

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*; and
 - (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]