

Chapter 2

Conduct of business

2.2 Generating, obtaining and passing on leads

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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

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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):

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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
■ CMCOB 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 ■ CMCOB 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

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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*.

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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*.