

Chapter 6

Post-contractual requirements

6



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.

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(1) The guidance at ■ CMC OB 4.2.10G also applies in relation to ■ CMC OB 6.1.2R.

(2) A *firm* should comply with ■ CMC OB 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:

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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.

		<div>(6) A <i>firm</i> must obtain the <i>customer's</i> consent in (3) and (4):<div>(a) over the telephone; or</div><div>(b) in a <i>durable medium</i>.</div></div>
6.1.6	G	<div>(1) Examples of developments in the progress of the <i>claim</i> which should be treated as material for the purposes of ■CMCOB 6.1.5R(1)(b) include:<div>(a) the <i>firm</i> becoming aware of the timetable for any court proceedings or alternative dispute resolution schemes (such as the <i>Financial Ombudsman Scheme</i>), or of any changes to that timetable;</div><div>(b) the <i>firm</i> receiving any information relating to the <i>claim</i> which is likely to have an effect on the amount of time within which the <i>firm</i> expects the <i>claim</i> to be determined;</div><div>(c) the <i>firm</i> becoming aware of any information relating to the <i>claim</i> which is likely to have an effect on the prospects of the <i>claim</i> succeeding;</div><div>(d) the <i>firm</i> receiving an offer of any kind from the <i>person</i> against whom the <i>claim</i> 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 <i>claim</i>; and</div><div>(e) the <i>firm</i> receiving a decision in respect of the <i>claim</i> from a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.</div></div> <div>(2) When making a notification in accordance with ■CMCOB 6.1.5R (1)(b), a <i>firm</i> should consider whether it is necessary to inform the <i>customer</i> that:<div>(a) updates from the <i>firm</i> are likely to be less frequent while the progress of the claim is not within the <i>firm's</i> control; and</div><div>(b) the <i>customer</i> may contact the <i>firm</i> at any time to discuss their <i>claim</i> and its progress.</div></div>
6.1.7	R	<div>Revised fee estimates</div> <div>When the <i>firm</i> has sufficient information from which it may reasonably estimate what its fee will be, or that the fee payable by the <i>customer</i> will differ from the illustration or estimate provided under ■CMCOB 4.2.5R or a previous estimate provided under this <i>rule</i>, the <i>firm</i> must promptly provide the <i>customer</i>, in a <i>durable medium</i>, with:<div>(1) an estimate of the fee; and</div><div>(2) an explanation of why that estimate differs from the illustration or the estimate (if any) which the <i>firm</i> has most recently provided.</div></div>
6.1.8	G	<div>(1) ■CMCOB 6.1.7R requires a <i>firm</i> to give a <i>customer</i> updated fee estimates. For example, a <i>firm</i> is likely to have sufficient information to produce a revised estimate once:</div>

- (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.

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- (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).

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■ 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

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- (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

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- (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

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- (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.
- (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.