

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

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- (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

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- (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

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- (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

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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.

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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

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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

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- (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*.

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(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

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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

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(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

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- (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:

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- (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).
- (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

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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

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(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.

