing complaint service</i>
personal injury claim	none specified
claim for a specified benefit	none specified

- (3) *Firms* should also indicate whether *claims* may be made direct to the ombudsman or compensation scheme, or whether it is necessary for the *customer* first to pursue their *claim* directly with the *person* to whom it relates.
- (4) For example, where the *financial promotion* that relates to *claims* in respect of packaged bank accounts, a *firm* could comply with ■ CMCOB 3.2.7R by indicating: “You do not need to use a claims management company to make your complaint to your bank, and if your complaint is not successful you can refer it to the Financial Ombudsman Service yourself for free”.

‘No-win, no-fee’

3.2.9

R

- (1) This *rule* applies if a *firm* uses the term “no win, no fee” or a term having a similar meaning in a *financial promotion*.
- (2) In the case of a *firm* which charges or may charge a fee for services to which the *financial promotion* relates, the *firm* must include prominently in the *financial promotion*:
 - (a) the fees that the *firm* charges in respect of *claims* of the sort to which the *financial promotion* relates;
 - (b) where those fees are not fixed or ascertainable in advance, the method by which the fees would be calculated; and
- (3) In the case of a *firm* which charges a *termination fee* in respect of an agreement with a *customer* for services to which the *financial promotion* relates (see ■ CMCOB 2.1.12R(2)(b) and ■ CMCOB 2.1.12R (4)), the *firm* must ensure that the *financial promotion* indicates:

- (a) that the *firm* may charge a *termination fee* in the event that the *customer* terminates the agreement other than during the cancellation period (see ■ CMCOB 2.1.12R(2)(a)); and
 - (b) what that *termination fee* is or, where it is not fixed or ascertainable in advance, the method by which it would be calculated.
- (4) Subject to (5), where a *firm* (F) passes *customers*, or details of a *customer* or of a *claim*, to a third party (T), or gives details about the third party (also T) to a *customer*, F must include prominently in the *financial promotion*:
- (a) the fees that T charges in respect of *claims* of the sort to which the *financial promotion* relates; or
 - (b) where those fees are not fixed or ascertainable in advance, the method by which the fees would be calculated.
- (5) Where F does not know the information required by (4), F must include prominently in the *financial promotion* an indication of the fee that may be charged for services to which the *financial promotion* relates.
- (6) Subject to (7), where T charges a *termination fee* in respect of an agreement with a *customer* for services to which the *financial promotion* relates (see ■ CMCOB 2.1.12R(2)(b) and ■ CMCOB 2.1.12R(4)), F must ensure that the *financial promotion* indicates:
- (a) that T may charge a *termination fee* in the event that the *customer* terminates the agreement other than during the cancellation period (see ■ CMCOB 2.1.12R(2)(a)); and
 - (b) what that *termination fee* is or, where it is not fixed or ascertainable in advance, the method by which it would be calculated.
- (7) Where F does not know the information required by (6), F must still inform the *customer* that they may be required to pay a *termination fee*.
- (8) Where a *firm* is required, under this *rule*, to include information about fees or *termination fees* in a *financial promotion*, that information must be no less prominent than the term referred to in (1).

3.2.10

G

- (1) As a consequence of ■ CMCOB 3.2.9R(4) and ■ CMCOB 3.2.9R(5) if a *firm* is unaware of the charging basis of the third parties, to whom they pass the *customer* or details of the *customer*, or of a *claim*, or whose details they give to a *customer*, they should not advertise a no-win, no-fee service.
- (2) When providing an indication of the fee for the purposes of ■ CMCOB 3.2.9R(5), the *FCA* expects *firms* to provide a reasonable indication of the fee the *customer* is likely to pay bearing in mind the *fair, clear and not misleading rule*.
- (3) In particular, the *FCA* expects *firms* to provide:
 - (a) an indication of a typical fee; or

- (b) a range of the fees;
that may become payable by the *customers*;
- (c) whom the *firm* passes to third parties or whose details the *firm* passes to third parties;
- (d) whose *claims* the *firm* passes to third parties; or
- (e) to whom the *firm* gives the details of third parties.

(4) A *firm* could provide an indication of a typical fee where a significant majority of such *customers* all pay the same fee (e.g. where the fee inclusive of VAT is 25% of the compensation amount).

(65) Where the *firm* provides an indication of a typical fee, it should make clear that that figure is only an indication of the amount which *customers* may be required to pay and that the actual fee may be higher. For example, the *firm* could state:

“Typically customers pay 25% of the amount recovered, although this will be subject to your individual circumstances and the actual fee may be more or less than this”.

(6) Where the *firm* provides a range of fees:

subject to (c), the range should represent all of the third parties to whom the *firm* passes *customers* or details of *customers*, or of *claims*, or whose details the *firm* gives to *customers*,

the range should include the highest and the lowest fee that may become payable by such *customers*;

the *firm* should not include a fee as the lowest fee unless that fee is charged to a reasonable proportion of such *customers*.

Restriction on advertising in certain buildings

3.2.11 R A *firm* must not make a *financial promotion*, or a communication intended to generate a lead, in a medical facility, a care facility or a public building without the approval in writing of the management of the facility or building.

[Note: in part, CAPR CSR 5]

3.2.12 G (1) The purpose of ■ CMCOB 3.2.11R is to prohibit the marketing of *regulated claims management activity*, and lead generation for *regulated claims management activity*, in medical facilities and public buildings without permission. Permission should be obtained from the management of the organisation which occupies the facility or building, rather than from junior members of staff.

(2) In ■ CMCOB 3.2.11R:

(a) a “medical facility” should be taken to include hospitals, GP surgeries, walk-in clinics and any other medical establishment in which people who have suffered an accident or other incident that might give rise to a *claim* may go to seek treatment;

- (b) a “care facility” includes any sort of establishment in which children or adults receive social care, either as residents or as outpatients; and
- (c) a “public building” should be taken to include any building to which the public has access, such as police stations and court buildings.

Chapter 4

Pre-contractual requirements

4.1 Application and purpose

- 4.1.1 **R** This chapter applies to a *firm* in relation to *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*.
- 4.1.2 **G** This chapter sets out *rules and guidance* on the information that *firms* should provide to *customers* before entering into an agreement that relates to *regulated claims management activity*.



4.2 Pre-contract information and advice

Summary document

4.2.1 **R** A firm must provide summary information (see ■ CMCOB 4.2.2R) to a customer in accordance with this section before entering into an agreement with the customer that relates to regulated claims management activity.

4.2.2 **R** The firm must provide the summary information:
(a) in a single page document, which contains only the summary information;
(b) in a durable medium; and
(c) in plain and intelligible language.
The summary information is:
(a) a brief description of the services that the firm will provide under the agreement (see ■ CMCOB 4.2.8R);
(b) a brief description of the steps that the customer will need to take in respect of the claim;
(c) a brief description of how the firm will keep the customer updated on the progress of the claim;
(d) a fee illustration or estimate, and explanation (see ■ CMCOB 4.2.5R);
(e) a brief description of the customer's right to cancel the agreement (see ■ CMCOB 2.1.12R(2)(a)); and
(f) a brief description of:
(i) the customer's right to terminate the agreement; and
(ii) any fees that may be payable by the customer to the firm if the customer terminates the agreement (see ■ CMCOB 2.1.12R(2)(b) and ■ CMCOB 2.1.12R(4));
(g) if the claim is of a sort which may be made by the customer to a statutory ombudsman or a statutory compensation scheme, without using the services of the firm and without incurring a fee, a statement to the effect that:
the customer is not required to use the services of a firm which carries on regulated claims management activity to pursue their claim; and
it is possible for the customer to present the claim themselves for free, either to the person against whom they

wish to complain or to the statutory ombudsman or the statutory compensation scheme; and

- (h) if the *firm* is aware that the *person* against whom the *claim* is to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (g)), a statement to the effect that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme.

4.2.3 **G** The *guidance* at **CMCOB 3.2.8G** also applies in respect of **CMCOB 4.2.2R(2)(g)**.

4.2.4 **G** The requirement at **CMCOB 4.2.2R(2)(b)** to describe the steps a *customer* will need to take in respect of a *claim* will generally include, but are not limited to, providing documentation relevant to the *claim* (such as background information) and completing the necessary paperwork.

4.2.5 **R**

- (1) The *firm* must explain the basis on which it would calculate its fee, and provide an illustration or estimate of that fee.
- (2) [deleted]
- (2A) Where the amount of the fee, or any part of it, would be determined by reference to the amount recovered for the *customer*, the *firm* must provide its fee illustration or estimate showing the level of fee by reference to each of the five redress bands in the table in **CMCOB 5.2.9R** (irrespective of whether the *claim* is a financial services or financial product *claim*).
- (3) For the purposes of (2A), the “amount recovered for the *customer*” means the amount paid or payable by the *person* against or about whom the *claim* would be made, ignoring any set-off or netting against any sum owed or payable by the *customer* to that *person*.
- (4) Where the *firm’s* fee is not ascertainable as in (2A), but is instead dependent on factors which cannot be known in advance (for example, where the *firm* charges an hourly rate), the *firm* must explain its fee structure, and provide an estimate calculated by reference to:
 - the facts and circumstances of the *claim*, to the extent that the *firm* has knowledge of them; and
 - (if the *firm* charges on an hourly basis) the typical number of hours the *firm* would expect to spend on a *claim* of that type.
- (5) The illustration or estimate must be accompanied:
 - where the amount of the fee, or any part of it, would be determined by reference to the amount recovered for the *customer*, by a statement that the fee illustration is not to be taken as an estimate of the amount likely to be recovered for the *customer*;
 - where that is not the case, by an explanation of how the estimate has been calculated; and

by a statement to the effect that the fee that the *customer* will have to pay may be more than or less than the illustration or estimate.

- (6) Where the fee is a fixed amount, the *firm* may indicate that the fee is a fixed amount and not an estimate.
- (7) Where the fee is provided for in or imposed under an *FS claims management agreement* and there is a possibility that services which fall outside the scope of the *FS claims management fee cap* will be provided under the agreement or under a connected agreement (as defined in ■ CMCOB 5.2.19R(2)), the *firm* must provide the *customer* with a clear and prominent:
 - (a) explanation that those services will not be covered by the *FS claims management fee cap*;
 - (b) explanation that the overall fees may exceed the cap; and
 - (c) estimate of the likely fees for those services.

4.2.6

G

- (1) If the *firm* is unable to provide a precise figure under ■ CMCOB 4.2.5R(4), it may provide an estimate in the form of a range. *Firms* should be able to demonstrate the basis for their calculations under ■ CMCOB 4.2.5R(4), and should ensure that their estimates are accurate.
- (2) Estimates and illustrations should be shown inclusive of VAT. VAT-exclusive fees should only be shown if the *customer* pays no VAT or can recover VAT, or the *firm* is not subject to VAT.

Provision of information and advice

4.2.7

R

- (1) Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must give the *customer* objective information, in a *durable medium*, to assist the *customer* to reach a decision as to whether to pursue the *claim*.
- (2) The information given under (1) must include information on:
 - (a) the risks and costs involved in making the *claim*, in particular (where relevant) the possibility of not recovering any money but becoming liable for costs; and
 - (b) the possibility, in the case of legal action, of attending Court and giving evidence.

[Note: CAPR CSR 11a]

4.2.8

R

Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must also give the *customer* information, in a *durable medium*, on:

- (1) the services that will be provided under the agreement, including but not limited to:
 - (a) the actions the *firm* will take to ascertain the basis and merits of the *claim*, including (where relevant):

- (i) the nature of inquiries that the *firm* will make of the *person* about whom the *claim* is to be made and of third parties; and
 - (ii) the procurement of legal, specialist or expert advice;
 - (b) the nature of any advice to be provided by the *firm* including:
 - (i) advice on the merits of the *claim*; and
 - (ii) advice on any particular steps that the *customer* may need to take;
 - (c) the actions the *firm* will take to present and pursue the *claim*;
 - (d) the actions the *firm* will take and the advice it will give when the *claim* is completed (that is, when it is either rejected or successful, whether in whole or in part);
- (2) the person who will provide those services;
- (3) the terms under which and the conditions on which those services will be provided;
- (4) any charge the *firm* makes;
- (5) whether the *firm's* fees are:
 - (a) calculated on the gross or net amount of the *customer's* damages, compensation or monies in settlement of a *claim*; and
 - (b) a clear explanation of how this will affect the damages, compensation or settlement monies that the *customer* will actually receive;
- (6) any referral fee paid by the *firm* to, or other financial arrangement with, any other *person* in respect of the introduction of the *customer* to the *firm*;
- (7) any steps that the *customer* is likely to have to take in respect of the *claim*;
- (8) any costs that the *customer* may have to pay, in relation to repayments of a loan taken out for the purchase of a legal expenses insurance policy, or any similar purpose, and whether the *customer* may be liable to pay any shortfall in recoverable costs or premiums from the *person* against whom the *claim* is to be made;
- (9) the documentation likely to be needed to pursue the *claim*;
- (10) any relationship between the *firm* and any solicitor or panel of solicitors to whom the *firm* might refer the *customer* or from whom the *firm* might commission services in relation to the *customer*;
- (11) the procedures to follow if the *customer* wishes to make a complaint about the *firm*;
- (12) how the *customer* may cancel or terminate the contract and what the consequences of cancellation and termination are, including the reimbursement of any costs paid during the cancellation period and any charges for work completed after that cancellation period (see ■ CMC0B 2.1.12R);

- (13) the nature and frequency of updates that the *firm* will give the *customer* on the progress of the *claim*;
- (14) the *Financial Ombudsman Scheme* or any other Ombudsman scheme to which the *firm* is subject; and
- (15) any relevant statutory compensation scheme to which the *firm* is subject.

[Note: in part, CAPR CSR 11(b)–(k)]

4.2.9

R

In addition to the matters in ■ CMC0B 4.2.7R and ■ 4.2.8R, the *firm* must also inform the *customer*, in a *durable medium*, that:

- (1) if the *customer* has outstanding liabilities with the *person* against whom the *claim* is to be made:
 - (a) 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.
- (2) in the case of pension related *claims*:
 - (a) it is possible that the *firm's* fee may become payable before the *customer* has access to their pension; and
 - (b) the *customer* will, where necessary need to pay the *firm's* fees from their own funds.
- (3) if the *customer* is subject to or proposing any of the processes or arrangements listed at ■ CMC0B 4.3.1R(6)(a) to (f) that:
 - (a) any damages, compensation or settlement monies might, in certain circumstances, be off-set against the *customer's* outstanding debts; and
 - (b) the *customer* will, where necessary need to pay the *firm's* fees from funds which are not subject to the processes or arrangements listed at ■ CMC0B 4.3.1R(6)(a) to (f).

4.2.10

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- (1) Examples of outstanding liabilities in ■ CMC0B 4.2.9R(1) include:
 - late repayments due under a *credit agreement* for financial services claims; or
 - the training costs paid by an employer for the employee which become repayable by the employee in accordance with the conditions of a contract.
- (2) Outstanding liabilities would not include arranged debts such as a mortgage account.

4.2.11

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When a *firm* gives information to a *customer* as required by ■ CMC0B 4.2.1R, ■ CMC0B 4.2.7R, ■ CMC0B 4.2.8R and ■ CMC0B 4.2.9R, the *firm* must accompany the information with:

4.2.12

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- (1) the name, postal address and other contact details of the *firm*; and
- (2) the reference number under which the *firm* appears in the *Financial Services Register*.

[Note: in part, CAPR CSR 11(l)]

- (1) The information required by ■ CMCOB 4.2.7R, ■ CMCOB 4.2.8R and ■ CMCOB 4.2.9R cannot be given in the same document as the information required by ■ CMCOB 4.2.2R. However, it is permissible for all of this information to be provided in attachments to the same email or enclosures to the same letter.
- (2) When giving the information referred to in ■ CMCOB 4.2.11R, *firms* are reminded of their obligations under ■ GEN 4.3.1R.

4.2.13

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Firms are reminded that ■ SYSC 10.1.7R requires them to maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest (as defined in ■ SYSC 10.1.3R) from adversely affecting the interests of their *customers*. If those arrangements are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *customer* will be prevented, ■ SYSC 10.1.8R requires the *firm* to disclose the general nature or sources of conflicts of interest, or both, and the steps taken to mitigate those risks, before undertaking business for the *customer*. The FCA would expect *firms* to do so at the same time as they provide the information required by ■ CMCOB 4.2.

4.2.14

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When providing information concerning any ombudsman or the compensation scheme as required by ■ CMCOB 4.2.8R(14) or ■ CMCOB 4.2.8R(15) or otherwise in ■ CMCOB 4.2.8R, a *firm's* communications with a *customer* should:

- (a) comply with the *fair, clear and not misleading rule* and the *client's best interests rule*; and
- (b) specify whether the scheme or schemes to which the *firm* is subject cover all the activities and/or services which the *firm* proposes to undertake for the *customer*, and specify which activities (if any) are not within the jurisdiction of the scheme or schemes.

4.3 Pre-contract requirements

4.3.1

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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*.

Chapter 5

Fee caps for regulated claims management activities

5.1.1

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5.1 Fee cap for payment protection insurance claims

- (1) Under section 29(3) of the Financial Guidance and Claims Act 2018, the fee cap applicable to *regulated claims management activity* in connection with a PPI claim is 20% of the amount recovered. The cap applies by reference to a sum comprising all amounts charged for such services in connection with the claim (whether or not charged under a single agreement), exclusive of VAT.
- (2) Section 31 of that Act (PPI claims: interim restriction on charges imposed by authorised persons after transfer of regulation to FCA) prohibits a *firm* from:
 - (a) charging an amount which exceeds the *PPI claims management fee cap*; and
 - (b) entering into an agreement which provides for the payment by a *customer* of charges which would breach or are capable of breaching the *PPI claims management fee cap*.
- (3) Any payment in excess of the *PPI claims management fee cap* is recoverable by the *customer*. The FCA would expect the *firm* to reimburse the *customer* promptly, irrespective of whether the *customer* has asserted that the *firm* has breached the fee cap.
- (4) Any agreement which provides for the payment by a *customer* of charges which would breach or are capable of breaching the *PPI claims management fee cap* is not enforceable to the extent that it provides for such a payment.
- (5) A *firm* that breaches the *PPI claims management fee cap* is subject to the FCA's disciplinary powers in the same way as if the *firm* had breached a *rule*.

5.2 Fee restrictions for financial services and financial product claims other than payment protection insurance claims

Application

5.2.1 **R** This section applies to *firms* in relation to:

- (1) *FS claims management agreements* entered into by a *customer*; and
- (2) charges provided for in or imposed on a *customer* under such an agreement or a **connected agreement**.

5.2.2 **G**

- (1) This section applies to financial services or financial product *claims*. However, as a result of the definition of *FS claims management agreement*, this section does not apply to a *claim* to the extent that the *PPI claims management fee cap* applies to it (for PPI claims see **CMCOB 5.1**).
- (2) The terms in bold in this section (other than in headings or in titles) are defined in **CMCOB 5.2.19R**.

Statutory context and purpose

5.2.3 **G**

- (1) Section 137FD of the Act (FCA general rules: charges for claims management services) places a duty on the FCA to make *rules* in relation to all *regulated claims management agreements* and all *regulated claims management activities*, which concern *claims* in relation to financial products or services.
- (2) The *rules* must be made with a view to securing an appropriate degree of protection against excessive charges for the provision of a service which is, or which is provided in connection with, a *regulated claims management activity*.
- (3) In accordance with that duty, the purpose of this section is:
 - (a) to restrict the charges for *claims* in relation to financial products or services; and
 - (b) to secure an appropriate degree of protection against excessive charges.
- (4) *Firms* are reminded of their obligations to treat *customers* fairly under **PRIN 2.1.1R(6)** (Customers' interests) and **CMCOB 2.1.1R**

(*client's best interests rule*) which also apply where this section applies. Accordingly, as well as complying with the *rules* in this section, *firms* should ensure that their fees comply with ■ PRIN 2.1.1R(6) and the *client's best interests rule*.

Fee cap for financial services and financial product claims within scope of complaints resolution rules or statutory ombudsman or statutory compensation scheme, where customer is awarded redress

Application of the FS claims management fee cap

- (1) Subject to (4), the *FS claims management fee cap* applies to charges for any of the activities in (2) which are payable by *customers* who are awarded financial redress for their *claim*, provided the *claim*, if made, would fall:
 - (a) within the scope of complaints resolution rules; or
 - (b) within the scope of any statutory ombudsman scheme or any statutory compensation scheme.
- (2) Subject to (3), the activities referred to in (1) are as follows:
 - (a) *FS claims management activities* carried on in relation to the *claim* which is the subject of the relevant *FS claims management agreement*; and
 - (b) services provided in connection with the activities in (a).
- (3) Where the charge is provided for in or imposed under a **connected agreement**, the reference to *FS claims management activities* in paragraph (2)(a) includes activities which would be *FS claims management activities* but for the exclusions in articles 89N to 89W of the *Regulated Activities Order*.
- (4) Where:
 - (a) the *FS claims management activities* carried on under an *FS claims management agreement* or a **connected agreement** are carried on for the purposes of actual or potential court proceedings; and
 - (b) one or more of the conditions in (5) is met,the *FS claims management fee cap* does not apply to the extent that the charges are for activities carried on for the purposes of those proceedings.
- (5) The conditions in this paragraph are:
 - (a) there are reasonable grounds to believe that the limitation period for issuing court proceedings may be about to expire and that it is therefore necessary to issue court proceedings;
 - (b) the *customer* is unable to pursue the *claim* through any statutory ombudsman scheme or any statutory compensation scheme because:
 - (i) the *claim* has already been determined under the relevant scheme; or
 - (ii) the operator of the relevant scheme has determined that the *claim* cannot or should not be considered under the scheme;

- (c) there are reasonable grounds to consider that the value of the *claim* may exceed the maximum redress which can be awarded by:
 - (i) the *Financial Ombudsman Service* or by the *FSCS* (where the *claim* falls within the scope of those schemes); or
 - (ii) (where the *claim* does not fall within the scope of the schemes in (i)), other statutory compensation or statutory ombudsman schemes; or
- (d) the time limit for referring the complaint to the *Financial Ombudsman Service* has already elapsed and:
 - (i) there are reasonable grounds to believe that the *Ombudsman* may not conclude that the failure to comply with the time limits was the result of exceptional circumstances in accordance with ■ DISP 2.8.2R(3); and
 - (ii) where relevant, the *respondent* has not consented to the *Ombudsman* considering the complaint in accordance with ■ DISP 2.8.2R(5).

5.2.5

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- (1) **Within the scope of complaints resolution rules** is defined in ■ CMCOB 5.2.19R.
- (2) The statutory schemes in ■ CMCOB 5.2.4R(1)(b) include the *Financial Ombudsman Service*, the *Pensions Ombudsman*, and the *compensation scheme* (see ■ CMCOB 3.2.8G).
- (3) The *FS claims management fee cap* applies to *FS claims management activities* (and related services) carried on in relation to a *claim*. The cap applies to the entire *claim* even where the where the *claim* is based on various different grounds.

Guidance on the application of the FS claims management fee cap: activities which are covered by the cap

5.2.6

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- (1) The *FS claims management fee cap*:
 - (a) restricts charges provided for in or imposed under an *FS claims management agreement* or a **connected agreement** (see ■ CMCOB 5.2.11R and ■ CMCOB 5.2.12R); and
 - (b) applies to charges for any of the activities specified in ■ CMCOB 5.2.4R(2), namely, *FS claims management activities* carried on in relation to the *claim* which is the subject of the relevant *FS claims management agreement* and services provided in connection with those activities.
- (2) When assessing whether the fee cap has been exceeded, a *firm* must therefore include all charges, for *FS claims management activities* and related services carried on in relation to the *claim*, which are provided for in or imposed under:
 - (a) the *FS claims management agreement*; and
 - (b) any **connected agreement**.
- (3) A *firm* to which this section applies must therefore consider not only its own charges when assessing whether the cap has been exceeded,

but also the charges imposed by other *persons* under a **connected agreement** (where the conditions above are met).

- (4) Where charges are imposed under a **connected agreement**, the exclusions in articles 89N to 89W of the *Regulated Activities Order* should be disregarded when determining whether an activity is an *FS claims management activity* (see ■ CMC0B 5.2.4R(3)).
- (5) Accordingly, the cap applies to charges for *FS claims management activities* (and related services) carried on in relation to a claim by an unauthorised person relying on an exclusion under the *Regulated Activities Order* (such as services provided by legal professionals).
- (6) Hence, while this section does not impose obligations on *unauthorised persons* themselves, any charges for the activities above which are imposed under a **connected agreement** must be included by *firms* when assessing whether the fee cap has been exceeded.

Guidance on the application of the FS claims management fee cap: activities which are not covered by the cap

5.2.7

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- (1) The *FS claims management fee cap* only applies to charges which are for the activities specified in ■ CMC0B 5.2.4R(2), namely:
 - (a) *FS claims management activities* carried on in relation to the *claim* which is the subject of the relevant *FS claims management agreement*; and
 - (b) services provided in connection with those activities.
- (2) This is explained in the examples below.
 - (a) A *firm* performs *FS claims management activities* under an *FS claims management agreement* but also provides debt or probate advice under the same agreement and that advice does not relate to the *claim*. For instance, the advice is general advice about how the *customer* could reduce their debts, as opposed to specific advice about how that *customer's* debt would affect the level of redress which the customer could obtain under the *claim*. In that scenario, the cap does not apply to the debt or probate advice. That is because the advice does not relate to the claim and it is therefore not:
 - (i) *advice in relation to a financial services or financial product claim* (see the definition of *FS claims management activity*) carried on in relation to the *claim*; or
 - (ii) a service provided in connection with the above activities.
 - (b) However, if the debt advice was about how the *customer's* debts would affect the *claim* which was being handled by the *firm*, then the cap would apply to that advice. That is because the advice would be advice in relation to a financial services or financial product *claim* and it would therefore be either an *FS claims management activity* carried on in relation to the *claim* or a service provided in connection with that activity.
 - (c) Where a *firm* provides or obtains accountancy or actuarial advice for a *customer* in relation to a *claim*, the cap would apply to that advice because it would be advice in relation to a financial services or financial product *claim* and it would therefore be

either an *FS claims management activity* carried on in relation to the *claim* or a service provided in connection with that activity.

- (3) *Firms* are reminded of their obligations under:
- (a) ■ CMCOB 4.2.5R(7) (obligation to explain to customer where charges will fall outside the cap);
 - (b) ■ CMCOB 6.2.1R(4) (obligation to explain and include charges outside the cap in the itemised bill);
 - (c) ■ CMCOB 6.2.4R(2) (a *firm* must not impose charges on a *customer* who is unable to pay fees and charges to the *firm* when they fall due unless the charges are no higher than necessary to cover the reasonable costs of the *firm*); and
 - (d) ■ PRIN 2.1.1R(6) (Customers' interests) and ■ CMCOB 2.1.1R (*client's best interests rule*).
- (4) In particular, where a *firm* provides some services under an *FS claims management agreement* which fall outside the cap, it would not be in the best interests of the *customer* for the *firm* to increase the charges for those services in order to recoup revenue lost as a result of the cap.

Guidance on the application of the FS claims management fee cap: court proceedings

5.2.8

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- (1) ■ CMCOB 5.2.4R(4) provides that, in certain circumstances, the *FS claims management fee cap* does not apply to steps taken by the firm to enable the *customer* to pursue the *claim* through court proceedings.
- (2) The exclusion above is limited to the circumstances specified in ■ CMCOB 5.2.4R(4)(a) and ■ (b) and only applies to the extent that the charges are for activities which are carried on for the purposes of actual or potential court proceedings.
- (3) Hence, the exclusion will not apply to charges for activities which are carried on for the purposes of:
- (a) making a *complaint* to a *firm* in accordance with the *complaints resolution rules* or ■ DISP 1.1A.20R to ■ 1.1A.22R; or
 - (b) submitting a *claim* to any statutory ombudsman scheme or any statutory compensation scheme.
- (4) *Firms* are still able to provide advice to *customers* about the merits of issuing court proceedings in circumstances which are not covered by ■ CMCOB 5.2.4R(4)(a) and (b) (but the cap will apply in those circumstances).
- (5) ■ CMCOB 5.2.4R(5)(b)(ii) refers to circumstances in which the operator of the relevant scheme has determined that the *claim* cannot or should not be considered under the scheme. Examples of where this might occur are:
- (a) the claim has been referred to the *Financial Ombudsman Service* after the time limit for referring it has elapsed and none of the exceptions in ■ DISP 2.8.2R(3) or ■ (5) apply;

- (b) the *Ombudsman* has determined that the *complaint* should be dismissed without consideration of the merits in accordance with ■ DISP 3.3.4A; and
 - (c) where the *claim* has been referred to the *Financial Ombudsman Service* and the *Ombudsman* proposes to cease to consider its merits so that it may be referred to a court to consider as a test case in accordance with ■ DISP 3.4.2R.
- (6) When providing advice about commencing court proceedings, *firms* should consider their obligations under the *client's best interests rule* and under ■ CMCOB 2.1.7R (obligation not to make or pursue a *claim* on behalf of a *customer* or advise a *customer* to pursue a *claim* if the *firm* knows or has reasonable grounds to suspect that the *claim* does not have a good arguable base or is fraudulent, frivolous or vexatious).

FS claims management fee cap: level of the cap

5.2.9

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The *FS claims management fee cap* for a *claim* is the lower of:

- (1) the maximum percentage rate of charge, or
- (2) the maximum total charge,

in the table below applicable to the redress awarded for that *claim*.

Band	Redress awarded for a claim (£)	The maximum percentage rate of charge	The maximum total charge (£)
1	1-1,499	30%	420
2	1,500-9,999	28%	2,500
3	10,000-24,999	25%	5,000
4	25,000-49,999	20%	7,500
5	50,000 or above	15%	10,000

5.2.10

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The *FS claims management fee cap* for a *claim*:

- (1) includes expenses and any other charge provided for in or imposed under the *FS claims management agreement* or **connected agreement**; but
- (2) excludes VAT.

FS claims management fee cap: prohibition on entering into agreements

5.2.11

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A *firm* must not enter into an *FS claims management agreement* that provides for the payment of one or more charges that, alone or in combination with any other charge under that agreement or a **connected agreement**, exceed or are capable of exceeding the *FS claims management fee cap*.

FS claims management fee cap: prohibition on imposition of charges

- 5.2.12 **R** (1) A *firm* must not impose one or more charges on a *customer* under an *FS claims management agreement* for a *claim* that, alone or in combination with any other charge in relation that *claim*, under that agreement or a **connected agreement**, exceed or are capable of exceeding the *FS claims management fee cap*.
- (2) The prohibitions in (1) do not apply to charges imposed under a provision in an *FS claims management agreement* or **connected agreement** where the agreement was entered into before this section came into force except where:
- (a) the provision was varied, after this section came into force, to increase the charge;
 - (b) the provision was added to the agreement after this section came into force;
 - (c) the charge relates to a *claim* which was added to the agreement after this section came into force; or
 - (d) the *customer's* first authorisation or instructions to the *firm* to act in relation to *claim* to which the charge relates were given after this section came into force.
- 5.2.13 **G** A charge is provided for or imposed for the purposes of **CMCOB 5.2.11R** and **5.2.12R**, respectively, regardless of how payment of a *firm's* charge is made, including where a *firm*:
- (1) deducts payment from redress received by it on behalf of the *customer*;
 - (2) arranges for or instructs another person to impose a charge on its behalf; or
 - (3) (in relation to **CMCOB 5.2.12R**) varies the *FS claims management agreement* to provide for the payment of one or more charges that, alone or in combination with any other charge under that agreement or a **connected agreement**, exceed or are capable of exceeding the *FS claims management fee cap*.
- 5.2.14 **G** (1) The *FS claims management fee cap* applies to charges paid or payable by a *customer* who is awarded financial redress. Such charges must not exceed the lower of the maximum percentage rate of charge or the maximum total charge.
- (2) For example, a *customer* who is awarded financial redress falling in band 1 must not be charged more than the lower of:
- (a) 30% (plus VAT) of the redress (the maximum percentage rate of charge in band 1); or
 - (b) £420 (plus VAT) (the maximum total charge in band 1).
- (3) Therefore, a *customer* who is awarded redress of £1,000 must not be charged more than £300 (plus VAT). This is the lower figure out of:
- (a) 30% of the redress awarded (30% of £1,000 = £300); and

(b) £420.

(4) However, a *customer* who is awarded redress of £1,450 must not be charged more than £420 (plus VAT). This is the lower figure out of:

(a) 30% of the redress awarded (30% of £1,450 = £435); and

(b) £420.

(5) The fee cap applies where a *customer* is awarded financial redress, irrespective of whether charges are imposed on a 'no-win-no-fee' basis, hourly basis, or other basis.

Consequences of breaching FS claims management fee cap

5.2.15

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(1) An *FS claims management agreement* is unenforceable against the *customer* to the extent that it provides for a charge that breaches or is capable of breaching the *FS claims management fee cap*.

(2) If a *firm* imposes a charge in breach of the *FS claims management fee cap*, the *firm* must:

(a) reimburse the amount of any overpayment promptly, irrespective of whether the *customer* has asserted the *firm* has breached the fee cap; and

(b) pay interest to the *customer*, at a rate of 8% per annum simple interest, from the date of overpayment by the *customer*.

5.2.16

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Firms are reminded of the need to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards (see ■ SYSC 3.2.6R).

Charges for financial products and services claims not within scope of complaints rules, or ombudsman or compensation schemes, or where customer is not awarded redress

5.2.17

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(1) This rule applies to charges in relation to a *claim*:

(a) for which the *customer* is not awarded financial redress;

(b) where the *claim*, if made, would not fall:

(i) within the scope of complaints resolution rules; or

(ii) within the scope of any statutory ombudsman scheme or any statutory compensation scheme; or

(c) which are excluded from the *FS claims management fee cap* as a result of ■ CMCOB 5.2.4R(4).

(2) A *firm* must not enter into an *FS claims management agreement* that provides for the payment of one or more charges in relation to a *claim* that, alone or in combination with any other charge in relation to the *claim* under that agreement or a **connected agreement**, exceed, or are capable of exceeding, an amount that is reasonable in the circumstances, in light of the work to be undertaken by the *firm*.

(3) A *firm* must not impose one or more charges on a *customer* in relation to a *claim* under an *FS claims management agreement* or **connected agreement** that exceed, or are capable of exceeding, an

amount that is reasonable in the circumstances, in light of the work undertaken or to be undertaken by the *firm*.

- (4) The prohibition in (3) does not apply to charges imposed under a provision in an *FS claims management agreement* or **connected agreement** where the agreement was entered into before this section came into force except in the circumstances described in ■ CMCOB 5.2.12R(2)(a)-(d).

5.2.18

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- (1) The *FS claims management fee cap* applies to charges for the activities in ■ CMCOB 5.2.4R(2) payable or paid by a *customer* who is awarded financial redress for a *claim*, in circumstances where the *claim*, if made, would fall **within the scope of complaints resolution rules**, any statutory ombudsman or any statutory compensation scheme.
- (2) In practice, the *FS claims management fee cap* is applicable to most cases where a *customer* is charged for a financial services or financial product *claim*. That is because such claims usually fall **within the scope of complaints resolution rules**, or a statutory ombudsman or statutory compensation scheme. Further, most *firms* which carry out *regulated claims management activities* do not charge customers who are not awarded financial redress.
- (3) The purpose of ■ CMCOB 5.2.17R is to ensure that charges not subject to the fee cap are nevertheless reasonable.
- (4) A *firm* is expected to be able to demonstrate what services it has provided, how charges are calculated, and why the charges are reasonable. In assessing whether charges are reasonable, *firms* are expected to take into account, where possible, the applicable level of the *FS claims management fee cap* if the fee cap had applied.
- (5) *Firms* are also required to take into account charges imposed under a **connected agreement** including charges imposed for *regulated claims management activity* which are carried on in reliance on an exclusion under the *Regulated Activities Order*, such as services provided by legal professionals.

Interpretation

5.2.19

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- (1) The terms in bold in this section (other than in headings or in titles) have the meaning below.
- (2) An agreement (agreement A) is a **connected agreement** in relation to an *FS claims management agreement* (agreement B) if:
 - (a) (i) agreement A enables a charge to be imposed on a *customer* in connection with a *claim*, and
 - (ii) agreement B provides for *regulated claims management activities* in relation to that *claim*; or
 - (b) agreement A provides for services in connection with the *regulated claims management activities* provided for in agreement B;

5.2.20

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Firms are reminded that *complaint* in the *complaints resolution rules* means any oral or written expression of dissatisfaction, whether justified or not, from or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which:

- (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
- (b) relates to an activity of that *respondent*, or of any other *respondent* with whom that *respondent* has some connection in marketing or providing financial services or products or *claims management services*, which comes under the jurisdiction of the *Financial Ombudsman Service*.

- (c) agreement A varies, supplements, novates or replaces agreement B (or vice versa); or
 - (d) agreement A requires the *customer* to pay a fee to a *lead generator* in respect of the activities performed or to be performed under agreement B.
- (3) A *claim* is **within the scope of complaints resolution rules** where:
- (a) if received by the *respondent*, it would constitute a *complaint* subject to the *complaints resolution rules*; or
 - (b) if received by the *MiFID investment firm* or *third country investment firm*, it would constitute a *MiFID complaint* subject to the provisions in ■ DISP 1.1A.20R to ■ 1.1A.22R.

Chapter 6

Post-contractual requirements



6.1 Keeping the customer and others informed

Application

- 6.1.1 **R** This section applies to a *firm* in relation to it carrying on *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*.

Enquiries regarding outstanding liabilities

- 6.1.2 **R**
- (1) After a *firm* has entered into an agreement with a *customer* relating to *regulated claims management activity*, the *firm* must promptly ask the *person* against whom the *claim* is to be made whether the *customer* has any outstanding liabilities with that *person*, which the damages, compensation or settlement monies might be off-set against.
 - (2) If the *person* against whom the *claim* is to be made confirms that the *customer* has such liabilities with it, the *firm* must:
 - (a) in a *durable medium*, promptly inform the *customer* of this;
 - (b) inform the *customer* that they will, where necessary, need to pay the *firm's* fees from their own funds.

- 6.1.3 **G**
- (1) The guidance at **CMCOB 4.2.10G** also applies in relation to **CMCOB 6.1.2R**.
 - (2) A *firm* should comply with **CMCOB 6.1.2R(1)** at the first opportunity it has, for example at the time of sending a letter of authority or initial information request to the *person* against whom the *claim* is to be made.

Passing on information and requests for information

- 6.1.4 **R**
- (1) The *firm* must pass on to the *customer*:
 - (a) any information received from a third party which is addressed to, or meant for, the attention of that *customer*; and
 - (b) any request received by the *firm* from a third party for the supply of information by the *customer* that the *firm* does not already hold.
 - (2) The *firm* must pass on the information or request:

6.1.5

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- (a) promptly, and in any event within ten *business days* of receiving the information or request; and
 - (b) in a *durable medium*.
- (1) A *firm* must notify the *customer* of:
- (a) the *firm* becoming aware of:
 - (i) any costs that the *customer* may have to meet which the *firm* has not previously notified to the *customer*; or
 - (ii) where the *firm* has notified the *customer* of the amount of any costs, any change to those costs (including any changes to the *firm's* fees); and
 - (b) any material development in the progress of the *customer's claim*; and
 - (c) if the *firm* becomes aware that the *person* against whom the *claim* is being or to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in ■ CMCOB 4.2.2R(2)(g)), the fact that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme; and
 - (d) any actions the *firm* intends to take to present and pursue the *claim* that were not notified to the *customer* under ■ CMCOB 4.2.8R (1)(c) at the time of contracting; and
 - (e) any allegation by a third party that the *claim* is fraudulent, except where there is a legal obligation preventing such disclosure. Where a *firm* is required to make such a notification under this provision, the *firm* must also advise its customer of the consequences of pursuing a fraudulent *claim*. *Firms* are reminded of their obligations under ■ CMCOB 2.1.7R(2).
- (2) The *firm* must make a notification in (1):
- (a) promptly, and in any event within ten *business days* of an event listed in (1) occurring; and
 - (b) in a *durable medium*, except for (1)(d), which may alternatively be made over the telephone.
- (3) Where a *firm* notifies the *customer* of any costs or changes to costs in accordance with (1)(a), the *firm* must obtain and record the *customer's* consent in relation to those costs before it invoices the *customer* for them.
- (4) The *firm* must obtain consent for any actions it proposes to take that:
- (a) have not previously been notified to the *customer*; or
 - (b) were notified to the *customer* more than six *months* ago and are significant in nature.
- (5) For the purposes of (4)(b), examples of actions that are significant in nature include, but are not limited to, the *firm* proposing to:
- (a) commence legal proceedings; or
 - (b) submit a *claim* to a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.

6.1.6

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- (6) A *firm* must obtain the *customer's* consent in (3) and (4):
 - (a) over the telephone; or
 - (b) in a *durable medium*.

- (1) Examples of developments in the progress of the *claim* which should be treated as material for the purposes of ■ CMCOB 6.1.5R(1)(b) include:
 - (a) the *firm* becoming aware of the timetable for any court proceedings or alternative dispute resolution schemes (such as the *Financial Ombudsman Scheme*), or of any changes to that timetable;
 - (b) the *firm* receiving any information relating to the *claim* which is likely to have an effect on the amount of time within which the *firm* expects the *claim* to be determined;
 - (c) the *firm* becoming aware of any information relating to the *claim* which is likely to have an effect on the prospects of the *claim* succeeding;
 - (d) the *firm* receiving an offer of any kind from the *person* against whom the *claim* is being made to settle the claim, whether for money or some other non-monetary benefit, even where such an offer was not originally the intended outcome of the *claim*; and
 - (e) the *firm* receiving a decision in respect of the *claim* from a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.

- (2) When making a notification in accordance with ■ CMCOB 6.1.5R (1)(b), a *firm* should consider whether it is necessary to inform the *customer* that:
 - (a) updates from the *firm* are likely to be less frequent while the progress of the claim is not within the *firm's* control; and
 - (b) the *customer* may contact the *firm* at any time to discuss their *claim* and its progress.

Revised fee estimates

6.1.7

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When the *firm* has sufficient information from which it may reasonably estimate what its fee will be, or that the fee payable by the *customer* will differ from the illustration or estimate provided under ■ CMCOB 4.2.5R or a previous estimate provided under this *rule*, the *firm* must promptly provide the *customer*, in a *durable medium*, with:

- (1) an estimate of the fee; and
- (2) an explanation of why that estimate differs from the illustration or the estimate (if any) which the *firm* has most recently provided.

6.1.8

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- (1) ■ CMCOB 6.1.7R requires a *firm* to give a *customer* updated fee estimates. For example, a *firm* is likely to have sufficient information to produce a revised estimate once:

- (a) it knows how much compensation the *customer* is claiming in relation to a misold financial product (for example because it has obtained the relevant *credit agreement*) where the fee is a percentage of that sum; or
 - (b) it realises that its fee, if charged by reference to an hourly rate, is likely to differ from its original estimate.
- (2) When calculating the likely compensation, damages or redress to provide the revised fee estimate under ■ CMCOB 6.1.7R, a *firm* should include in their calculation any interest or other sum likely to be paid in satisfaction of the *claim* on which the *firm's* fees will be based.
- (3) If the *firm* realises that a revised estimate is incorrect, it should provide a further revised estimate.
- (4) When giving a revised fee estimate as required by ■ CMCOB 6.1.7R the *firm*:
- (a) should, where relevant, communicate to the *customer* any assumptions it has used in its calculations, for example that the *customer* made all of the payments they were obliged to make under the agreement; and
 - (b) may, where appropriate, include a statement to the effect that the fee estimate may be subject to change and may be different to the actual amount the *customer* will receive.
- (5) For *claims* concerning pension or *investment* products or services, *firms* are expected to:
- take all reasonable steps to obtain sufficient information about the *claim* as soon as reasonably practicable after entering into an agreement with the *customer* to provide *regulated claims management activity*, enabling them to comply with ■ CMCOB 6.1.7R promptly; and
 - where such information is unavailable, consider whether, based on experience of similar claims, the *firm* is in any case able to give the *customer* a more reliable indication of the fee that the *customer* is likely to pay.

Keeping the customer informed

6.1.9

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- (1) A *firm* must provide each *customer* with an update on the progress of the *claim* at least once every six *months*, in a *durable medium*.
- (2) But the *firm* need not provide an update under (1) if, in the previous six *months*, the *firm* has:
 - (a) as part of a notification required under ■ CMCOB 6.1.5R(1), given an update on the progress of the claim; and
 - (b) the notification contains sufficient information as to constitute an update for the purposes of (1).
- (3) An update under (1) must:
 - summarise the progress of the *claim* since the last report (or, in the case of the first report, since the *firm* entered into an agreement with the *customer* in relation to the *claim*); and

indicate the current state of affairs in relation to the *claim*; for example, whether the *firm* is awaiting an expert's report, whether solicitors have issued a letter before action, or whether the *claim* has been submitted to the *Financial Ombudsman Service* but it is yet to make a determination.

- 6.1.10 **G**
- (1) If, during the period to which the report relates, the *firm* has not sent any notifications to the *customer* under **CMCOB 6.1.5R**, the update should indicate why, to the best of the *firm's* knowledge, there have been no material developments.
 - (2) The *firm* should give updates under **CMCOB 6.1.9R** until such time as the *claim* is finally determined or settled, or is withdrawn or discontinued.
 - (3) If, for the purposes of notifications under **CMCOB 6.1.5R(1)** and updates under **CMCOB 6.1.9R**, the *firm* has made available an online portal through which *customers* may receive such notifications and updates, the *firm* should ensure that it alerts the *customer* to the notification or update being available via the portal, for example by sending a text message or email (and provided that the *customer* is content to, and is able to, receive such communications).

- 6.1.11 **R** ■ **CMCOB 6.1.9R** does not apply if the *customer* expressly requests not to receive such updates.

Providing information to persons other than the customer

- 6.1.12 **R**
- (1) A *firm* must pass on to a third party any information received from a *customer* and intended for that third party:
 - promptly, and in any event within ten *business days*; and
 - in a *durable medium*.
 - (2) Where the information received from the *customer* is incomplete for the third party's purposes, the *firm* need not comply with (1) until such time as the *customer* has supplied the outstanding information, provided that the delay caused by waiting for the outstanding information does not, and could reasonably be expected not to, harm, prejudice or invalidate the *claim*.

Advising the customer where the claim is not successful

- 6.1.13 **R**
- (1) If a *customer's claim* is not successful, the *firm* must advise the *customer* of the available methods by which the *customer* may continue to pursue their *claim*.
 - (2) If the *claim* is of a sort which may be made by the *customer* to a statutory ombudsman or a statutory compensation scheme, without using the services of the *firm* and without incurring a fee, the advice must include a statement to the effect that:
 - (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and

(b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the statutory ombudsman or the statutory compensation scheme.

(1) If the *firm* is aware that the *person* against whom the *claim* was made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (2)), the advice must also include a statement to the effect that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme.

(4) For the purposes of this *rule*, a *claim* is not successful if it produces an outcome with which the *customer* is not satisfied.

6.1.14

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(1) A *claim* may progress through several stages. For example, it may start as a complaint made against a company, then proceed to an ombudsman scheme or to the courts. The *firm* must advise the *customer*, after each stage at which the *claim* is not successful, about how they might continue with their *claim*.

(2) The *guidance* at ■ CMCOB 3.2.8G also applies in relation to ■ CMCOB 6.1.13R.

6.2 Fees and fee collection

Explanation of fees and charges

6.2.1

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- (1) A *firm* must provide the *customer* with an itemised bill, in a *durable medium*:
 - (a) if the agreement is terminated under ■ CMCOB 2.1.12R(2)(b), before the *firm* takes any payment (for example, using payment details provided by the *customer*); or
 - (b) before the *firm* takes or deducts its fees and charges from money received from a third party for onward transmission to the *customer*; or
 - (c) when the *firm* presents an invoice or request for payment to the *customer*.
- (2) The itemised bill must explain:
 - (a) what *claims management services* the *firm* has provided; and
 - (b) how the fees and charges have been calculated including, where relevant, by reference to the full amount of any money recovered for the *customer* in respect of damages or compensation, or in settlement of the claim.
- (3) A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* without the *customer's* consent.
- (4) Where the *FS claims management fee cap* applies to any of the services to which the itemised bill relates, the bill must:
 - (a) explain whether any of the services to which the bill relates fall outside the scope of the *FS claims management fee cap* ; and
 - (b) clearly identify the charges for those services.

6.2.2

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Firms are reminded that they may be carrying on a *credit-related regulated activity* if they permit *customers* to enter into instalment plans or give them an extended period of time to pay fees and charges later than the date on which they are payable (see ■ PERG 2.7.19AG and ■ 2.7.19GG).

Fee collection

6.2.3

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A *firm* must establish and implement clear, effective and appropriate policies and procedures for:

6.2.4

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- (1) dealing with *customers* who are unable to pay fees and charges to the *firm* when they fall due; and
- (2) the fair and appropriate treatment of *customers* in (1) whom the *firm* understands or reasonably suspects to be vulnerable.

- (1) If a *customer* is unable to pay fees and charges to the *firm* when they fall due, a *firm* must:
 - (a) treat the *customer* with forbearance and due consideration, including by allowing the *customer* a reasonable opportunity to pay the fee and charges; and
 - (b) where appropriate, direct the *customer* to sources of free and independent debt advice.
- (2) A *firm* must not impose charges on a *customer* who is unable to pay fees and charges to the *firm* when they fall due unless the charges are no higher than necessary to cover the reasonable costs of the *firm*.

6.2.5

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- (1) *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.
- (2) In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines “Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt” (March 2015).

[Note: see <http://malg.org.uk/resouces/malg-mental-health-and-debt-guidelines/>]

- (3) A *firm* should suspend the pursuit of the recovery of fees and charges from a *customer* who is unable to pay those fees and charges when they fall due, when:
 - (a) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges; or
 - (b) the *firm* understands or ought reasonably to be aware that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges.

6.2.6

R

A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* unless it has written consent from the *customer* to do so, whether given in the *firm's* agreement with the *customer* or by some other means.



6.3 Ceasing regulated claims management activities

Who and when?

6.3.1

R

- (1) ■ CMCOB 6.3.3R to ■ 6.3.6R apply to a *firm*:
 - (a) which carries on any *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*; and
 - (b) in respect of which it has been determined that the *firm* is to cease carrying on any of those *regulated claims management activities*.
- (2) ■ CMCOB 6.3.7R applies to a *firm*:
 - (a) which carries on *seeking out, referrals and identification of claims or potential claims*; and
 - (b) in respect of which it has been determined that the *firm* is to cease carrying on that *regulated activity*.
- (3) The following provisions in ■ CMCOB 6.3 apply to a *firm* with a *claims management temporary permission* as modified below:
 - (a) the reference in ■ CMCOB 6.3.3R(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*;
 - (b) the reference in ■ CMCOB 6.3.5R to 40 *business days* must be read as 30 *days*; and
 - (c) the reference in ■ CMCOB 6.3.7(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*.

6.3.2

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Circumstances of it being determined that a *firm* is to cease carrying on a *regulated claims management activity* would include:

- (1) the *governing body* of the *firm* deciding to cease carrying on that activity;
- (2) the *firm* becoming insolvent or insolvency proceedings being commenced in respect of the *firm*; and
- (3) the *FCA* issuing a written notice under the *Act* or *final notice* removing or suspending the relevant *permission*.

Notifying customers

6.3.3

R

- (1) Within 20 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must, in a *durable medium*:
 - (a) notify each *customer* in relation to whom it carries on those activities that it is to cease carrying on the relevant activities;
 - (b) explain to each *customer* what options are available for the customer to continue with their *claim*; and
 - (c) notify each third party to whom the *claim* has been presented and (if different) each third party against which the *claim* has been made:
 - (i) that the *firm* is to cease carrying on those *regulated claims management activities*; and
 - (ii) of the identity of the *person* who will act for the *customer* in place of the *firm* (where the identity of that *person* is known).
- (2) In explaining to the *customer* what options are available to them to continue with their *claim*, the *firm* must include a statement to the effect of:
 - (a) the statement in (3), if the *claim* is of a sort which may be made by the *customer* to a statutory ombudsman or a statutory compensation scheme without using the services of the *firm* and without incurring a fee; and
 - (b) the statement in (4), if the *firm* is aware that the *person* against whom the *claim* is being or is to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (a)).
- (3) The statement in this paragraph is that:
 - (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
 - (b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the statutory ombudsman or a statutory compensation scheme.
- (4) The statement in this paragraph is that it is possible for the *customer* to present the claim themselves to the alternative dispute resolution mechanism mentioned in (3)(b).

6.3.4

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The *guidance* at ■ CMCOB 3.2.8G also applies in respect of ■ CMCOB 6.3.3R(2)(a).

Sending information and documents to customers

6.3.5

R

Within 40 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must send to each *customer* whose *claim* has not been settled, withdrawn or discontinued all information and documentation the *firm* holds relating to their *claim*.

Passing customer details to third parties

6.3.6

R

If the *firm* passes the *customer*, or details of the *customer* or of the *claim* to a third party, with a view to that third party carrying on a *regulated claims management activity* in respect of the *claim* or the *customer* (or activity which would constitute such a *regulated activity* but for an exemption or an exclusion), the *firm* must promptly notify the *customer* in a *durable medium*:

- (1) that it has done so; and
- (2) of the identity and contact details of the third party.

Ceasing to carry on seeking out, referrals and identification of claims or potential claims

6.3.7

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(1) This *rule* applies in respect of a *firm* which has indicated to a *customer* that it will:

- (a) identify a third party to assist the *customer* with their *claim*; and
- (b) pass the *customer's* details or details relating to the *claim* to the third party, or pass details of the third party to the *customer*,

but has not yet done so and will not do so within 20 *business days* of it being determined that the *firm* is to cease carrying on *seeking out, referrals and identification of claims or potential claims*.

(2) Within the time period referred to in (1), the *firm* must, in respect of each *customer* to whom it has made an indication of the sort described in (1) in a *durable medium*, notify the *customer* that it has not done so and explain why.

Chapter 7

Prudential requirements and professional indemnity insurance

7.1 Purpose

7.1.1

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- (1) This chapter builds upon the appropriate resources *threshold condition* set out in paragraph 2D of Schedule 6 to the Act (see ■ COND 2.4), which requires *firms* to have appropriate resources including financial resources.
- (2) This chapter also builds upon *Principle 4*, which requires a *firm* to maintain adequate financial resources, by focusing upon the adequacy of that part of a *firm's* financial resources that consists of *capital resources*.
- (3) The chapter also includes requirements for *firms* to have professional indemnity insurance if they carry on *advice, investigation or representation in relation to a personal injury claim*.

7.1.2

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A contravention of the *rules* in ■ CMCOB 7.2 or ■ CMCOB 7.3 does not give rise to a right of action by a *private person* under section 138D of the Act (and each of those *rules*) is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).



7.2 Prudential requirements

- 7.2.1** **R** **General solvency requirement**
 A *firm* must ensure that it is able at all times to meet its liabilities as they fall due.
- 7.2.2** **R** **General prudential resources requirement**
 A *firm* must ensure at all times that its prudential resources, calculated in accordance with ■ CMCOB 7.3, are not less than its prudential resources requirement.
- 7.2.3** **R** **Prudential resources: general accounting principles**
 A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its *annual financial statements* unless a *rule* requires otherwise.
- 7.2.4** **R** **Prudential resources requirement: firms carrying on other regulated activities**
 The prudential resources requirement for a *firm* carrying on a *regulated activity* in addition to those covered by this chapter, is the higher of:
- (1) the requirement which is applied by this chapter; and
 - (2) the prudential resources requirement or *capital resources requirement* which is applied by another *rule* or requirement to the *firm*.
- 7.2.5** **R** **Classification of firms for prudential resources purposes**
- (1) For the purposes of this chapter, a *firm* which carries on any *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims* is:
 - (a) a "Class 1 firm" if its total income in the year ending on its most recent *accounting reference date* is not less than £1million; and
 - (b) a "Class 2 firm" if its total income in the year ending on its most recent *accounting reference date* is less than £1million.
 - (2) A *firm* which carries on no *regulated claims management activities* other than *seeking out, referrals and identification of claims or*

potential claims is neither a Class 1 firm nor a Class 2 firm, and its prudential resources requirement is specified in ■ CMCOB 7.2.10R.

- (3) For the purposes of this chapter, total income only includes income relating to the part of the business which is involved in carrying on *regulated claims management activities* and *ancillary activities*.
- (4) Where the *firm* has not yet started to trade, total income is to be calculated based on forecast income included in the budget for the first twelve *months'* trading, as submitted with the *firm's* application for *authorisation*.

Prudential resources requirement for a Class 1 firm

7.2.6 **R** Subject to ■ CMCOB 7.2.10R, the prudential resources requirement for a Class 1 firm is:

- (1) the higher of:
 - £10,000; and
 - the *firm's* overheads requirement (see ■ CMCOB 7.2.8R); plus
- (2) if the *firm* has held *client money* at any time in the last 12 *months*, the client money requirement (see ■ CMCOB 7.2.9R).

Prudential resources requirement for a Class 2 firm

7.2.7 **R** Subject to ■ CMCOB 7.2.10R, the prudential resources requirement for a Class 2 firm is:

- (1) the higher of:
 - (a) £5,000; and
 - (b) the *firm's* overheads requirement (see ■ CMCOB 7.2.8R); plus
- (2) if the *firm* has held *client money* at any time in the last 12 *months*, the client money requirement (see ■ CMCOB 7.2.9R).

The overheads requirement

- 7.2.8 **R**
- (1) A *firm's* overheads requirement is an amount that is equal to one sixth of its overheads expenditure.
 - (2) For the purposes of (1), a *firm's* overheads expenditure is to be calculated as follows:
 - (a) the *firm's* total expenditure in the period of 12 *months* ending on its most recent *accounting reference date*; less
 - (b) the total of the following items (if they are included in such expenditure) in that period:
 - (i) staff bonuses, except to the extent that they are guaranteed;
 - (ii) *employees'* and *directors'* shares in profits, except to the extent that they are guaranteed;
 - (ii) other appropriations of profits and other variable *remuneration*, except to the extent that they are guaranteed;

- (iv) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue;
 - (v) interest charges in respect of borrowings made to finance the acquisition of the *firm's readily realisable investments*;
 - (vi) interest paid to *customers on client money*;
 - (vii) 20% of total marketing expenditure; and
 - (viii) other variable expenditure.
- (3) Where the *firm's* total expenditure in the year ending on its *accounting reference date* was incurred in a period of less than twelve *months*, the items in (2)(a) and (2)(b) are to be calculated on a pro-rated basis to produce an equivalent annual amount.
- (4) Where the *firm* has not yet started to trade, the items in (2)(a) and (2)(b) are to be calculated based on forecast expenditure included in the budget for the first twelve *months'* trading, as submitted with the *firm's* application for *authorisation*.
- (5) In (2)(b)(vii) total marketing expenditure means spending in the twelve *months* ending on the *firm's* most recent *accounting reference date* on, or relating to:
- (a) advertising across different media channels;
 - (b) digital marketing;
 - (c) publicity expenses;
 - (d) advertising agency fees;
 - (e) public relations consultancy fees;
 - (f) expenses for promotions offered in connection with services provided by the *firm*;
 - (g) market research and customer surveys;
 - (h) publications including printed promotional material such as brochures and leaflets, and the *firm's annual report*;
 - (i) sponsorships; and
 - (j) gifts to *customers*.
- (6) Where, during a period of six *months*, a *firm's* overheads expenditure, calculated according to (2), decreases by 20% or more relative to the overheads expenditure calculated at the last *accounting reference date*, the *firm* may recalculate its overheads requirement and therefore its prudential resources requirement accordingly.
- (7) For the purpose of the recalculation in (6), the *firm's* overheads requirement shall be equal to one third of:
- (a) the *firm's* total expenditure in the period of 6 *months* ending on the date it changes its prudential resources requirement; less
 - (b) the total of the items in (2)(b) (if they are included in such expenditure) in that six *month* period.
- (9) A *firm* must notify the *FCA* of any change in its prudential resources requirement within 14 *days* of that change.

The client money requirement

7.2.9 **R** The *client money* requirement is £20,000.

Prudential requirement for lead generators

7.2.10 **R** If a *lead generator* holds *client money*, the prudential requirement for the *firm* is the client money requirement (see **R** CMCOB 7.2.9R).



7.3 Calculation of prudential resources

Eligible prudential resources

- 7.3.1 **R** (1) A *firm* must calculate its prudential resources only from the items which are eligible to contribute to a *firm's* prudential resources as set out in the table in ■ CMCOB 7.3.2R.
- (2) In arriving at its calculation of its prudential resources, a *firm* must deduct certain items as set out in the table in ■ CMCOB 7.3.3R.

7.3.2 **R** Table: Items which are eligible to contribute to the prudential resources of a firm

Item	Additional explanation
1 Share capital	This must be fully paid and may include: <ul style="list-style-type: none"> (1) ordinary <i>share</i> capital; or (2) preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).
2 Capital other than <i>share</i> capital (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i> : <ul style="list-style-type: none"> (1) capital account, that is the account: <ul style="list-style-type: none"> (a) into which capital contributed by the <i>partners</i> is paid; and (b) from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if: <ul style="list-style-type: none"> (i) the <i>person</i> ceases to be a <i>partner</i> and an equal amount is transferred to another such account by the <i>person's</i> former <i>partners</i> or any <i>person</i> replacing that <i>person</i> as their <i>partner</i>; or (ii) the <i>person</i> ceases to be a partner and an equal amount is transferred to another such account by the <i>person's</i> former partners or any <i>person</i> replacing that <i>person</i> as their partner; or (iii) the <i>partnership</i> is otherwise dissolved or wound up; and

Item	Additional explanation
	<p>(2) current accounts according to the most recent financial statement.</p> <p>For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i>:</p> <p>(3) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(4) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</p>
3 Reserves (Note 1)	<p>These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p> <p>For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:</p> <p>(1) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;</p> <p>(2) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;</p> <p>(3) in respect of a <i>defined benefit occupational scheme</i>:</p> <p>(a) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(b) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</p>
4 Interim net profits (Note 1)	<p>If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.</p>
5 Revaluation reserves	<p>Revaluation reserves such as reserves arising from the revaluation of land and buildings, including any net unrealised gains for the fair valuation of equities held in the available-for-sale financial assets category.</p>
6 Subordinated loans/debt	<p>Subordinated loans/debt must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans/debts.</p>
Note:	
1	<p>Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemption from audit) or, where applicable,</p>

Item	Additional explanation
	Part 16 of the Companies Act 2006 (section 477 (Small companies; Conditions for exemption from audit)) relating to the audit of accounts.

7.3.3

R

Table: Items which must be deducted in arriving at prudential resources

1	<i>Investments</i> in own shares
2	<i>Investments</i> in subsidiaries (Note 1)
3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)
Notes:	
1	<i>Investments</i> in subsidiaries are valued at the full balance sheet value.
2	Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.
3	The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the prudential resources are being computed.

7

Subordinated loans/debt

7.3.4

R

A subordinated loan/debt must not form part of the prudential resources of the *firm* unless it meets the following conditions:

- (1) it has an original maturity of:
 - (a) at least five years; or
 - (b) it is subject to five years' notice of repayment;
- (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding-up of the *firm*;
- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding-up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they

owe the *firm* against subordinated amounts owed to them by the *firm*;

- (8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms which provide for the conditions set out in this *rule*; and
- (9) the loan/debt must be unsecured and fully paid up.

7.3.5

R

When calculating its prudential resources, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

a – b

where:

a = the sum of Items 1-5 in the Table of items, which are eligible to contribute to a *firm's* capital resources (see ■ CMCOB 7.3.2R)

b = the sum of Items 1-5 in the Table of items, which must be deducted in arriving at a *firm's* capital resources (see ■ CMCOB 7.3.3R)

7.3.6

G

■ CMCOB 7.3.5R can be illustrated by the examples set out below:

(1)	Share capital	£20,000
	Reserves	£30,000
	Subordinated loans/debts	£10,000
	Intangible assets	£10,000
	As subordinated loans/debts (£10,000) are less than the total of share capital + reserves - intangible assets (£40,000) the <i>firm</i> need not exclude any of its subordinated loans/debts pursuant to CMCOB 7.3.4R when calculating its prudential resources. Therefore the <i>firm's</i> total prudential resources will be £50,000.	
(2)	Share capital	£20,000
	Reserves	£30,000
	Subordinated loans/debts	£60,000
	Intangible assets	£10,000
	As subordinated loans/debts (£60,000) exceed the total of share capital + reserves - intangible assets (£40,000) by £20,000, the <i>firm</i> should exclude £20,000 of its subordinated loans/debts pursuant to CMCOB 7.3.5R when calculating its prudential resources. Therefore the <i>firm's</i> total prudential resources will be £80,000.	



7.4 Professional indemnity insurance: personal injury claims management

Application

7.4.1 R This section applies only to firms who carry on advice, investigation or representation in relation to a personal injury claim.

Requirement to hold

7.4.2 R A firm must take out and maintain at all times a professional indemnity insurance contract that provides for a level of cover at least equal to the requirements in this section from an insurer which is authorised to enter into professional indemnity insurance contracts in:

- (1) a Zone A country; or
(2) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

7.4.3 R The professional indemnity insurance contract must make provision for cover in respect of any claim for loss or damage, for which the firm may be liable as a result of a negligent act, error or omission by:

- (1) the firm; or
(2) any person acting on behalf of the firm including employees, or its other agents.

7.4.4 R The minimum limit of indemnity per year in the professional indemnity insurance contract must be no lower than:

- (1) £250,000 for a single claim against the firm;
(2) £500,000 in the aggregate.

7.4.5 R (1) Where the professional indemnity insurance contract includes an excess, the excess must not be greater than £10,000 per claim.
(2) The professional indemnity insurance contract must contain cover in respect of legal defence costs.
(3) The professional indemnity insurance contract must provide for continuous cover for all claims:

- (a) first made against the *firm* during the period of insurance; or
- (b) made against the *firm* during or after the period of insurance and arising from claims first notified to the insurer during the period of insurance.

Chapter 8

Requirements for firms with temporary permission for regulated claims management activities



8.1 Application and purpose

8.1.1 **R** This chapter applies to a *firm* with a *claims management temporary permission*.

8.1.2 **G** The purpose of these *rules* is to provide that certain provisions of the *FCA Handbook*:

- (1) that would otherwise apply to *persons* with a *claims management temporary permission* are not to apply; or
- (2) are to apply to those *persons* with the modifications specified in the table in ■ CMCOB 8.1.4R.

Disapplication or modification of certain modules or provisions of the Handbook

8.1.3 **R** The modules or parts of the modules of the *FCA Handbook* listed in the table in ■ CMCOB 8.1.4R:

- (1) do not apply, to the extent set out in the table, to a *person* with a *claims management temporary permission* with respect to the carrying on of a *regulated claims management activity*; or
- (2) are to apply to such a *person* with the modifications specified in the table.

Table: Disapplied or modified modules or provisions of the Handbook

Module	Disapplication or modification
Threshold Conditions (COND)	<p><i>Guidance</i> applies with necessary modifications to reflect the <i>Claims Management Order</i> (see Note 1).</p> <p>Note 1 A <i>firm</i> is treated as having a <i>claims management temporary permission</i> on and after 1 April 2019 to carry on <i>regulated claims management activity</i> under the <i>Claims Management Order</i> if it met the conditions set out in Chapter 5 of Part 3 of that Order at that date. According to article 83(9) of the <i>Claims Management Order</i> section 55B(3) of the <i>Act</i> (The threshold conditions) does not require the <i>FCA</i> to ensure that the <i>firm</i> will satisfy, and continue to satisfy, in relation to <i>regulated claims management activity</i> for which it has a <i>claims</i></p>

Module	Disapplication or modification
Supervision Manual (SUP)	<p><i>management temporary permission</i>, the threshold conditions for which the FCA is responsible. The FCA can, however, exercise its power under section 55J of the Act (variation or cancellation on initiative of regulator) or under section 55L of the Act (imposition of requirements by the regulator) in relation to a <i>firm</i> if, among other things, it appears to the FCA that the <i>firm</i> is failing, or is likely to fail, to satisfy the threshold conditions in relation to the <i>regulated claims management activity</i> for which it has a <i>claims management temporary permission</i> for which the FCA is responsible. The <i>guidance</i> in COND should be read accordingly.</p> <p>SUP 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies with necessary modifications to reflect Chapters 2 and 5 of Part 3 of the <i>Claims Management Order</i> (see Note 2).</p> <p>Note 2 If a <i>firm</i> with <i>claims management temporary permission</i> applies to the FCA under section 55A of the Act for <i>permission</i> to carry on a <i>regulated activity</i> or under section 55H or 55I of the Act to vary a <i>permission</i> that the <i>firm</i> has otherwise than by virtue of the <i>Claims Management Order</i> by adding a <i>regulated activity</i> to those to which the <i>permission</i> relates, the application may be treated by the FCA as relating also to some or all of the <i>regulated activities</i> for which the <i>firm</i> has <i>claims management temporary permission</i>.</p> <p>For a <i>firm</i> with only <i>claims management temporary permission</i>: SUP 15.5.1R, SUP 15.5.2G, SUP 15.5.4R, SUP 15.5.5R are modified so that the words “reasonable advance”, “and the date on which the <i>firm</i> intends to implement the change of name” and “and the date of the change” are omitted.</p>

8.1.5

G

■ SYSC TP 8.2.1R says that a *firm* with a *claims management temporary permission* is not an *SMCR firm*.

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CMCOB TP 1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	CMCOB 6.1.7R	R	<p>In relation to an agreement entered into before 1 April 2019:</p> <p>(1) the <i>firm</i> need not comply with CMCOB 6.1.7R until 1 July 2019; and;</p> <p>(2) the reference in CMCOB 6.1.7R to an illustration or estimate provided under CMCOB 4.2.5R is to be treated as a reference to the most recent illustration or estimate of fees (if any) provided before 1 April 2019.</p>	From 1 April 2019	1 April 2019
2	CMCOB 6.1.7R	G	<p>The effect of TP 1.1 is that, where a <i>firm</i> has sufficient information from which it may reasonably estimate what its fee under an agreement entered into before 1 April 2019 will be, the <i>firm</i> must provide an estimate to the <i>customer</i> no later than 1 July 2019 unless that estimate is unchanged from the most recent estimate given before 1 April 2019.</p>		
3	CMCOB 7.2.4R to 7.2.10R	R	<p>A <i>firm</i> need not comply with CMCOB 7.2.4R to 7.2.10R.</p>	1 April 2019 to 31 July 2019	1 April 2019

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Schedule 1 Record-keeping requirements

Sch 1.1 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements in *CMCOB*.

Sch 1.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
CMCOB 2.2.2R	<i>Lead generators</i>	Steps taken to ascertain whether <i>lead generator</i> authorised and has systems and processes in place to comply with <i>data protection legislation</i> and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and conclusions reached	When the steps are taken	Not specified
CMCOB 2.2.4R	Source of sales leads	<i>Lead generator</i> which supplied the lead	When the lead is accepted	Not specified
CMCOB 2.3.2R and 2.3.6R	Telephone calls and <i>electronic communications</i>	Call recording; and retention of <i>electronic communications</i>	When the call or the <i>electronic communication</i> is made or received	At least 12 <i>months</i> for call recording; according to SYSC 9.1.1R for <i>electronic communications</i>
CMCOB 4.3.1R	Availability of alternative methods for pursuing a claim; whether <i>customer</i> has outstanding liabil-	The <i>customer's</i> confirmation that they have alternative methods and the reasons for not using them; and	Before an agreement is entered into with the <i>customer</i>	Not specified

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
CMCOB 6.1.5R	ities with the <i>person claim</i> made against; and whether <i>customer</i> subject to bankruptcy etc Costs not previously notified or changes to notified costs	the <i>customer's</i> confirmation regarding outstanding liabilities and bankruptcy etc <i>Customer's</i> consent in relation to costs	When consent obtained	Not specified

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Schedule 2 Notification and reporting requirements

Sch 2.1 G

The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements in *CMCOB*.

Sch 2.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Matter to be notified	Contents of notification	Trigger Event	Time allowed
CMCOB 2.1.21R	<i>Claims management companies</i> with connections to individuals involved in an FSCS-eligible activity.	Names of individuals and <i>firms</i> concerned, the roles performed by those individuals, and the dates during which such were roles performed.	FCA data request	Annual notifications
CMCOB 2.2.7R	<i>Lead generator</i> not an <i>authorised person</i>	Identity and contact details (if known) of the <i>lead generator</i> , and the <i>firm's</i> reasons for not being satisfied that the <i>lead generator</i> may carry on <i>seeking out, referrals and identification of claims or potential claims</i> without breaching the <i>general prohibition</i>	The <i>firm</i> not being satisfied that the <i>lead generator</i> may carry on <i>seeking out, referrals and identification of claims or potential claims</i> without breaching the <i>general prohibition</i>	Promptly
CMCOB 7.2.8R	Changes in prudential resources requirement	Change in prudential resources requirement	The <i>firm</i> changing its prudential resources requirement	Within 14 days of that change

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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 CMCOB 3.2.3 R	Yes	In part (Note 1)	No
		The prudential <i>rules</i> for <i>firms</i> carrying on <i>regulated claims management activity</i> in CMCOB 7.2 and 7.3	No	Yes, CMCOB 7.1.2R	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*.

