Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes and amends the scheme rules, makes and amends the Voluntary Jurisdiction rules, and fixes and varies the standard terms for Voluntary Jurisdiction participants, as set out in Annex A and Annex G to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

1. section 227 (Voluntary jurisdiction);
2. paragraph 8 (Information, advice and guidance) of Schedule 17;
3. paragraph 14 (Scheme operator’s rules) of Schedule 17;
4. paragraph 18 (Terms of reference to the scheme) of Schedule 17;
5. paragraph 20 (Voluntary jurisdiction rules: procedure); and
6. paragraph 22 (Consultation) of Schedule 17.

B. The Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 1.1 in Annex G to this instrument apply equally to the Voluntary Jurisdiction of the Financial Ombudsman Service and the Compulsory Jurisdiction.

C. The making and variation of the scheme rules in Annex A and Annex G by the Financial Ombudsman Service Limited is subject to the consent of the Financial Conduct Authority, and the making and amendment of the Voluntary Jurisdiction rules and fixing and variation of the standard terms in Annex A and Annex G by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

D. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the Act:

1. section 59 (approval for particular arrangements);
2. section 137A (The FCA’s general rules);
3. section 137B (FCA general rules: clients’ money, right to rescind etc);
4. section 137R (Financial promotion rules);
5. section 137T (General supplementary powers);
6. section 138D (Actions for damages);
7. section 139A (The FCA’s power to give guidance);
8. section 226 (Compulsory jurisdiction);
9. paragraph 13 (FCA’s rules) of Schedule 17; and

E. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

G. This instrument comes into force on 1 April 2019 except for Part 1 of Annex A, which comes into force on 1 January 2019.

Amendments to the FCA Handbook

H. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary</td>
<td>Annex A</td>
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<tr>
<td>Principles for Businesses (PRIN)</td>
<td>Annex B</td>
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<tr>
<td>Senior Management Arrangements, Systems and Controls (SYSC)</td>
<td>Annex C</td>
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<td>General Provisions (GEN)</td>
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<td>Client Assets (CASS)</td>
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<td>Supervision manual (SUP)</td>
<td>Annex F</td>
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<td>Dispute Resolution: Complaints sourcebook (DISP)</td>
<td>Annex G</td>
</tr>
<tr>
<td>Consumer Credit sourcebook (CONC)</td>
<td>Annex H</td>
</tr>
</tbody>
</table>

Making the Claims Management: Conduct of Business sourcebook (CMCOB)

I. The Financial Conduct Authority makes the rules, gives the guidance in accordance with Annex I to this instrument.

J. The Claims Management: Conduct of Business sourcebook (CMCOB) is added to the Business Standards block within the Handbook, immediately after the Banking: Conduct of Business sourcebook (BCOBS).

Amendments to material outside the Handbook

K. The Financial Crime guide (FC) is amended in accordance with Annex J to this instrument.

L. The Perimeter Guidance manual (PERG) is amended in accordance with Annex K to this instrument.

M. The Wind-down Planning Guide (WDPG) is amended in accordance with Annex L to this instrument.

N. The Reader’s Guide is amended in accordance with Annex M to this instrument.
O. The Financial Conduct Authority confirms and remakes in the Glossary of definitions:

(1) the defined expression “Regulated Activities Order”; and

(2) to the extent that they appear in the Glossary of definitions, the defined expressions relating to any other legislation amended by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

Notes

P. In the Annexes, the “notes” (indicated by “Note:”) are included for the convenience of readers but do not form part of the legislative text.

Citation

Q. This instrument may be cited as the Claims Management Instrument 2018.

By order of the Board of the Financial Ombudsman Service Limited
7 December 2018

By order of the Board of the Financial Conduct Authority
13 December 2018
Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force 1 January 2019

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

advice, investigation or representation in relation to a claim for a specified benefit the regulated activity, specified in article 89K of the Regulated Activities Order, of each of advising a claimant or potential claimant, investigating a claim and representing a claimant, in relation to a claim for a specified benefit.

advice, investigation or representation in relation to a criminal injury claim the regulated activity, specified in article 89L of the Regulated Activities Order, of each of advising a claimant or potential claimant, investigating a claim and representing a claimant, in relation to a criminal injury claim.

advice, investigation or representation in relation to an employment-related claim the regulated activity, specified in article 89M of the Regulated Activities Order, of each of advising a claimant or potential claimant, investigating a claim and representing a claimant, in relation to an employment-related claim.

advice, investigation or representation in relation to a financial services or financial product claim the regulated activity, specified in article 89I of the Regulated Activities Order, of each of advising a claimant or potential claimant, investigating a claim and representing a claimant, in relation to a financial services or financial product claim.

advice, investigation the regulated activity, specified in article 89J of the Regulated Activities Order, of each of advising a claimant or potential claimant, investigating a
claim and representing a claimant, in relation to a housing disrepair claim.

the regulated activity, specified in article 89H of the Regulated Activities Order, of each of advising a claimant or potential claimant, investigating a claim and representing a claimant, in relation to a personal injury claim.

(in CMCOB, and elsewhere in the FCA Handbook in relation to regulated claims management activities) includes, for the purposes of civil proceedings in Scotland, a pursuer.

a claim of the description specified in article 89F(2)(f) of the Regulated Activities Order (that is, a claim for certain industrial injuries benefits).

a person carrying on a regulated claims management activity in Great Britain.


(in accordance with section 419A of the Act) advice or other services in relation to the making of a claim.

a temporary Part 4A permission, or variation of permission to carry on regulated claims management activity pursuant to article 80 of the Claims Management Order.

the Claims Management: Conduct of Business sourcebook.

(in accordance with Part 1A of the Financial Promotion Order) one of the following activities, if carried on in Great Britain:

(a) seeking out persons who may have a claim, referring details of a claim or potential claim or a claimant or a potential claimant to another person (including a person having the right to conduct litigation), or identifying a claim or potential claim or a claimant or
potential claimant in respect of:

(i) a personal injury claim;
(ii) a financial services or financial product claim;
(iii) a housing disrepair claim;
(iv) a claim for a specified benefit;
(v) a criminal injury claim; or
(vi) an employment-related claim.

(b) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a personal injury claim;

(c) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a financial services or financial product claim;

(d) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a housing disrepair claim;

(e) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a claim for a specified benefit;

(f) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of a criminal injury claim; or

(g) advising a claimant or potential claimant, investigating a claim or representing a claimant in respect of an employment-related claim.

<table>
<thead>
<tr>
<th>Terms</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>criminal injury claim</td>
<td>a claim of the description specified in article 89F(2)(g) of the Regulated Activities Order.</td>
</tr>
<tr>
<td>employment-related claim</td>
<td>a claim of the description specified in article 89F(2)(h) of the Regulated Activities Order.</td>
</tr>
<tr>
<td>Great Britain</td>
<td>England and Wales and Scotland (but not Northern Ireland, the Channel Islands or the Isle of Man).</td>
</tr>
<tr>
<td>housing disrepair claim</td>
<td>a claim of the description specified in article 89F(2)(e) of the Regulated Activities Order.</td>
</tr>
<tr>
<td>personal injury claim</td>
<td>a claim of the description specified in article 89F(2)(c) of the Regulated Activities Order.</td>
</tr>
<tr>
<td>regulated claims management</td>
<td>each of:</td>
</tr>
</tbody>
</table>
activity

(a) seeking out, referrals and identification of claims or potential claims;
(b) advice, investigation or representation in relation to a personal injury claim;
(c) advice, investigation or representation in relation to a financial services or financial product claim;
(d) advice, investigation or representation in relation to a housing disrepair claim;
(e) advice, investigation or representation in relation to a claim for a specified benefit;
(f) advice, investigation or representation in relation to a criminal injury claim; and
(g) advice, investigation or representation in relation to an employment-related claim.

seeking out, referrals and identification of claims or potential claims

the regulated activity, specified in article 89G of the Regulated Activities Order, which is any or all of:

(a) seeking out persons who may have a claim (unless that activity constitutes controlled claims management activity),
(b) referring details of a claim or a potential claim or a claimant or potential claimant to another person, and
(c) identifying a claim or potential claim or a claimant or potential claimant,

when carried on in relation to a personal injury claim, a financial services or financial product claim, a housing disrepair claim, a claim for a specified benefit, a criminal injury claim or an employment-related claim.

Amend the following definitions as shown.

agreeing to carry on a regulated activity

the regulated activity, specified in article 64 of the Regulated Activities Order (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II, or Part 3A, or Part 3B of that Order other than:

…

claim

…

(3) (in CMCOB, and elsewhere in the FCA Handbook where used in relation
to regulated claims management activity and ancillary activity) any claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made:

(a) by way of legal proceedings;

(b) in accordance with a scheme of regulation (whether voluntary or compulsory); or

(c) in pursuance of a voluntary undertaking.

(A) …

(B) in the FCA Handbook: (in accordance with section 22 of the Act (Regulated activities)) the activities specified in Part II (Specified activities), Part 3A (Specified activities in relation to information) and Part 3B (Claims management activities in Great Britain) of the Regulated Activities Order, (Specified Activities) which are, in summary:

…

(to) administering a benchmark (article 63S);

(tp) seeking out, referrals and identification of claims or potential claims (article 89G);

(tq) advice, investigation or representation in relation to a personal injury claim (article 89H);

(tr) advice, investigation or representation in relation to a financial services or financial product claim (article 89I);

(ts) advice, investigation or representation in relation to a housing disrepair claim (article 89J);

(tt) advice, investigation or representation in relation to a claim for a specified benefit (article 89K);

(tu) advice, investigation or representation in relation to a criminal injury claim (article 89L); and

(tv) advice, investigation or representation in relation to an employment-related claim (article 89M);

which is carried on by way of business and, except for (ta), (tb) and (to), relates to a specified investment applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a person’s financial standing or, in the case of (tp),
(tq), (tr), (ts), (tt), (tu) and (tv), is or relates to claims management services and is carried on in Great Britain:

(u) agreeing to carry on a regulated activity (article 64);

which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (na), (nb), (nc), (nd), (ne) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a person’s financial standing or, in the case of (tp), (tq), (tr), (ts), (tt), (tu) and (tv), is, or relates to, claims management services and is carried on in Great Britain.
Part 2: Comes into force 1 April 2019

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

**CAPR CSR** the Client Specific Rules of the Claims Management Regulation Conduct of Authorised Persons Rules 2018 (effective on 1 April 2018).

**CAPR GR** the General Rules of the Claims Management Regulation Conduct of Authorised Persons Rules 2018 (effective on 1 April 2018).

**CASS 13 claims management firm** a firm that is subject to the rules and guidance in CASS 13.

**CASS 13 claims management client money distribution rules** the rules and guidance in CASS 13.

**CASS 13 claims management client money rules** the rules and guidance in CASS 13.

**CASS 13 claims management fee cap** the provisions in sections 29 and 31 of the Financial Guidance and Claims Act 2018 (see CMCOB 5).

**engage in claims management activity** (as defined in section 21(10A) of the Act) (Restrictions on financial promotion)) enter or offer to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity.

**housing complaint service** in England, the Housing Ombudsman Service; in Wales, the Public Services Ombudsman; and in Scotland, the Scottish Public Service Ombudsman, the Scottish Housing Regulator, and the Housing and Property Chamber of the First-tier Tribunal for Scotland.

**Legal Ombudsman** the Legal Ombudsman scheme operated by the Office for Legal Complaints under Part 6 of the Legal Services Act 2007.

**relevant claims management complaint** a relevant existing claims management complaint or a relevant new claims management complaint.

**relevant existing claims** a complaint in respect of which the Financial Ombudsman Service has jurisdiction by operation of article 69(1) of the Financial Services and
management complaint


relevant new claims management complaint

a complaint in respect of which the Financial Ombudsman Service has jurisdiction by operation of article 70(1) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

termination fee

(in CMCOB) any fee or charge which a firm charges in the event that the customer terminates an agreement in respect of services provided or to be provided by the firm.

Amend the following definitions as shown.

acknowledge ment letter

(3) (in CASS 13) the text in the client bank account acknowledgement letter that is not in square brackets.

acknowledge ment letter variable text

(3) (in CASS 13) the text in the client bank account acknowledgement letter that is in square brackets.

client

(10) (in relation to regulated claims management activity and ancillary activity) a customer.

client bank account

(3) (in CASS 11 and CASS 13):

(a) an account at an approved bank which:

(i) holds the money of one or more clients;

(ii) is held in the name of the firm to which CASS 11.9 or CASS 13.6 (segregation and the operation of client money accounts) applies;

(iii) includes in its title the word “client” (or, if the system constraints of the approved bank or the firm that holds the account (or both) make this impracticable, an appropriate abbreviation of “client” that has the same meaning); and

(iv) is a current or a deposit account.
(3) (in CASS 13) a letter in the form of the template in CASS 13 Annex 1R.

client money …

(2C) (in CASS 13) money which a firm receives or holds on behalf of a customer in the course of or in connection with providing claims management services.

client’s best interests rule 

COBS 2.1.1R or, in relation to regulated claims management activity and ancillary activity, CMCOB 2.1.1R.

consumer …

(2) (as further defined in section 1G of the Act) (in relation to the discharge of the FCA’s general functions (sections 1B to 1E of the Act), the application of the regulatory principles by the regulators in section 3B of the Act and references by scheme operators or regulated persons (section 234D of the Act)) a person:

…

(d) (in relation to the FCA’s power to make general rules (section 137A of the Act (The FCA’s general rules)) a person within the extended definition of consumer in article 7 of the Financial Services Act 2012 (Transitional Provisions) Miscellaneous Provisions) Order 2013 (SI 442/2013 Definition of “consumer”);

(e) [deleted]

(f) in respect of whom a person carries on the regulated activity of seeking out, referrals and identification of claims or potential claims whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the Regulated Activities Order or the Act, not a regulated activity;

(2A) (as further defined in section 425A of the Act) (in relation to the issue of statements or codes under section 64 of the Act), general exemptions to consultation by the FCA (section 138L of the Act) in the publication of notices (section 391 of the Act) and the exercise of Treaty rights (Schedule 4 to the Act) a person:

(a) who uses, has used, may have used, or has relevant rights or interests in relation to any services provided by:

(α) (i) authorised persons in carrying on regulated activities;
(b) (ii) authorised persons who are investment firms, or credit institutions, in providing relevant ancillary services; or

(ɛ) (iii) persons acting as appointed representatives; or

(b) in respect of whom a person carries on the regulated activity of seeking out, referrals and identification of claims or potential claims whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the Regulated Activities Order or the Act, not a regulated activity.

... complaint

(1) [deleted]

(2) (in DISP, except DISP 1.1 and (in relation to collective portfolio management) in the consumer awareness rules, the complaints handling rules and the complaints record rule, and in CREDS 9) 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.

(3) (in DISP 1.1 and (in relation to collective portfolio management) in the consumer awareness rules, the complaints handling rules and the complaints record rule) 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 alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

(4) (in DISP) reference to a complaint includes:

(a) under all jurisdictions, part of a complaint; and

(b) under the Compulsory Jurisdiction, all or part of a relevant complaint, a relevant claims management complaint or a relevant credit-related complaint.

customer ...
(B) in the FCA Handbook:

(1) (except in relation to SYSC 19F.2, ICOBS, a credit-related regulated activity, regulated claims management activity, MCOB 3A, an MCD credit agreement, CASS 5, PRIN in relation to MiFID or equivalent third country business DISP 1.1.10-BR, PROD 1.4 and PROD 4) a client who is not an eligible counterparty for the relevant purposes.

…

(7) (in relation to regulated claims management activity and ancillary activity) means a person who has, has had, or may have a claim:

(a) who uses, has used, or 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 an exclusion in the Regulated Activities Order; or

(b) 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.

external client money reconciliation

(1) (in CASS 7) the client money reconciliation described in CASS 7.15.20R.

(2) (in CASS 13) the client money reconciliation described in CASS 13.10.17R.

fair, clear and not misleading rule

financial promotion

(1) an invitation or inducement to engage in investment activity or to engage in claims management activity that is communicated in the course of business;

…

financial promotion rules

…
(6) (in relation to CMCOB) any or all of the rules in CMCOB 3, that impose requirements in relation to a financial promotion but only to the extent that they apply to a financial promotion.

firm ...

(10) (in DISP 2 and 3) includes, in accordance with the Claims Management Order, unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant claims management complaints.

former scheme (1) (except in relation to a relevant transitional complaint or a relevant claims management complaint) any of the following:

...;

(2) (in relation to a relevant transitional complaint)

(a) the GISC facility; or

(b) the MCAS scheme;

(3) (in relation to a relevant claims management complaint) the Legal Ombudsman.

internal client money reconciliation (1) (in CASS 7) the client money reconciliation described in CASS 7.15.12R.

(2) (in CASS 13) the client money reconciliation described in CASS 13.10.5R to 13.10.14R.

lead generator (1) a person that acquires the personal contact details of customers and passes the customers’ details to a firm in return for a fee;

(2) (in CMCOB, and elsewhere in the FCA Handbook where used in relation to regulated claims management activity) a person who carries on the regulated activity of seeking out, referrals and identification of claims or potential claims.

primary pooling event ...

(5) (in CASS 13) an event that occurs in the circumstances described in CASS 13.11.3R.

relevant complaint (1) (in DISP) a relevant existing complaint, a relevant new complaint, or a relevant transitional complaint, and (in DISP and FEES 5) a relevant claims management complaint.

...
(6) (in DISP 2 and 3 and FEES 5) includes, in accordance with the Claims Management Order, an unauthorised person subject to the Compulsory Jurisdiction in relation to relevant claims management complaints.

retail client …

(3) (in relation to credit-related regulated activity and regulated claims management activity) a customer.

secondary pooling event …

(5) (in CASS 13) an event that occurs in the circumstances described in CASS 13.11.11R.

UK financial system (as defined in section 1I of the Act (meaning of “the UK financial system”)) the financial system operating in the United Kingdom including:

(a) financial markets and exchanges;

(b) regulated activities (including regulated claims management activities); and

(c) other activities connected with financial markets and exchanges.
Annex B

Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction

…

1.2 Clients and the Principles

…

Approach to client categorisation

1.2.2 G Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers. The approach that a firm (other than for credit-related regulated activities and regulated claims management activities in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, or other activities, as described in PRIN 1.2.3G.

1.2.3 G …

(1AB) Client categorisation under COBS 3 or PRIN 1 Annex 1R is not relevant to regulated claims management activities and therefore the guidance on client categorisation does not apply in relation to a regulated claims management activity.

…

3 Rules about application

…

3.2 What?

…

3.2.2A R PRIN 1 Annex 1R, PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the carrying on of credit-related regulated activities or regulated claims management activities.

…
### Where?

Territorial application of the Principles

<table>
<thead>
<tr>
<th>3.3.1 R</th>
<th><strong>Principle</strong></th>
<th><strong>Territorial application</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principles 1, 2 and 3</strong></td>
<td>in a prudential context, apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the firm (or its appointed representative) in the United Kingdom, or in respect of regulated claims management activities, apply with respect to activity carried on in Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A), unless another applicable rule or EU regulation which is relevant to the activity has a wider territorial scope, in which case the Principle applies with that wider scope in relation to the activity described in that rule or EU regulation.</td>
<td></td>
</tr>
</tbody>
</table>

...  

**Principle 5** | if the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the UK financial system, applies with respect to activities wherever they are carried on; otherwise, applies with respect to activities carried on from an establishment maintained by the firm (or its appointed representative) in the United Kingdom, or in respect of regulated claims management activities, applies with respect to activity carried on in Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A). |

**Principles 6, 7, 8, 9 and 10** | Principle 8, in a prudential context, applies with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the firm (or its appointed representative) in the United Kingdom, or in respect of regulated claims management activities, apply with respect to activity carried on in Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A), unless another applicable rule or EU regulation which is relevant to the activity has a wider territorial scope, in which case the Principle applies with that wider scope in relation to the activity described in that rule or EU regulation. |

...  

### 3.4 General
Clients and the Principles

3.4.3 G ...

(4) *PRIN* 3.4.1R and *PRIN* 3.4.2R do not apply with respect to the carrying on of regulated claims management activities. Client categorisation does not apply in relation to carrying on a regulated claims management activity.
Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Application and purpose

...

1 Annex  Detailed application of SYSC

1

<table>
<thead>
<tr>
<th>Part 2</th>
<th>Application of the common platform requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Who?</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2.13A</td>
<td>R SYSC 6.3 only applies to a firm in relation to carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, to which the Money Laundering Regulations also apply.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Where?</td>
</tr>
</tbody>
</table>
| 2.15   | R The common platform requirements, except the common platform record-keeping requirements, apply to a firm in relation to activities which:
| (1)    | (except for regulated claims management activities and ancillary activities) are carried on by it from an establishment in the United Kingdom; or |
| (2)    | are, or are ancillary to, regulated claims management activities. |
|        |                                                 |
| 2.17   | R The common platform record-keeping requirements apply to activities which:
| (1)    | (except for regulated claims management activities and ancillary activities) are carried on by a firm from an establishment maintained in the United Kingdom; or |

Page 20 of 183
are, or are ancillary to, **regulated claims management activities**.

- unless If, however, another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case the *common platform record-keeping requirements* apply with that wider scope in relation to the activity described in that *rule*.

[Note: article 16(11) first paragraph of *MiFID*]

### Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A</th>
<th>COLUMN A+</th>
<th>COLUMN A++</th>
<th>COLUMN B</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 6</td>
<td>Application to a common platform firm other than to a UCITS investment firm</td>
<td>Application to a UCITS management company</td>
<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms</td>
</tr>
<tr>
<td>SYSC 6.3.1R</td>
<td>Rule</td>
<td>Rule</td>
<td>Rule</td>
<td></td>
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<tr>
<td>------------</td>
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<tr>
<td>For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</td>
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<tr>
<th>SYSC 6.3.2G</th>
<th>Guidance</th>
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<tbody>
<tr>
<td>For firms carrying on a credit-related regulated activity or regulated claims</td>
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<table>
<thead>
<tr>
<th>SYSC 6.3.3R</th>
<th>Rule</th>
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<td>For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional</td>
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<td>SYSC 6.3.5G</td>
<td>Guidance</td>
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<td>For firms carrying on a credit-related regulated activity or regulated</td>
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<th>SYSC 6.3.9R</th>
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<th>SYSC 6.3.10G</th>
<th>Guidance</th>
<th>Guidance</th>
<th>Guidance</th>
<th>Guidance</th>
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For **firms** carrying on a **credit-related regulated activity or regulated claims management activity**, or operating an electronic system in relation to lending, applies only where the **Money Laundering Regulations** apply to the **firm**. Rule does not apply to a **firm** with a **limited permission for entering into a regulated credit agreement as lender**. Rule does not apply to a **firm** for which a professional body listed in Schedule 1 to the **Money Laundering Regulations**, and not the **FCA**, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
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4 General organisational requirements

4.1 General Requirements

Mechanisms and procedures for a firm

4.1.4 R A firm (with the exception of a common platform firm and a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the financial services, claims management services and other activities undertaken in the course of that business:

...
General

5.1.13 R The systems, internal control mechanisms and arrangements established by a firm (other than a common platform firm) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, claims management services and other activities undertaken in the course of that business.

[Note: articles 4(1) final paragraph and 5(4) of the UCITS implementing Directive]
Annex D

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 Statutory status disclosure

4.1 Application

…

Where?

…

4.1.2 R GEN 4.3 (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the firm (or by its appointed representative) in the United Kingdom, subject to GEN 4.3.4R (Exception: insurers). In relation to regulated claims management activities, GEN 4.3 applies with respect to activity carried on in Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A).

4.1.4 R GEN 4.5 (Statements about authorisation and regulation by the appropriate regulator) applies in relation to activities carried on from an establishment maintained by the firm (or by its appointed representative) in the United Kingdom, provided that, in the case of the MiFID business of an EEA MiFID investment firm or the activities of an EEA UCITS management company, it only applies to business conducted within the territory of the United Kingdom. In relation to regulated claims management activities, GEN 4.5 applies with respect to activity carried on in Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A).

4.2 Purpose

…

4.2.2 G There are other pre contract information requirements outside this chapter including:

…

(7) …; and

(8) …; and

(9) for regulated claims management activities, the pre-contract
information and other requirements in CMCOB 4.2 and CMCOB 4.3.

...  

4.4 Business for retail clients from non-UK offices  

...  

Exception  

4.4.3 R This section does not apply in relation to regulated claims management activities (but firms carrying on such activities in Great Britain will be subject to GEN 4.3: see GEN 4.1.2R).

...  

6 Insurance against financial difficulties  

6.1 Payment of financial penalties  

Application  

...  

6.1.2 G For the purposes of GEN 2.2.17R (Activities covered by general rules), the chapter applies to regulated and unregulated activities carried on in the United Kingdom or overseas. In relation to regulated claims management activities and ancillary activities, this chapter applies with respect to activity carried on in Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A).

...  

7 Charging consumers for telephone calls  

7.1 Application  

Who? Where?  

7.1.1 R This chapter applies to a firm carrying on activities from an establishment in the United Kingdom. In relation to regulated claims management activities, this chapter applies with respect to activity carried on in Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A).
Annex E

Amendments to the Client Assets sourcebook (CASS)

Part 1

In this Part, underlining indicates new text.

1A CASS firm classification and operational oversight

...

1A.2 CASS firm classification

...

1A2.2 R (1) ...

(2) For the purpose of determining its ‘CASS firm type’ in accordance with CASS 1A.2.7R, a firm must:

...

(c) in either case, exclude from its calculation any client money held in accordance with CASS 5 (Client money: insurance distribution activity) or CASS 13 (Claims management: client money).

TP 1 Transitional Provisions

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>15</td>
<td>CASS 13 R</td>
<td>CASS 13 applies in relation to money held by the firm on 1 April 2019 to the extent that such money was received or is held on behalf of an individual, in the course of or in connection with the</td>
<td>Indefinitely</td>
<td>1 April 2019</td>
</tr>
</tbody>
</table>
(a) carried on before 1 April 2019; and

(b) would, if carried on after that date, be regulated claims management activities.

(16) CASS 13 G The rule in (15) applies to the firm irrespective of whether it has a claims management temporary permission or a Part 4A permission. Indefinitely 1 April 2019

### Schedul e 1G

#### Record keeping requirements

...  

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Content of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CASS 13.2.3R</td>
<td>Allocation of oversight function in CASS 13.2.3R</td>
<td>The person to who the oversight function is allocated</td>
<td>Upon allocation</td>
<td>5 years (from the date the record was made)</td>
</tr>
<tr>
<td>CASS 13.5.8R</td>
<td>Client bank account acknowledgement letters sent in accordance with CASS 13.5.2R</td>
<td>Each countersigned client bank account acknowledgement letter received</td>
<td>On receipt of each letter</td>
<td>5 years (following closure of the last client bank account to which the letter relates)</td>
</tr>
<tr>
<td><strong>CASS 13.5.9R</strong></td>
<td>Demonstration that the <em>firm</em> has complied with the requirements of CASS 13.5</td>
<td>Evidence of such compliance</td>
<td>On compliance with the relevant provision</td>
<td>None specified</td>
</tr>
<tr>
<td><strong>CASS 13.6.5R</strong></td>
<td><em>Money received from customers in the form of cash, cheques or other payable orders</em></td>
<td>Details of money received</td>
<td>On receipt</td>
<td>None specified</td>
</tr>
<tr>
<td><strong>CASS 13.6.6R(2)</strong></td>
<td><em>Unidentified client money under CASS 13.6.6R(2)</em></td>
<td>Details of unidentified <em>client money</em> held</td>
<td>Being unable to identify <em>money as client money</em> or its own <em>money</em>, and deciding it is reasonably prudent to so record</td>
<td>Until it performs the necessary steps to identify the <em>money</em> under CASS 13.6.6R(1)</td>
</tr>
<tr>
<td><strong>CASS 13.10.1R(1)</strong></td>
<td><em>Client money held for each customer</em> and the <em>firm’s own money</em></td>
<td>All that is necessary to enable the <em>firm</em> to distinguish <em>client money</em> held for one <em>customer</em> from <em>client money</em> held for any other <em>customer</em> and from the <em>firm’s own money</em></td>
<td>Maintain up-to-date records</td>
<td>None specified</td>
</tr>
<tr>
<td><strong>CASS 13.10.3R</strong></td>
<td><em>Client money held for each customer</em></td>
<td>Accurate records to ensure the correspondence between the records and accounts of the entitlement</td>
<td>Maintain up-to-date records</td>
<td>None is specified</td>
</tr>
</tbody>
</table>
of each customer for whom the firm holds client money with the records and accounts of the client money the firm holds in client bank accounts

<table>
<thead>
<tr>
<th>CASS 13.10.4R</th>
<th>Payments made to, for or on behalf of customers by the firm</th>
<th>Details of payments made</th>
<th>Maintain up-to-date records</th>
<th>None is specified</th>
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</thead>
<tbody>
<tr>
<td>CASS 13.11.13R</td>
<td>A record of each customer’s shortfall in the event of a secondary pooling event</td>
<td>Details of the shortfall</td>
<td>On the secondary pooling event occurring</td>
<td>None is specified</td>
</tr>
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</table>

**Schedule 2G**

Notification and reporting requirements

<table>
<thead>
<tr>
<th>2.1</th>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger Event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>...</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>CASS 13.10.21R(1) to (5)</td>
<td>The firm’s inability or failure to comply with CASS 13.10.1R to 13.10.4R, CASS 13.10.5R, CASS 13.10.15R, CASS 13.10.17R, or CASS</td>
<td>The inability or failure to comply</td>
<td>Awareness of the inability or failure</td>
<td>Without delay</td>
</tr>
</tbody>
</table>
### Part 2

In this Part, all the text is new and is not underlined.

#### 13 Claims management: client money

##### 13.1 Application

13.1.1 **R** This chapter applies to a *firm* that:

1. carries on a *regulated claims management activity*; and
2. receives or holds *client money*.

##### 13.2 Organisational requirements and responsibility for CASS operational oversight

13.2.1 **R** A *firm* must, when holding *client money*, make adequate arrangements to safeguard the customer’s rights and prevent the use of *client money* for its own account.

13.2.2 **R** A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

13.2.3 **R** A *firm* must allocate to a *director or senior manager* responsibility for:

1. oversight of the *firm’s* operational compliance with *CASS 13*;
(2) reporting to the firm’s governing body in respect of that oversight; and

(3) completing and submitting the client money parts of a CMC001 return in accordance with SUP 16.25.3R to SUP 16.25.8R.

13.2.4 R (1) A firm must make and retain an appropriate record of the person to whom responsibility is allocated in accordance with CASS 13.2.3R.

(2) But a firm must make and retain such a record only where:

(a) there is a person in that firm who performs the compliance oversight function; and

(b) it allocates responsibility in accordance with CASS 13.2.3R to a person other than the person in that firm who performs the compliance oversight function.

(3) A firm must ensure that a record made under this rule is retained for a period of five years after it is made.

13.3 Statutory trust

13.3.1 R A firm receives and holds client money as trustee on the following terms:

(1) for the purposes and on the terms of the claims management client money rules and the claims management client money distribution rules;

(2) subject to (3), for the customers for whom that money is held, according to their respective interests in it;

(3) on failure of the firm, for the payment of the costs properly attributable to the distribution of the client money in accordance with (2); and

(4) after all valid claims and costs under (2) and (3) have been met, for the firm itself.

13.4 Selecting an approved bank at which to hold client money

13.4.1 G A firm owes a duty of care as a trustee to its clients in relation to client money and has to exercise that duty of care in deciding where to hold client money.

13.4.2 R Before a firm opens a client bank account and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the
firm to hold client money at the approved bank concerned.

13.4.3 R A firm must consider the risks associated with holding all client money with one approved bank and should consider whether it would be appropriate to hold client money in client bank accounts at a number of different approved banks.

13.4.4 G In complying with CASS 13.4.3R, a firm should consider as appropriate, together with any other relevant matters:

(1) the amount of client money held by the firm;

(2) the amount of client money the firm anticipates holding at the approved bank; and

(3) the creditworthiness of the approved bank.

13.4.5 G A firm can demonstrate compliance with CASS 13.4.2R by checking that the person it proposes to hold client money with is an approved bank and that nothing has come to the firm's attention to cause it to believe that such person is not an appropriate place at which to hold client money.

13.5 Client bank account acknowledgement letters

13.5.1 G The main purposes of a client bank account acknowledgement letter are:

(1) to put the approved bank on notice of a firm’s clients' interests in client money that has been deposited with such person;

(2) to ensure that the client bank account has been opened in accordance with CASS 13.6.3R, and is distinguished from any account containing money that belongs to the firm; and

(3) to ensure that the approved bank understands and agrees that it will not have any recourse or right against money standing to the credit of the client bank account, in respect of any liability of the firm to such person (or person connected to such person).

Requirement for and content of client bank account acknowledgement letters

13.5.2 R (1) For each client bank account, a firm must, in accordance with CASS 13.5.4R, complete and sign a client bank account acknowledgement letter clearly identifying the client bank account, and send it to the approved bank with whom the client bank account is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the firm.

(2) Subject to CASS 13.5.6R, a firm must not hold or receive any client money in or into a client bank account unless it has received a duly countersigned client bank account acknowledgement letter from the...
approved bank. The letter must not have been inappropriately redrafted and should clearly identify the client bank account.

13.5.3 R In drafting client bank account acknowledgement letters under CASS 13.5.2R a firm is required to use the relevant template in CASS 13 Annex 1R.

13.5.4 R When completing a client bank account acknowledgement letter under CASS 13.5.2R(1) a firm:

(1) must not amend any of the acknowledgement letter fixed text;

(2) subject to (3), must ensure the acknowledgement letter variable text is removed, included or amended as appropriate; and

(3) must not amend any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text.

13.5.5 G CASS 13 Annex 2G contains guidance on using the template client bank account acknowledgement letters, including on when and how firms should amend the acknowledgement letter variable text that is in square brackets.

Countersignature by the bank

13.5.6 R (1) If, on countersigning and returning the client bank account acknowledgement letter to a firm, the relevant approved bank has also:

(a) made amendments to any of the acknowledgement letter fixed text; or

(b) made amendments to any of the acknowledgement letter variable text in a way that would alter or otherwise change the meaning of the acknowledgement letter fixed text;

the client bank account acknowledgement letter will have been inappropriately redrafted for the purposes of CASS 13.5.2R(2).

(2) Amendments made to the acknowledgement letter variable text, in the client bank account acknowledgement letter returned to a firm by the relevant approved bank, will not have the result that the letter has been inappropriately redrafted if those amendments:

(a) do not affect the meaning of the acknowledgement letter fixed text;

(b) have been specifically agreed with the firm; and

(c) do not cause the client bank account acknowledgement letter to be inaccurate.
13.5.7  R  A firm must use reasonable endeavours to ensure that any individual that has countersigned a client bank account acknowledgement letter that has been returned to the firm was authorised to countersign the letter on behalf of the relevant approved bank.

Retention of client bank account acknowledgement letters

13.5.8  R  A firm must retain each countersigned client bank account acknowledgement letter it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last client bank account to which the acknowledgment letter relates is closed.

13.5.9  R  A firm must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned a client bank account acknowledgement letter that has been returned to the firm was authorised to countersign the letter on behalf of the relevant approved bank).

Review and replacement of client bank account acknowledgement letters

13.5.10 R  A firm must, periodically (at least annually, and whenever it becomes aware that something referred to in a client bank account acknowledgement letter has changed) review each of its countersigned client bank account acknowledgement letters to ensure that they remain accurate.

13.5.11 R  Whenever a firm finds a countersigned client bank account acknowledgement letter to contain an inaccuracy, the firm must promptly draw up a new replacement client bank account acknowledgement letter under CASS 13.5.2R and ensure that the new client bank account acknowledgement letter is duly countersigned and returned by the relevant approved bank.

13.5.12 G  Under CASS 13.5.10R, a firm should obtain a replacement client bank account acknowledgement letter whenever:

(1) there has been a change in any of the parties’ names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or

(2) it becomes aware of an error or misspelling in the letter.

13.5.13 R  If a firm’s client bank account is transferred to another approved bank, the firm must promptly draw up a new client bank account acknowledgement letter under CASS 13.5.2R and ensure that the new client bank account acknowledgement letter is duly countersigned and returned by the relevant approved bank within 20 business days of the firm sending it to that person.

13.6  Segregation and the operation of client money accounts
Requirement to segregate

13.6.1 R A firm must take all reasonable steps to ensure that all client money it receives is paid directly into a client bank account at an approved bank, rather than being first received into the firm’s own account and then segregated.

13.6.2 G A firm should arrange for clients and third parties to make transfers and payments of any money which will be client money directly into the firm’s client bank accounts.

13.6.3 R A firm must ensure that client money is held in a client bank account at one or more approved banks.

13.6.4 R Cheques received by a firm, made out to the firm, representing client money or a mixed remittance must be treated as client money from receipt by the firm.

13.6.5 R Where a firm receives client money in the form of cash, a cheque or other payable order, it must:

(1) pay the money into a client bank account in accordance with CASS 13.6.1R promptly and no later than the business day after the day on which it receives the money;

(2) if the firm holds the money overnight, hold it in a secure location in line with Principle 10; and

(3) record the receipt of the money in the firm’s books and records under the applicable requirements of CASS 13.10 (Records, accounts and reconciliations).

13.6.6 R If a firm receives money (either in a client bank account or an account of its own) which it is unable immediately to identify as client money or its own money, it must:

(1) take all necessary steps to identify the money as either client money or its own money; and

(2) if it considers it reasonably prudent to do so, given the risk that client money may not be adequately protected if it is not treated as such, treat the entire balance of money as client money and record the money in its books and records as “unidentified client money” while it performs the necessary steps under (1).

13.6.7 G If a firm is unable to identify money that it has received as either client money or its own money under CASS 13.6.6R(1), it should consider whether it would be appropriate to return the money to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A firm should have regard to its fiduciary duties when considering such matters.
13.6.8  G  A firm must ensure that client money received by its agents is:

(1) received directly into a client bank account of the firm; or

(2) if it is received in the form of a cheque or other payable order:

   (a) paid into a client bank account of the firm promptly and, in any event, no later than the next business day after receipt; or

   (b) forwarded to the firm promptly and, in any event, so that it is received by the firm no later than the close of the third business day following the receipt of the money from the customer; or

(3) if it is received in the form of cash, paid into a client bank account of the firm promptly and, in any event, no later than the next business day after receipt.

Mixed remittance

13.6.9  R  If a firm receives a mixed remittance it must:

(1) pay the full sum into a client bank account promptly and in accordance with CASS 13.6.1R to 13.6.5R; and

(2) no later than one business day after the payment of the mixed remittance into the client bank account has cleared, pay the money that is not client money out of the client bank account.

Interest

13.6.10  R  A firm must pay a client any interest earned on client money held for that client.

13.7  Money due and payable to the firm

13.7.1  R  Money is not client money when it is or becomes properly due and payable to the firm for its own account.

13.7.2  G  (1) The circumstances in which money may be or become due and payable to the firm for its own account could include:

   (a) when fees and/or third party disbursements have become due and payable to the firm for its own account under the agreement between the customer and the firm; and

   (b) when money recovered for a customer or a sum in respect of damages, compensation or settlement of a claim is paid into a client bank account and the firm has agreed with the client that a proportion of the sum is to be paid to the firm for fees or in
respect of liabilities the firm has incurred on behalf of the customer.

(2) The circumstances in which money is due and payable will depend on the contractual arrangement between the firm and the client.

13.7.3 G Firms are reminded that when entering into or varying contractual arrangements with customers regarding circumstances in which money becomes properly due and payable to the firm for its own account, firms should comply with any relevant obligations to customers including the client’s best interests rule and requirements under the Unfair Terms Regulations and the Consumer Rights Act 2015.

13.8 Money due to a client or third party.

13.8.1 R Client money in respect of money recovered for a customer or money in respect of damages, compensation or settlement of a claim received into a client bank account must be paid to the customer, or a duly authorised representative of the customer, as soon as reasonably practicable after receipt and, in any event, a firm must take steps within two business days of receipt to make such a payment.

13.8.2 R Money received from a customer in respect of third party disbursements which is due and payable to the third party in accordance with the terms of the contractual arrangements between the parties should be paid to the third party as soon as reasonably practicable after receipt.

13.9 Discharge of fiduciary duty

13.9.1 G CASS 13 provides important safeguards for the protection of client money held by firms that sit alongside the fiduciary duty owed by firms in relation to client money. CASS 13.9.2R to 13.9.3R provide for when money ceases to be client money for the purposes of CASS 13 and the fiduciary duty which firms owe to clients in relation to client money.

13.9.2 R Money ceases to be client money if:

(1) it is paid to the customer, or a duly authorised representative of the customer; or

(2) it is:

(a) paid to a third party on the instruction of the customer, or with the specific consent of the customer; or

(b) paid to a third party further to an obligation on the firm under any applicable law; or
(3) it is paid into an account of the customer (not being an account which is also in the name of the firm) on the instruction, or with the specific consent, of the customer; or

(4) it is due and payable to the firm for its own account (see CASS 13.7.1R to 13.7.2G); or

(5) it is paid to the firm as an excess in the client bank account (see CASS 13.10.15R(3)).

13.9.3 R When a firm draws a cheque or other payable order to discharge its fiduciary duty to the client, it must continue to treat the sum concerned as client money until the cheque or order is presented and paid.

13.10 Records, accounts and reconciliations

Records and accounts

13.10.1 R (1) A firm must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish client money held for one customer from client money held for any other customer, and from its own money.

(2) A firm must allocate in its books and records any client money it receives to an individual customer promptly and, in any case, no later than two business days following the receipt.

(3) Pending a firm's allocation of a receipt of client money to an individual customer under (2), it must record the received client money in its books and records as “unallocated client money”.

13.10.2 G In accordance with CASS 13.10.1R, a firm must maintain internal records and accounts of the client money it holds (for example, a cash book and client ledger accounts). These internal records are separate to any external records it has obtained from approved banks with whom it has deposited client money (for example, bank statements).

13.10.3 R A firm must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the client money held for individual customers.

13.10.4 R A firm must maintain up-to-date records that detail all payments received for, or on behalf of, customers and all payments to, from, or made on behalf of, customers.

Internal client money reconciliation

13.10.5 R A firm must carry out an internal client money reconciliation each business day.
An internal client money reconciliation requires a firm to check whether its client money resource, as determined by CASS 13.10.8R, on the previous business day, was at least equal to the client money requirement, as determined by CASS 13.10.9R, as at the close of business on that day.

In carrying out an internal client money reconciliation, a firm must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from approved banks with whom it has deposited client money (for example, bank statements).

Calculating the client money resource

The client money resource for client money held in accordance with CASS 13.10.6R is the aggregate of the balances on the firm’s client bank accounts, as at the close of business on the previous business day.

Calculating the client money requirement

The client money requirement is the sum of:

(a) the aggregate of all individual customer balances calculated in accordance with CASS 13.10.13R and CASS 13.10.14R;

(b) the amount of any unallocated client money under CASS 13.10.1R(3);

(c) the amount of any unidentified client money under CASS 13.6.6R(2)R; and

(d) any other amounts of client money included in the calculation under (2).

For the purposes of (1)(d), the firm must consider whether there are amounts of client money, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its client money requirement and, if so, adjust the calculation accordingly.

The client money requirement calculated in accordance with CASS 13.10.9R should represent the total amount of client money a firm is required to have segregated in client bank accounts under CASS 13.

Firms are reminded that, under CASS 13.9.3R, if a firm has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its clients (for example, to return client money to the client), the sum concerned must be included in the firm’s calculation of its client money requirement until the cheque or order is presented and paid.

The following guidance applies where a firm receives client money in the form of cash, a cheque or other payable order.
(2) In carrying out the calculation of the client money requirement, a firm may initially include the amount of client money received as cash, cheques or payment orders that has not yet been deposited in a client bank account in line with CASS 13.6.5R. If it does so, the firm should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the firm’s client money requirement and client money resource.

(3) In carrying out the calculation of the client money requirement, a firm may alternatively exclude the amount of client money received as cash, cheques or payment orders that has not yet been deposited in a client bank account in line with CASS 13.6.5R. If it does so, the firm is reminded that it must separately record the receipt of the money in the firm’s books and records under CASS 13.6.5R(3).

(4) A firm that receives client money in the form of cash, a cheque or other payable order is reminded that it must pay that money into a client bank account promptly and no later than on the business day after it receives the money (see CASS 13.6.5R).

13.10.13 R The individual customer balance for each client must be calculated as follows:

(1) the amount received for or on behalf of the customer by the firm; plus

(2) the amount of any interest, and any other sums, due from the firm to the customer; less:

(3) the aggregate of the amount of money:

(a) paid to that customer by the firm; and

(b) due and payable by the customer to the firm; and

(c) due by the customer to a third party in accordance with the contractual arrangements in place between the firm and the customer.

13.10.14 R Where the individual customer balance calculated in respect of an individual client under CASS 13.10.13R is a negative figure (because the amounts received for or on behalf of, or due, to a client under CASS 13.10.13R(1) and CASS 13.10.13R(2) are less than the amounts paid by, or due and payable by, that customer under CASS 13.10.13R(3), that individual customer balance should be treated as zero for the purposes of the calculation of the firm’s client money requirement in CASS 13.10.9R.

Reconciliation differences and discrepancies

13.10.15 R When an internal client money reconciliation reveals a difference between the client money resource and its client money requirement a firm must:
(1) identify the reason for the difference;

(2) ensure that any shortfall in the amount of the client money resource as compared to the amount of the client money requirement is made up by a payment into the firm’s client bank accounts by the end of the business day following the day on which the difference was discovered; and

(3) ensure that any excess in the amount of the client money resource as compared to the amount of the client money requirement is withdrawn from the firm’s client bank accounts by the end of the business day following the day on which the difference was discovered.

External client money reconciliation

13.10.16 G The purpose of the reconciliation process required by CASS 13.10.17R is to ensure the accuracy of a firm’s internal accounts and records against those of any third parties by whom client money is held.

13.10.17 R A firm must perform an external client money reconciliation:

(1) each business day; and

(2) as soon as reasonably practicable after the relevant internal client money reconciliation;

to ensure the accuracy of its internal accounts and records by comparing its internal accounts records against those of approved banks with whom client money is deposited.

13.10.18 G An external client money reconciliation requires a firm to conduct a reconciliation between its internal accounts and records and those of any approved banks by whom client money is held.

13.10.19 R When any discrepancy is revealed by an external client money reconciliation, a firm must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting system of the party providing the statement or confirmation and that of the firm.

13.10.20 R While a firm is unable to resolve a discrepancy arising from an external client money reconciliation, and one record or a set of records examined by the firm during the reconciliation process indicates that there is a need to have greater amount of client money than is in fact the case, the firm must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own money into a relevant client bank account.

Notification requirements

13.10.21 R A firm must inform the FCA in writing without delay if:
(1) its internal records and accounts of client money are materially out of date or materially inaccurate so that the firm is no longer able to comply with the requirements in CASS 13.10.1R to CASS 13.10.4R; or

(2) it will be unable to or materially fails to conduct an internal client money reconciliation in compliance with CASS 13.10.5R; or

(3) after having carried out an internal client money reconciliation in accordance with CASS 13.10.5R it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a client bank account so that the firm is unable to comply with CASS 13.10.15R; or

(4) it will be unable to or materially fails to conduct an external client money reconciliation in compliance with CASS 13.10.17R; or

(5) after having carried out an external client money reconciliation in accordance with CASS 13.10.17R it will be unable to, or materially fails to, identify the reason for any discrepancies and correct them in accordance with CASS 13.10.19R; or

(6) it becomes aware that, at any time in the preceding 12 months, the amount of client money segregated in its client bank accounts materially differed from the total aggregate amount of client money the firm was required to segregate in client bank accounts in accordance with the segregation requirements in CASS 13.6.

13.11 Client money distribution in the event of a failure of a firm or approved bank

Application

13.11.1 R This section (the claims management client money distribution rules) applies to a firm that holds client money which is subject to the claims management client money rules when a primary pooling event or a secondary pooling event occurs.

Purpose

13.11.2 G The claims management client money distribution rules seek, in the event of the failure of a firm or of an approved bank at which the firm holds client money, to protect client money and to facilitate the timely return of client money to clients.

Failure of the authorised firm: primary pooling event

13.11.3 R A primary pooling event occurs:

(1) on the failure of the firm;
(2) on the vesting of assets in a trustee in accordance with an ‘assets requirement’ imposed under section 55P(1)(b) or (c) (as the case may be) of the Act; or

(3) on the coming into force of a requirement or requirements which, either separately or in combination:

(a) is or are for all client money held by the firm; and

(b) require the firm to take steps to cease holding all client money.

Pooling and distribution after a primary pooling event

13.11.4 R If a primary pooling event occurs, then:

(1) all client money:

(a) held in the firm’s client bank accounts; and

(b) any client money identifiable in any other account held by the firm into which client money has been received;

is treated as pooled together to form a notional pool; and

(2) a firm must calculate the amount it should be holding on behalf of each individual customer as at the time of the primary pooling event using the method of calculating individual customer balance provided for by CASS 13.10.13R.

Distribution if client money not transferred to another firm

13.11.5 R Where a primary pooling event occurs and the client money pool is not transferred to another firm in accordance with CASS 13.11.6R, a firm must distribute client money comprising the notional pool so that each client receives a sum that is rateable to its entitlement to the notional pool calculated in accordance with CASS 13.11.4R(2).

Transfer of client money to another firm

13.11.6 R If, in the event of a primary pooling event occurring, the regulated claims management activity business undertaken by a firm (“the transferor”) is to be transferred to another firm (“the transferee”), then the transferor may move the client money pool to the transferee.

13.11.7 R If the transferor decides to move the client money pool to the transferee, the transferor must immediately on making the decision, and before the move takes place, notify the FCA in writing of:

(1) the proposed move, including the date of the proposed move if known at the time of the notification; and
(2) the proposed transferee.

13.11.8 R The client money pool may be transferred under CASS 13.11.6R only if it will be held by the transferee in accordance with CASS 13, including the statutory trust in CASS 13.3.1R.

13.11.9 R If there is a shortfall in the client money transferred under CASS 13.11.6R then the client money must be allocated to each of the customers for whom the client money was held so that each client is allocated a sum which is rateable to that customer’s client money entitlement in accordance with CASS 13.11.4R(2). This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.

13.11.10 R The transferee must, within seven days after the transfer of client money under CASS 13.11.6R notify customers that:

(1) their money has been transferred to the transferee; and

(2) they have the option of having client money returned to them or to their order by the transferee, otherwise the transferee will hold the client money for the customers and conduct regulated claims management activities for those customers.

Failure of an approved bank: secondary pooling event

13.11.11 R A secondary pooling event occurs on the failure of an approved bank at which a firm holds client money in a client bank account.

13.11.12 R (1) Subject to (2), if a secondary pooling event occurs as a result of the failure of an approved bank where one or more client bank accounts are held then in relation to every client bank account of the firm, the provisions of CASS 13.11.13R(1), CASS 13.11.13R(2) and CASS 13.11.13R(3) will apply.

(2) CASS 13.11.13R does not apply if, on the failure of the approved bank, the firm pays to its clients, or pays into a client bank account at an unaffected approved bank, an amount equal to the amount of client money that would have been held if a shortfall had not occurred as a result of the failure.

13.11.13 R Money held in each client bank account of the firm must be treated as pooled and:

(1) any shortfall in client money held, or which should have been held, in client bank accounts, that has arisen as a result of the failure of the approved bank, must be borne by all customers whose client money is held in a client bank account of the firm, rateably in accordance with their entitlements to the pool;

(2) a new client money entitlement must be calculated for each customer by the firm, to reflect the requirements in (1), and the firm’s records
must be amended to reflect the reduced client money entitlement;

(3) the firm must make and retain a record of each client’s share of the client money shortfall at the failed approved bank until the client is repaid; and

(4) the firm must use the new client entitlements, calculated in accordance with (2), when performing the client money calculation in CASS 13.10.9R.

13.11.14 R The term “which should have been held” is a reference to the failed approved bank’s failure to hold the client money at the time of the pooling event.

13.11.15 R Any interest earned on client money following a primary or secondary pooling event will be due to clients in accordance with CASS 13.6.10R (Interest).

13 Annex

client bank account acknowledgement letter template

CASS client bank account acknowledgement letter template

[Letterhead of firm subject to CASS 13.5.3R, including full name and address of firm]

[Name and address of approved bank]

[Date]

Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)

We refer to the following [current/deposit account[s]] which [name of firm], regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), (“us”, “we” or “our”) has opened or will open with [name of approved bank] (“you” or “your”):

[Insert the account title[s], the account unique identifier[s] (for example, as relevant, sort code and account number) and (if applicable) any abbreviated name of the account[s] as reflected in the approved bank’s systems]

([collectively,] the “Client Bank Account[s]”).

In relation to [each of] the Client Bank Account[s] identified above you acknowledge that we have notified you that:

(a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;
(b) we have opened or will open the Client Bank Account for the purpose of depositing money with you on behalf of our clients; and

(c) we hold all money standing to the credit of the Client Bank Account in our capacity as trustee under the laws applicable to us.

In relation to [each of] the Client Bank Account[s] identified above you agree that:

(d) you do not have any recourse or right against money in the Client Bank Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Bank Account with any other account and any right of set-off or counterclaim against money in the Client Bank Account;

(e) you will title, or have titled, the Client Bank Account as stated above and that such title is different to the title of any other account containing money that belongs to us or to any third party; and

(f) you are required to release on demand all money standing to the credit of the Client Bank Account, upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy, (or similar procedure) in any relevant jurisdiction, except for any properly incurred charges or liabilities owed to you on, and arising from the operation of, the Client Bank Account, provided that you have a contractual right to retain such money and that this right is notwithstanding (a) to (c) above and without breach of your agreement to (d) above.

We acknowledge that:

(g) you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Client Bank Account[s].

You and we agree that:

(h) the terms of this letter will remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;

(i) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter;

(j) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement will prevail;

(k) no variation to the terms of this letter will be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;
(l) this letter will be governed by the laws of [insert appropriate jurisdiction]; and

(m) the courts of [insert same jurisdiction as previous] will have jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [name of firm]

x___________________________

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [name of approved bank]

x___________________________

Authorised Signatory

Print Name:

Title:

Contact Information: [insert signatory’s phone number and email address]

Date:

13 Annex 2G

Guidance notes for client bank account acknowledgement letters (CASS 13.5.5G)

Introduction
1. This annex contains guidance on the use of the template client bank account acknowledgement letters in CASS 13 Annex 1R.

General

2. Under CASS 13.5.2R(2), firms are required to have in place a duly signed and countersigned client bank account acknowledgement letter for a client bank account before they are allowed to hold or receive client money in or into the account.

3. For each client bank account a firm is required to complete, sign and send to the approved bank a client bank account acknowledgement letter identifying that account and in the form set out in CASS 13 Annex 1R (CASS claims management firm client bank account acknowledgment letter template).

4. When completing a client bank account acknowledgement letter using the appropriate template, a firm is reminded that it must not amend any of the text which is not in square brackets (acknowledgment letter fixed text). A firm should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.

Clear identification of relevant accounts

5. A firm is reminded that for each client bank account it needs to have in place a client bank account acknowledgement letter. As a result, it is important that it is clear to which account or accounts each client bank account acknowledgement letter relates. As a result, the template in CASS 13 Annex 1R requires that the client bank account acknowledgement letter includes the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each client bank account.

6. The title and unique identifiers included in a client bank account acknowledgement letter for a client bank account should be the same as those reflected in both the records of the firm and the relevant approved bank, as appropriate, for that account. Where an approved bank’s systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

(a) the account may continue to be appropriately identified in line with the requirements of CASS 13 (for example, ‘segregated’ may be shortened to ‘seg’, ‘account’ may be shortened to ‘acct’ etc); and

(b) when completing a client bank account acknowledgement letter, such letter must include both the long and short versions of the account title.
7. A firm should ensure that all relevant account information is contained in the space provided in the body of the client bank account acknowledgment letter. Nothing should be appended to a client bank account acknowledgment letter.

8. In the space provided in the template letter for setting out the account title and unique identifiers for each relevant account/deposit, a firm may include the required information in the format of the following table:

<table>
<thead>
<tr>
<th>Full account title</th>
<th>Unique identifier</th>
<th>Title reflected in [name of approved bank] systems</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Claims Management Firm Client Bank Account]</td>
<td>[00-00-00 12345678]</td>
<td>[CM FIRM CLIENT A/C]</td>
</tr>
</tbody>
</table>

9. Where a client bank account acknowledgment letter is intended to cover a range of client bank accounts, some of which may not exist as at the date the client bank account acknowledgment letter is countersigned by the approved bank, a firm should set out in the space provided in the body of the client bank account acknowledgment letter that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (e.g. with the word ‘client’ in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (e.g. all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in CASS 13 Annex 1R which allows a firm to include the account title and a unique identifier for each relevant account, a firm should include a statement to the following effect:

Any account open at present or to be opened in the future which contains the term ['client'][insert appropriate abbreviation of the term ‘client’ as agreed and to be reflected in the Approved Bank’s systems] in its title and which may be identified with [the following [insert common unique identifier][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].

Signatures and countersignatures

10. A firm should ensure that each client bank account acknowledgment letter is signed and countersigned by all relevant parties and individuals (including where a firm or the approved bank may require more than one signatory).

11. A client bank account acknowledgment letter that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in CASS 13.5. However, where electronic signatures are used, a firm should consider whether, taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the
electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.

Completing a client bank account acknowledgment letter

12. A firm should use at least the same level of care and diligence when completing a client bank account acknowledgement letter as it would in managing its own commercial agreements.

13. A firm should ensure that each client bank account acknowledgement letter is legible (e.g. any handwritten details should be easy to read), produced on the firm’s own letter-headed paper, dated and addressed to the correct legal entity (e.g. where the approved bank belongs to a group of companies).

14. A firm should also ensure each client bank account acknowledgement letter includes all the required information (such as account names and numbers, the parties’ full names, addresses and contact information, and each signatory’s printed name and title).

15. A firm should similarly ensure that no square brackets remain in the text of each client bank account acknowledgement letter (e.g. after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the template in CASS 13 Annex 1R) and that each page of the letter is numbered.

16. A firm should complete a client bank account acknowledgement letter so that no part of the letter can be easily altered (e.g. the letter should be signed in ink rather than pencil).

17. In respect of the client bank account acknowledgement letter’s governing law and choice of competent jurisdiction (see paragraphs (11) and (12) of the template client bank account acknowledgement letters), a firm should agree with the approved bank and reflect in the letter that the laws of a particular jurisdiction will govern the client bank account acknowledgement letter and that the courts of that same jurisdiction will have jurisdiction to settle any disputes arising out of, or in connection with, the client bank account acknowledgement letter, its subject matter or formation.

18. If a firm does not, in any client bank account acknowledgement letter, utilise the governing law and choice of competent jurisdiction that is the same as either or both:

(a) the laws of the jurisdiction under which either the firm or the relevant approved bank are organised; or

(b) as is found in the underlying agreement/s (e.g. banking services
agreement) with the relevant approved bank;

then the firm should consider whether it is at risk of breaching CASS 13.5.4R(3) or CASS 13.4.2R.

Authorised signatories

19. A firm is required under CASS 13.5.7R to use reasonable endeavours to ensure that any individual that has countersigned a client bank account acknowledgement letter returned to the firm was authorised to countersign the letter on behalf of the relevant approved bank.

20. If an individual that has countersigned a client bank account acknowledgement letter does not provide the firm with sufficient evidence of their authority to do so then the firm is expected to make appropriate enquiries to satisfy itself of that individual’s authority.

21. Evidence of an individual’s authority to countersign a client bank account acknowledgement letter may include a copy of the approved bank’s list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the client bank account acknowledgement letter.

22. A firm should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the client bank account acknowledgement letter as the firm would seek when managing its own commercial arrangements.

Third party administrators

23. If a firm uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing a client bank account acknowledgement letter, the text “[Signed by [Name of Third Party Administrator] on behalf of [firm]]” should be inserted to confirm that the client bank account acknowledgement letter was signed by the TPA on behalf of the firm.

24. In these circumstances, the firm should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the client bank account acknowledgement letter on the firm’s behalf. A firm should also ensure that the client bank account acknowledgement letter continues to be drafted on letter-headed paper belonging to the firm.

Client bank accounts

25. A firm must ensure that each of its client bank accounts follows the naming conventions prescribed in the Glossary. This includes ensuring that all client bank accounts include the term ‘client’ in their title or an appropriate abbreviation in circumstances where this is permitted by the
Glossary definition.

26. All references to the term “Client Bank Account[s]” in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.
Annex F

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1A The FCA’s approach to supervision
1A.1 Application and purpose

... Purpose ...

1A.1.3 The design of these arrangements is shaped by the FCA’s statutory objectives in relation to the conduct supervision of financial services firms as well as the prudential supervision of firms not supervised by the PRA. These objectives are set out in Chapter 1 of the Act. The FCA has one strategic objective: ensuring that the relevant markets function well. In discharging its general functions, the FCA must, so far as is reasonably possible, act in a way which is compatible with its strategic objective and which advances one or more of its three operational objectives:

... 

1A.1.3A (1) The meaning of “UK financial system” when used in Chapter 1 of the Act includes regulated claims management activities.

(2) The term “regulated financial services” when used in Chapter 1 of the Act includes services provided by an authorised person in carrying on any regulated activity. Accordingly, for the purposes of Chapter 1 of the Act: a regulated claims management activity is a “regulated financial service” and a customer of a firm carrying on a regulated claims management activity is a “consumer” for the purposes of the FCA’s consumer protection and competition statutory objectives.

... 

1A.4 Tools of supervision

... 

1A.4.4 Some of these tools, for example the use of public statements to deliver messages to firms or consumers of financial services, do not involve the FCA in direct oversight of the business of firms. In contrast, other tools do involve
a direct relationship with firms. The FCA also has powers to act on its own initiative to impose or vary individual requirements on a firm (see SUP 7) and to ban or impose requirements in relation to specific financial promotions. The FCA may also use its general rule-making powers to ban or impose requirements in relation to specific products, types of products or practices associated with a particular product or type of product. The use of the FCA’s tools in its oversight of market practices, in ensuring the protection of client assets and for prudential supervision of FCA-only firms, will also contribute to the integrity and orderly operation of the financial markets.

2 Information gathering by the FCA or PRA on its own initiative

2.1 Application and purpose

... Purpose

2.1.9 G The purpose of SUP 2.4 is to explain a particular method of information gathering used by the FCA, known as “mystery shopping”. Information about how a firm sells financial products and services can be very difficult to obtain, and the purpose of this method is to obtain such information from individuals who approach a firm in the role of potential retail consumers on the FCA’s initiative. The FCA may seek information about particular issues or the activities of individual firms by means of mystery shopping.

2.4 ‘Mystery shopping’

... 2.4.2 G The FCA uses mystery shopping to help it protect consumers. This may be by seeking information about a particular practice across a range of firms (SUP 2.4.3G(1)) or the practices of a particular firm (SUP 2.4.3G(2)). One of the risks consumers face is that they may be sold financial products or services which are inappropriate to them. A problem in protecting consumers from this risk is that it is very difficult to establish after the event what a firm has said to a ‘genuine’ consumer in discussions. By recording what a firm says in discussions with a ‘mystery shopper’, the FCA can establish a firm’s normal practices in a way which would not be possible by other means.
3.1  Application

…

3.1.2  R  Applicable sections (see SUP 3.1.1R)

…

<table>
<thead>
<tr>
<th>(1) Category of firm</th>
<th>(2) Sections applicable to the firm</th>
<th>(3) Sections applicable to its auditor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5D) A CASS 13 claims management firm</td>
<td>SUP 3.1-3.7, 3.11</td>
<td>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

…

3.10  Duties of auditors: notification and report on client assets

…

3.10.5  R  Client assets report

Whether in the auditor’s opinion

<table>
<thead>
<tr>
<th>(1)</th>
<th>the firm has maintained systems adequate to enable it to comply with the custody rules (except CASS 6.7), the collateral rules, the client money rules (except CASS 5.2), the debt management client money rules, the claims management client money rules and the mandate rules throughout the period;</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2)</td>
<td>the firm was in compliance with the custody rules (except CASS 6.7), the collateral rules, the client money rules (except CASS 5.2), the debt management client money rules, the claims management client money rules and the mandate rules, at the date as at which the report has been made;</td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>if there has been a secondary pooling event during the period, the firm has complied with the rules in CASS 5.6 and CASS 7A (Client money distribution) and CASS 11.13 (debt management client money distribution rules) and CASS 13.11 (claims management rules) during the period.</td>
</tr>
</tbody>
</table>

...
Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

How long will an application take?

6.3.38A If the relevant regulator fails to determine an application within the time period specified in section 55V of the Act, this does not mean that the application is deemed to be granted.

10A FCA Approved Persons

10A.1 Application

General

10A.1.1 This chapter applies to every:

1. a firm that is not an SMCR firm; and

2. an SMCR firm, but only to the extent required by SUP 10A.1.16BR (Appointed representatives), other than a firm which has permission to carry on only regulated claims management activities.

12 Appointed Representatives

12.2 Introduction
12.2.7  

(4)  *Regulated claims management activity* is not a type of business for which an appointed representative may be exempt.

…

15  

Notifications to the FCA

…

15.5  

Core information requirements

Change in name

15.5.1  

A *firm* must give the FCA reasonable advance notice of a change in:

(1)  the firm’s name (which is the registered name if the firm is a *body corporate*);

(2)  any business name under which the firm carries on a *regulated activity* (other than a *regulated claims management activity*) or *ancillary activity* either from an establishment in the *United Kingdom* or with or for clients in the *United Kingdom*; and

(3)  any business name under which the firm carries on a *regulated claims management activity* or *ancillary activity*.

…

16  

Reporting requirements

16.1  

Application

…

16.1.3  

Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17 and SUP 16.22)

<table>
<thead>
<tr>
<th>(1) Section(s)</th>
<th>(2) Categories of firm to which section applies</th>
<th>(3) Applicable rules and guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td><em>SUP 16.4</em> and <em>SUP 16.5</em></td>
<td>All categories of <em>firm</em> except:</td>
<td>Entire sections</td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(jb)</td>
<td><em>a firm</em> with <em>permission</em> to carry</td>
<td></td>
</tr>
<tr>
<td></td>
<td>on only regulated claims management activities;</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>(k)</td>
<td>a firm falling within a combination of (i), (ia), (j), and (ja) and (jb).</td>
<td></td>
</tr>
</tbody>
</table>

...  

**SUP 16.25**  
A firm with permission to carry on regulated claims management activities.

Entire section

...  

### 16.3 General provisions on reporting

Structure of the chapter

16.3.2  
This chapter has been split into the following sections, covering:

...  

(18) annual financial crime reporting (**SUP 16.23**); and  
(18) employers’ liability register compliance reporting (**SUP 16.23A**); and  
(19) retirement income data reporting (**SUP 16.24**); and  
(20) claims management reporting (**SUP 16.25**).

...  

After **SUP 16.24** (Retirement income data reporting) insert the following new section, **SUP 16.25**. The text is not underlined.

### 16.25 Claims management reporting

Application

16.25.1  
The effect of **SUP 16.1.3R** is that this section applies to a firm with permission to carry on regulated claims management activities.

Purpose

16.25.2  
The purpose of this section is to ensure that the FCA receives, on a regular basis, comprehensive information about the activities of firms
which carry on regulated claims management activities.

(2) The purpose of collecting this data is to monitor firms' compliance with applicable rules and to assess and identify any emerging risks within the claims management industry.

Requirement to submit Annual Claims Management Report

16.25.3 R A firm must submit an Annual Claims Management Report to the FCA annually in respect of the period of 12 months ending on the firm’s accounting reference date.

16.25.4 G Firms are only required to disclose in Annual Claims Management Reports information relating to the part of their business which is involved in carrying on regulated claims management activities and ancillary activities, except for questions 13 to 15, 19 to 27 and 30 to 34, which relate to the firm as a whole.

Method for submitting Annual Claims Management Report

16.25.5 R A firm must submit an Annual Claims Management Report in the format as set out in SUP 16 Annex 45AR, using the appropriate online systems specified on the FCA’s website.

16.25.6 G A firm submitting an Annual Claims Management Report should read the guidance notes available in SUP 16 Annex 45BG.

Time period for submitting Annual Claims Management Report

16.25.7 R A firm must submit the Annual Claims Management Report within 30 business days of the firm’s accounting reference date.

Group reporting

16.25.8 R If a group includes more than one firm, a single Annual Claims Management Report may be submitted, and so satisfy the requirements of all firms in the group. Such a report should contain the information required from all of the firms in the group, meet all relevant due dates, indicate all the firms on whose behalf it is submitted and give their firm reference numbers. Nevertheless, the requirement to provide a report and the responsibility for the report remain with each firm in the group.

…

After SUP 16 Annex 44BG (Guidance notes for the completion of the Employers’ Liability Register compliance return in SUP 16 Annex 44AR) insert the following new Annexes, SUP 16 Annex 45AR and SUP 16 Annex 45BG. The text is not underlined.

16 Annual Claims Management Report form

Annex
CMC001: Key data for Claims Management

Currency: Sterling only

Units: integers

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
</tr>
</tbody>
</table>

**Group reporting**

1. Does the data reported in this return relate to more than one firm? (NB: You should always answer “No” if your firm is not part of a group)

2. If “Yes” then list the firm reference numbers (FRNs) of all of the additional firms included in this return.

**Nil return**

3. Do you wish to report a nil return?

   All firms answering ‘no’ to question 3, must complete the following:

4. Over the reporting period, how many employees did the firm have on average?

5. How many employees left the firm (for any reason) during the reporting period?

6. What was the firm’s annual employee turnover rate during the reporting period?

7. What was the total remuneration paid to the firm’s employees over the reporting period?

8. What was the total amount of variable remuneration paid to the firm’s employees over the reporting period?

9. How does the firm charge fees to its customers?

10. What was the total annual income for all regulated claims management activities, as defined in FEES 4 Annex 11AR for the purposes of FCA fees reporting (see guidance in FEES 4 Annex 13G)?

**Profit and loss account (over reporting period)**

11. What was the firm’s income from seeking out, referrals
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>and identification of claims or potential claims?</td>
<td></td>
</tr>
<tr>
<td>12 What was the firm’s income from all regulated claims management activities?</td>
<td></td>
</tr>
<tr>
<td>13 What was the firm’s income from all regulated activities?</td>
<td></td>
</tr>
<tr>
<td>14 What was the firm’s income from activities which are not regulated activities?</td>
<td></td>
</tr>
<tr>
<td>15 What was the firm’s total income, including from activities which are not regulated activities?</td>
<td></td>
</tr>
<tr>
<td>16 What was the firm’s expenditure in respect of all regulated claims management activities?</td>
<td></td>
</tr>
<tr>
<td>17 What was the firm’s expenditure in respect of all regulated claims management activities (excluding expenditure of the sort listed in CMCOB 7.2.8R(2)(b))?</td>
<td></td>
</tr>
<tr>
<td>18 What was the firm’s operating profit from regulated claims management activities?</td>
<td></td>
</tr>
<tr>
<td>Balance sheet (as at end of reporting period)</td>
<td></td>
</tr>
<tr>
<td>19 What was the value of the firm’s total assets (fixed and current)?</td>
<td></td>
</tr>
<tr>
<td>20 How much cash did the firm hold?</td>
<td></td>
</tr>
<tr>
<td>21 What was the value of the firm’s other current assets?</td>
<td></td>
</tr>
<tr>
<td>22 How much did the firm owe in overdrafts and bank loans due within one year?</td>
<td></td>
</tr>
<tr>
<td>23 What was the value of the firm’s current liabilities (other than overdrafts and bank loans)?</td>
<td></td>
</tr>
<tr>
<td>24 What was the value of the firm’s total (current and non-current) liabilities?</td>
<td></td>
</tr>
<tr>
<td>25 What was the value of the firm’s current assets less the value of its current liabilities?</td>
<td></td>
</tr>
<tr>
<td>26 What was the value of the firm’s total assets less the value of its current liabilities?</td>
<td></td>
</tr>
<tr>
<td>Prudential resources</td>
<td></td>
</tr>
<tr>
<td>27 What level of prudential resources did the firm hold at the end of the reporting period (as calculated in CMCOB 7.3)?</td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>Was the firm a Class 1 firm or a Class 2 firm (as defined in CMCOB 7.2.5R) at the end of the reporting period?</td>
<td></td>
</tr>
<tr>
<td>What was the firm’s overheads requirement (as calculated in CMCOB 7.2.8R) as at the end of the reporting period?</td>
<td></td>
</tr>
<tr>
<td>As at the end of the reporting period, was the firm’s overheads requirement (as calculated in CMCOB 7.2.8R) greater than the amount set out in whichever of CMCOB 7.2.6R(1)(a) or 7.2.7R(1)(a) was applicable to the firm?</td>
<td></td>
</tr>
<tr>
<td>Did the firm hold client money at any point during the reporting period?</td>
<td></td>
</tr>
<tr>
<td>What was the firm’s prudential resources requirement (as calculated in CMCOB 7.2.6R and 7.2.7R) as at the end of the reporting period?</td>
<td></td>
</tr>
<tr>
<td>Did the firm have a prudential surplus or deficit at the end of the reporting period?</td>
<td></td>
</tr>
<tr>
<td>What was the amount of the prudential surplus or deficit at the end of the reporting period?</td>
<td></td>
</tr>
<tr>
<td>The rest of the questions are only for firms that have permission for one or more of:</td>
<td></td>
</tr>
<tr>
<td>• advice, investigation or representation in relation to a personal injury claim;</td>
<td></td>
</tr>
<tr>
<td>• advice, investigation or representation in relation to a financial services or financial product claim;</td>
<td></td>
</tr>
<tr>
<td>• advice, investigation or representation in relation to a housing disrepair claim;</td>
<td></td>
</tr>
<tr>
<td>• advice, investigation or representation in relation to a claim for a specified benefit;</td>
<td></td>
</tr>
<tr>
<td>• advice, investigation or representation in relation to a criminal injury claim; and</td>
<td></td>
</tr>
<tr>
<td>• advice, investigation or representation in relation to an employment-related claim.</td>
<td></td>
</tr>
<tr>
<td>Professional Indemnity Insurance</td>
<td></td>
</tr>
<tr>
<td>Does the firm have permission for advice, investigation or representation in relation to a personal injury claim?</td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
</tr>
</tbody>
</table>
| 36       | Did the **firm** have a professional indemnity insurance policy in place for **advice, investigation or representation in relation to a personal injury claim** as at the end of the reporting period?  
  If yes:  
  (a) Who is the underwriter of the insurance?  
  (b) What is the policy renewal date?  
  (c) Have the minimum terms of the policy been reviewed in the last five years?  
  (d) What is the amount of the limit of indemnity (liability) for any single claim?  
  (e) What is the amount of the limit of indemnity (liability) for claims in the aggregate over the policy period?  
  (f) What is the amount of the excess (or deductible) that would be applicable for any one claim?  
  (g) Has the identity of the insurance provider or the terms and conditions of the insurance policy changed from the content of the last Annual Claims Management Report form submitted to the **FCA**? |
| 37       | What was the highest balance of **client money** held by the **firm** at any point during the reporting period? |
| 38       | In relation to the balance reported for question 37, for how many different **customers** did the **firm** hold **client money**? |
| 39       | For how many different **customers** did the **firm** hold **client money** for a period longer than two **business days**? |
| 40       | For how many different **customers** did the **firm** hold **client money** for a period longer than five **business days**? |
| 41       | What was the longest period of time for which the **firm** held **client money** for a **customer**? |
| 42       | What was the average fee charged by the **firm**, during the reporting period in respect of a **claim**? |
### Third-party Lead Generators

<table>
<thead>
<tr>
<th>Question</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>43 How many leads did the firm purchase from lead generators during the reporting period?</td>
<td></td>
</tr>
<tr>
<td>44 If you have provided a figure in response to the previous question, provide the following details in respect of the three lead generators from which the firm purchased the most leads during this reporting period:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>Postal address</th>
<th>Email address</th>
<th>Does supplier use overseas facilities (e.g. a call centre)?</th>
<th>Number of leads purchased from supplier over reporting period</th>
<th>Average cost per lead purchased from supplier over reporting period</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
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<tr>
<td>3</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Question</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>45 How many leads did the firm supply to a third party? (include all the occasions on which the firm passed a customer, or details of a customer or claim, to a third party)</td>
<td></td>
</tr>
</tbody>
</table>

### Product data

<table>
<thead>
<tr>
<th>How was the firm’s regulated claims management activity divided among the following areas of work?</th>
<th>Revenue</th>
<th>Number of claims where lead obtained from lead generator</th>
<th>Number of claims pursued</th>
<th>Number of successful claims</th>
<th>Number of claims halted or not taken forward because: no good arguable base (left hand column), suspected fraud (middle column), or being</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th></th>
<th>frivolous or vexatious (right hand column)</th>
</tr>
</thead>
<tbody>
<tr>
<td>46</td>
<td>financial services or financial product <em>claims</em></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>Payment protection insurance</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>Packaged bank accounts</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>Investments</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(d)</td>
<td>Payment card or bank charges</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(e)</td>
<td>Mortgages</td>
</tr>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(f)</td>
<td>Consumer credit</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(g)</td>
<td>Pensions, including SERPS</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(h)</td>
<td>Interest rate swaps and hedging products</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(i)</td>
<td>Other (please specify)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td><em>personal injury claims</em></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>Holiday sickness</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(b) Road traffic accidents (excluding whiplash)

(c) Slips, trips and falls (excluding accidents at work)

(d) Accidents at work

(e) Clinical negligence

(f) Whiplash

(g) Other (please specify)

<table>
<thead>
<tr>
<th>Type of claim</th>
<th>Percentage change</th>
</tr>
</thead>
<tbody>
<tr>
<td>48 housing disrepair claims</td>
<td></td>
</tr>
<tr>
<td>49 claims for a specified benefit</td>
<td></td>
</tr>
<tr>
<td>50 criminal injury claims</td>
<td></td>
</tr>
<tr>
<td>51 employment-related claims</td>
<td></td>
</tr>
</tbody>
</table>

52 Of the above types of claim, which three saw the largest percentage change in number of successful claims?

<table>
<thead>
<tr>
<th>Type of claim</th>
<th>Percentage change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td></td>
</tr>
</tbody>
</table>
Guidance notes for completion of the Annual Claims Management Report form

Guidance for CMC001

General notes

This data item collects key information annually from firms with permission to undertake regulated claims management activity.

Except for rows 13 to 15, 19 to 27 and 30 to 34, the data provided in this form should relate only to regulated claims management activity, even if the firm undertakes regulated or unregulated activities in other areas. Except where a single Annual Claims Management Report is submitted in respect of a group in accordance with SUP 16.25.8R, the data should not include the assets, liabilities, income or costs of any consolidated subsidiaries of the firm.

If you have undertaken no regulated claims management activity during the reporting period, answer “yes” to question 3 “do you wish to report a nil return?” to attest that there is no activity to report to us.

All questions requiring a monetary answer must be answered in sterling only. Figures should be reported in integers (that is, single units, to the nearest whole number), except where otherwise specified in the form: for example, income figures should be given to the nearest pound, not to the nearest thousand pounds.

In the form there are two sections. The first section must be answered by all firms (including those that only have permission for seeking out, referrals and identification of claims or potential claims, or agreeing to carry on a regulated activity in respect of one of these activities). The second section however (from question 35 onwards) is only required from those firms that have permission for one or more of the following activities:

- advice, investigation or representation in relation to a personal injury claim;
- advice, investigation or representation in relation to a financial services or financial product claim;
- advice, investigation or representation in relation to a housing disrepair claim;
- advice, investigation or representation in relation to a claim for a specified benefit;
- advice, investigation or representation in relation to a criminal injury claim; and

- advice, investigation or representation in relation to an employment-related claim,

collectively referred to in these guidance notes as ‘advising on a claim, investigating a claim, or representing a claimant’.

Data elements

<table>
<thead>
<tr>
<th>Question</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Do you wish to report a nil return?</td>
<td>If the firm has undertaken no regulated claims management activity during this reporting period then answer “yes” and submit the form.</td>
</tr>
<tr>
<td>4 Over of the reporting period, how many employees did the firm have on average?</td>
<td>State how many employees the firm had on average during the reporting period. Include part time workers in this figure as 0.5.</td>
</tr>
<tr>
<td>5 How many employees left the firm (for any reason) during the reporting period?</td>
<td>State the figure for the number of employees who left the firm. Include part time workers in this figure as 0.5.</td>
</tr>
<tr>
<td>6 What was the firm’s annual employee turnover rate during the reporting period?</td>
<td>This should be the number of employees who left the firm during the reporting period (item 5) divided by the average number of employees the firm had during the reporting period (item 4), multiplied by 100.</td>
</tr>
<tr>
<td>7 What was the total remuneration paid to the firm’s employees over the reporting period?</td>
<td>Include all remuneration received by employees, including any variable remuneration such as bonuses, commissions or performance-based pay. Include share-based remuneration, options and the monetary value of benefits in kind.</td>
</tr>
<tr>
<td>8 What was the total amount of variable remuneration paid to the firm’s</td>
<td>Include only variable remuneration such as bonuses, commissions or</td>
</tr>
<tr>
<td>Question</td>
<td>Description</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>employees over the reporting period?</td>
<td>performance-based pay. Include share-based remuneration, options and the monetary value of benefits in kind to the extent that these are variable.</td>
</tr>
<tr>
<td>9 How does the firm charge fees to its customers?</td>
<td>Please describe all the ways in which the firm charges fees: for example, whether calculated by reference to the amount recovered for the customer or on an hourly rate, and whether fees are charged up front or on account, or are invoiced periodically or at the end of the claim.</td>
</tr>
<tr>
<td>10 What was the total annual income for all regulated claims management activities, as defined in FEES 4 Annex 11AR for the purposes of FCA fees reporting (see guidance in FEES 4 Annex 13G)?</td>
<td>Refer to the guidance contained in FEES 4 Annex 13G before completing this question. If you undertake other activities this will be a subset of your total income.</td>
</tr>
<tr>
<td>11 What was the firm’s income from seeking out, referrals and identification of claims or potential claims?</td>
<td>State the revenue from generating leads for, or selling leads to, third parties. If you do not have this permission enter “0”.</td>
</tr>
<tr>
<td>12 What was the firm’s income from all regulated claims management activities?</td>
<td></td>
</tr>
<tr>
<td>13 What was the firm’s income from all regulated activities?</td>
<td></td>
</tr>
<tr>
<td>14 What was the firm’s income from activities which are not regulated activities?</td>
<td></td>
</tr>
<tr>
<td>15 What was the firm’s total income, including from activities which are not regulated activities?</td>
<td>This should be the sum of items 13 and 14.</td>
</tr>
<tr>
<td>16 What was the firm’s expenditure in respect of all regulated claims management activities?</td>
<td>Include any share of overheads which is allocated to income from regulated claims management activities.</td>
</tr>
<tr>
<td>17 What was the firm’s expenditure in respect of all regulated claims management activities (excluding expenditure of the sort listed in)</td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Response</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>What was the firm’s operating profit from regulated claims management activities?</td>
<td>Operating profit is equal to income (item 12) less expenditure (item 16).</td>
</tr>
<tr>
<td>Balance sheet</td>
<td>Questions 19 to 27 are to be answered as at the end of the relevant reporting period.</td>
</tr>
<tr>
<td>What was the value of the firm’s total assets?</td>
<td>Include all fixed and current assets.</td>
</tr>
<tr>
<td>How much cash did the firm hold?</td>
<td>This should relate to the whole firm but should not include the cash of any consolidated subsidiaries. This should include cash held in a bank account available for instant withdrawal.</td>
</tr>
<tr>
<td>What was the value of the firm’s other current assets?</td>
<td>A current asset is an asset that is expected to be converted to cash within a year of the date of measurement (but does not include cash). This should relate to the whole firm (including investments in or receivables from other group entities) but should not include the assets of any consolidated subsidiaries.</td>
</tr>
<tr>
<td>How much did the firm owe in overdrafts and bank loans due within one year?</td>
<td>Include only the drawn amount of overdrafts.</td>
</tr>
<tr>
<td>What was the value of the firm’s current liabilities (other than overdrafts and bank loans)?</td>
<td>A current liability is a debt or obligation that falls due within one year of the date of the liability arising. This should relate to the whole firm (including any amounts owed to other group entities) but should not include any consolidated subsidiaries.</td>
</tr>
<tr>
<td>What was the value of the firm’s total (current and non-current) liabilities?</td>
<td>Non-current liabilities are those falling due more than one year after the date of measurement.</td>
</tr>
<tr>
<td>What was value of the firm’s current assets less the value of its current liabilities?</td>
<td>This should equal the sum of items 20 and 21 less the sum of items 22 and 23.</td>
</tr>
<tr>
<td>What was the value of the firm’s total</td>
<td>This should equal the sum of item 24.</td>
</tr>
<tr>
<td>27</td>
<td>What level of prudential resources did the firm hold at the end of the reporting period (as calculated in CMCOB 7.3)?</td>
</tr>
<tr>
<td>28</td>
<td>Was the firm a Class 1 firm or a Class 2 firm (as defined in CMCOB 7.2.5R) at the end of the reporting period?</td>
</tr>
<tr>
<td>29</td>
<td>What was the firm’s overheads requirement (as calculated in CMCOB 7.2.8R) as at the end of the reporting period?</td>
</tr>
<tr>
<td>30</td>
<td>As at the end of the reporting period, was the firm’s overheads requirement (as calculated in CMCOB 7.2.8R) greater than the amount set out in whichever of CMCOB 7.2.6R(1)(a) or 7.2.7R(1)(a) was applicable to the firm?</td>
</tr>
<tr>
<td>31</td>
<td>Did the firm hold client money at any point during the reporting period?</td>
</tr>
<tr>
<td>32</td>
<td>What was the firm’s prudential resources requirement (as calculated in CMCOB 7.2.6R and 7.2.7R) as at the end of the reporting period?</td>
</tr>
<tr>
<td>33</td>
<td>Did the firm have a prudential surplus or deficit at the end of the reporting period?</td>
</tr>
<tr>
<td>34</td>
<td>What was the amount of the prudential surplus or deficit at the end of the reporting period?</td>
</tr>
</tbody>
</table>
The rest of the questions are only for **firms** that have permission for advising on a **claim**, investigating a **claim**, or representing a **claimant**.

All the questions below relate to advising on a **claim**, investigating a **claim**, or representing a **claimant** and should not include data for any other **regulated claims management activity**.

<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>Does the <strong>firm</strong> have permission for <strong>advice, investigation or representation in relation to a personal injury claim</strong>?</td>
</tr>
<tr>
<td>36</td>
<td>Did the <strong>firm</strong> have a professional indemnity insurance policy in place for <strong>advice, investigation or representation in relation to a personal injury claim</strong> at the end of the reporting period?</td>
</tr>
</tbody>
</table>

If yes:

(a) Who is the underwriter of the insurance?  
   State the underwriter’s name.

(b) What is the policy renewal date?  
   Provide the end date of the policy in the format dd/mm/yyyy.

(c) Have the minimum terms of the policy been reviewed in the last five years?

(d) What is the amount of the limit of indemnity (liability) for any single claim?  
   If the policy applies different indemnity limits to different insured events, enter the lowest applicable limit.

(e) What is the amount of the limit of indemnity (liability) for claims in the aggregate over the policy period?

(f) What is the amount of the excess (or deductible) that would be applicable for any one claim?

(g) Has the identity of the insurance provider or the terms and conditions of the insurance policy changed from the content?  
   Answer “yes” or “no”.
<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
<th>Reporting Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>37</td>
<td>What was the highest balance of client money held by the firm at any point during the reporting period?</td>
<td>Report rounded to the nearest pound.</td>
</tr>
<tr>
<td>38</td>
<td>In relation to the balance reported for question 37, for how many different customers did the firm hold client money?</td>
<td>Report the number of customers to whom the balance reported for question 37 relates.</td>
</tr>
<tr>
<td>39</td>
<td>For how many different customers did the firm hold client money for a period longer than two business days?</td>
<td>Report the total number of customers for whom the firm held client money for longer than two business days.</td>
</tr>
<tr>
<td>40</td>
<td>For how many different customers did the firm hold client money for a period longer than five business days?</td>
<td>Report the total number of customers for whom the firm held client money for longer than five business days. Exclude (for question 40 reporting purposes only) any customers to which the firm has sent a cheque or other payable order which is uncleared and/or unbanked. For the avoidance of doubt, a firm must continue to treat this money as client money until the cheque or order is presented and paid by the bank.</td>
</tr>
<tr>
<td>41</td>
<td>What was the longest period of time for which the firm held client money for a customer?</td>
<td>Report in days.</td>
</tr>
<tr>
<td>42</td>
<td>What was the average fee charged by the firm, during the reporting period in respect of a claim?</td>
<td>Include in the average only claims where a fee was charged.</td>
</tr>
<tr>
<td>43</td>
<td>How many leads did the firm purchase from lead generators during the reporting period?</td>
<td>State “None” or provide a positive figure.</td>
</tr>
<tr>
<td>44</td>
<td>If you have provided a figure in response to the previous question, provide the following details in respect of the three lead generators from which the firm purchased the most</td>
<td>Provide all the information requested in each column.</td>
</tr>
<tr>
<td>Questions</td>
<td>Details</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>45 How many leads did the <strong>firm</strong> supply to a third party? (include all the occasions on which the <strong>firm</strong> passed a <strong>customer</strong>, or details of a <strong>customer</strong> or <strong>claim</strong>, to a third party)</td>
<td>Provide the following figures for each area of work. For financial services and products <strong>claims</strong> and personal injury claims show how this work is split between different subcategories. When reporting “other”, complete the free text box to indicate what the figures relate to.</td>
<td></td>
</tr>
<tr>
<td>46-51 How was the firm’s regulated claims management activity divided among the following areas of work?</td>
<td>Revenue Enter the total income earned from this type of work during the reporting period. Number of <strong>claims</strong> where lead obtained from lead generator Enter the number of <strong>claims</strong> where the <strong>customer</strong> was obtained from a lead purchased from a lead generator. Number of <strong>claims</strong> pursued Enter the number of <strong>claims</strong> in respect of which an agreement was reached with the <strong>customer</strong> for the <strong>firm</strong> to investigate, advise or represent. Number of successful <strong>claims</strong> Enter the number of <strong>claims</strong> which resulted in a payment or other remedy for the <strong>customer</strong>. Include <strong>claims</strong> settled on such terms. Number of <strong>claims</strong> halted or not taken forward because: no good arguable base, suspected fraud, or being frivolous or vexatious Enter the number of <strong>claims</strong> which the <strong>firm</strong> declined, or declined to continue to pursue because there was no arguable case in the left hand column; the number of those where there was suspected fraud in the middle column; and the number of those which were frivolous or vexatious in the right hand column.</td>
<td></td>
</tr>
</tbody>
</table>
52 Of the above types of claim, which three saw the largest percentage change in number of successful claims?

Percentage change is the increase or decrease in the number of successful claims concluded during the reporting period compared to the number in the equivalent period ending 12 months earlier. Enter the name of the type of claim and the percentage change. For financial services or financial product claims and personal injury claims, enter the more detailed claim category (e.g. Whiplash).

Amend the following as shown.

TP 1  Transitional provisions

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
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<td></td>
<td></td>
</tr>
<tr>
<td>3AC</td>
<td>SUP 3.10.4R to SUP 3.10.6R</td>
<td>R</td>
<td>(1) This transitional provision applies in respect of an auditor which was subject to SUP 3.10 immediately before 1 April 2019 in relation to a firm which becomes subject to the claims management client money rules on 1 April 2019.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>From 1 April 2019</td>
</tr>
</tbody>
</table>

(2) For the purposes of SUP 3.10.5R(1) in its application to the claims management
client money rules, the first report which the auditor submits under SUP 3.10.4R which covers the claims management client money rules must state whether, in the auditor’s opinion, the firm was in compliance with those rules from 1 April 2019 to the end of the period covered by the report.

<table>
<thead>
<tr>
<th>19</th>
<th>SUP 16.25.7</th>
<th>R</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) This transitional provision applies in respect of the first Annual Claims Management Report which a firm is required to submit under SUP 16.25.7R.</td>
<td>From 1 April 2019 to 1 July 2020</td>
<td></td>
</tr>
<tr>
<td>(2) No report is required under SUP 16.25.7R in respect of a period ending on an accounting reference date of the firm earlier than 1 July 2019.</td>
<td>1 April 2019</td>
<td></td>
</tr>
<tr>
<td>(3) If no report is provided under SUP 16.25.7R in respect of a period ending on an accounting reference date of the firm earlier than 1 July 2019, the first report under SUP 16.25.7R must address the period from 1 April 2019 to the firm’s first accounting reference date which occurs on or after 1 July 2019.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex G

Amendments to the Dispute Resolution: Complaints manual (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Treating complainants fairly

1.1 Purpose and application

Purpose

1.1.1 G This chapter contains rules and guidance on how respondents should deal promptly and fairly with complaints in respect of business carried on from establishments in the United Kingdom, by certain branches of firms in the EEA or by certain EEA firms carrying out activities in the United Kingdom under the freedom to provide cross border services. In respect of regulated claims management activities, this chapter applies to business carried on in Great Britain (see PERG 2.4A). It is also relevant to those who may wish to make a complaint or refer it to the Financial Ombudsman Service.

…

Application to firms

1.1.3 R …

(1A) This chapter also applies to a firm in respect of complaints from eligible complainants concerning activities which are, or which are ancillary to, regulated claims management activities.

…

1.1.5 R This chapter does not apply to:

…

(3A) a firm in respect of complaints concerning activities which:

(a) are not carried on in Great Britain but which would be regulated claims management activities if they were carried on in Great Britain; or

(b) are ancillary to activities described in (a);

…

1.1.5-B G For an activity to amount to a regulated claims management activity it must be carried on in Great Britain (see PERG 2.4A). The effect of DISP 1.1.3R(1A) and DISP 1.1.5R(3A) is that the application of this chapter to
regulated claims management activities and activities ancillary to regulated claims management activities depends on whether the activity is carried on in Great Britain rather than whether it is carried on from an establishment maintained in the United Kingdom.

…

1.1.10 R In relation to a firm’s obligations under this chapter, references to a complaint also include an expression of dissatisfaction which is capable of becoming a relevant new complaint, a relevant transitional complaint, or a relevant new credit-related complaint, or a relevant new claims management complaint.

…

1.3 Complaints handling rules

…

Further requirements for all respondents

…

1.3.6 G Where a firm identifies (from its complaints or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service or claims management service, it should (in accordance with Principle 6 (Customers’ interests) and to the extent that it applies) consider whether it ought to act with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those customers are given appropriate redress or a proper opportunity to obtain it. In particular, the firm should:

…

…

1.10 Complaints reporting rules

1.10.1 R (1) Unless (2) applies, twice a year a firm must provide the FCA with a complete report concerning complaints received from eligible complainants.

(2) If a firm:

(a) has permission to carry on only credit-related regulated activities or operating an electronic system in relation to lending and has revenue arising from those activities that is less than or equal to £5,000,000 a year, or

(b) has permission to carry on only regulated claims management activities:
the firm must provide the FCA with a complete report concerning complaints received from eligible complainants once a year.

(3) The report required by (1) and (2) must be set out in the format in:

(a) *DISP 1 Annex 1R*, in respect of complaints which do not relate to regulated claims management activity or any activity ancillary to regulated claims management activity; and

(b) *DISP 1 Annex 1ABR*, in respect of complaints relating to regulated claims management activity or any activity ancillary to regulated claims management activity.

Information requirements

1.10.2B R *DISP 1 Annex 1ABR* requires (for the relevant reporting period) information about:

(1) in Table 1, the total number of complaints received by the firm and the main focus of the complaint;

(2) in Table 2:

(a) the number of complaints that were closed or upheld within different time periods;

(b) the total amount of redress paid by the firm in relation to complaints upheld and not upheld in the relevant reporting period; and

(c) redress in relation to the claims management fee cap, where this was done at the firm’s instigation rather than as the result of a complaint about the fee.

1.10.3 G For the purposes of *DISP 1.10.2R*, *DISP 1.10.2-AR*, and *DISP 1.10.2AR*, and *DISP 1.10.2BR*, when completing the return, the firm should take into account the following matters.

(2) Under *DISP 1.10.2R(1)(b)*, *DISP 1.10.2R(2)(b)*, or *DISP 1.10.2-AR* or *DISP 1.10.2BR(2)*, a firm should report information relating to all complaints which are closed and upheld within the relevant reporting period, including those resolved under *DISP 1.5* (Complaints resolved by close of the third business day). Where a complaint is upheld in part, or where the firm does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a firm should treat the complaint as upheld for reporting purposes.
However, where a firm rejects a complaint, yet chooses to make a goodwill payment to the complainant, the complaint should be recorded as “rejected”.

(3) If a firm reports on the amount of redress paid under DISP 1.10.2R(1)(b)(ii), DISP 1.10.2R(2)(b)(ii), DISP 1.10.2-AR(4), or DISP 1.10.2AR or DISP 1.10.2BR(2)(b), redress should be interpreted to include an amount paid, or cost borne, by the firm, where a cash value can be readily identified, and should include:

... 

(e) waiver of an excess on an insurance policy; and 

(f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred; and 

(g) the refund of fees paid in excess of the claims management fee cap, and any amount which the firm had attempted to charge but which was written off or waived (before the customer paid it) on the basis that it would have exceeded the claims management fee cap.

... 

1.10A Complaints data publication rules

Obligation to publish summary of complaints data or total number of complaints

1.10A.1 R ... 

(1A) 

(a) This paragraph applies to a firm which:

(i) has permission to carry on only credit-related regulated activities or to operate an electronic system in relation to lending; and 

(ii) has revenue arising from those activities that is less than or equal to £5,000,000 a year.
This paragraph also applies to a firm which has permission to carry on only regulated claims management activities.

Where a firm to which this paragraph applies submits a report to the FCA in accordance with DISP 1.10.1R reporting 1000 or more complaints, it must publish a summary of the complaints data contained in that report (the complaints data summary).

…

After DISP 1 Annex 1AAG (Notes on completing electronic money and payment services complaints return form) insert the following new Annex, DISP 1 Annex 1ABR. The text is not underlined.

1 Annex Claims management complaints and redress return form 1ABR

Currency: Sterling only

Units: Integers

<table>
<thead>
<tr>
<th>Group reporting</th>
<th>A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Does the data reported in this return cover complaints relating to more than one firm? (NB: You should always answer “No” if your firm is not part of a group.)</td>
</tr>
<tr>
<td>2</td>
<td>If “Yes” then list the firm reference numbers (FRNs) of all of the additional firms included in this return.</td>
</tr>
</tbody>
</table>

Nil return declaration

3 We wish to declare a nil return  
(If yes, leave all questions on complaints activities, including contextualisation, blank.)

Return details required

4 Total complaints outstanding at reporting period start date. 

5 Total number of complaints opened during the reporting
Complaints data publication by FCA

6 If you are reporting 1000 or more complaints, do you consent to the FCA publishing the complaints data and information on context contained in this report in advance of the firm publishing the data itself?

7 If “Yes”, do you confirm that the complaints data and information on context contained in this report accurately reflects the information required to be published by the reporting firm under DISP?

Contextualisation data

8 Total number of leads generated or obtained during the reporting period

9 Total number of claims opened during the reporting period

Table 1

<table>
<thead>
<tr>
<th>Type of claim</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Numbers of complaints during reporting period</td>
<td>personal injury claims</td>
<td>financial services or financial product claims</td>
<td>housing disrepair claims</td>
<td>claims for a specified benefit</td>
<td>criminal injury claims</td>
<td>employment-related claims</td>
</tr>
<tr>
<td>10 Total number of complaints</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Main focus of complaint</td>
<td>Lead generation, unsolicited marketing and cold calling</td>
<td></td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Quality of advice / provision of misleading information</td>
<td></td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>12</td>
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<tr>
<td>(including in advertisements)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13 Customer service issues (including call handling)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 General administration</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>15 Upfront fees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 Fee dispute (at settlement – other than one in 17 below)</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 Fees in excess of the claims management fee cap</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 Claim outcome</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19 Process for obtaining and/or sharing of customer data</td>
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<tr>
<td>20 Delay in processing claim</td>
<td></td>
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<tr>
<td>21 Other – please provide details</td>
<td></td>
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</tbody>
</table>

Table 2

Number of complaints closed during the reporting period (22 to 25) and complaints upheld (26)

Redress paid, in integers (27 to 30): for example, figures for redress paid should be to the nearest pound not to the nearest thousand pounds. Include all amounts in excess of the claims management fee cap, whether a refund of fees paid or a waiver of excess fees.

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<tr>
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<tbody>
<tr>
<td>22 Complaints closed within 3 days</td>
<td></td>
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<tr>
<td>23 Complaints closed within 8 weeks, but after more than 3 days</td>
<td></td>
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<tr>
<td>24 Complaints closed after more than 8 weeks</td>
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<tr>
<td>25</td>
<td>Total complaints closed</td>
<td></td>
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</tr>
<tr>
<td>26</td>
<td>Complaints upheld</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Redress paid for upheld complaints</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>Redress paid for complaints not upheld</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Redress in relation to the <em>claims management fee cap</em>, where this was done at the firm’s instigation rather than as the result of a complaint about the fee</td>
<td></td>
<td></td>
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<tr>
<td>30</td>
<td>Total redress paid</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Amend the following as shown.

**1 Annex  Complaints publication report**

**1B**

<table>
<thead>
<tr>
<th>Product / service grouping</th>
<th>Provision (at reporting period end date)</th>
<th>Intermediation (within the reporting period)</th>
<th>Number of complaints opened</th>
<th>Number of complaints closed</th>
<th>Percent age closed within 3 days</th>
<th>Percent age closed after 3 days but within 8 weeks</th>
<th>Percent age upheld</th>
<th>Main cause of complaints opened</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit related</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>Claims management, per 1000 claims in progress and/or leads generated</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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</tbody>
</table>
2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

2.1.1 The purpose of this chapter is to set out rules and guidance on the scope of the Compulsory Jurisdiction and the Voluntary Jurisdiction, which are the Financial Ombudsman Service’s two jurisdictions:

(1) the Compulsory Jurisdiction is not restricted to regulated activities, payment services, issuance of electronic money, and CBTL business and covers:

(a) relevant complaints against former members of former schemes under the Ombudsman Transitional Order, and the Mortgage and General Insurance Complaints Transitional Order and the Claims Management Order;

(b) relevant complaints against former members of former schemes under the Ombudsman Transitional Order, and the Mortgage and General Insurance Complaints Transitional Order and the Claims Management Order;

(2) ...;

(3) ...;

(4) ...; and

(5) ...;

(6) relevant existing claims management complaints referred to the Legal Ombudsman before 1 April 2019 and inherited by the Financial Ombudsman Service under the Claims Management Order; and

(7) relevant new claims management complaints about events which took place before 1 April 2019 but referred to the Financial Ombudsman Service on or after 1 April 2019 under the Claims Management Order.

2.1.2 Relevant complaints covered by the Compulsory Jurisdiction comprise:

(1) ...;

(2) ...;

(3) ...;

(4) ...; and

(5) ...;

(6) relevant new claims management complaints about events which took place before 1 April 2019 but referred to the Financial Ombudsman Service on or after 1 April 2019 under the Claims Management Order.

2.1.3 The Ombudsman Transitional Order and the Claims Management Order requires the Financial Ombudsman Service to complete the handling of relevant existing complaints and relevant existing claims management complaints, in a significant number of respects, in accordance with the requirements of the relevant former scheme rather than in accordance with the requirements of this chapter.
2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms and unauthorised persons subject to a former scheme

2.3.2 G The Ombudsman can also consider under the Compulsory Jurisdiction:

(1) … ; or

(2) … ; or

(2A) as a result of the Claims Management Order, a relevant claims management complaint that relates to an act or omission by a firm or an unauthorised person which was subject to a former scheme at the time of the act or omission:

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The Ombudsman can consider a complaint under the Voluntary Jurisdiction if:

...

(2) it relates to an act or omission by a VJ participant in carrying on one or more of the following activities:

...

(c) activities, other than regulated claims management activities and activities ancillary to regulated claims management activities, which (at 3 January 2018 to 1 April 2019) would be covered by the Compulsory Jurisdiction, if they were carried on from an establishment in the United Kingdom (these activities are listed in DISP 2 Annex 1G);

(ca) an activity which would be a regulated claims management activity and would be covered by the Compulsory Jurisdiction if it were carried on in Great Britain (see PERG 2.4A);

...

2.5.3 G DISP 2.5.1R (2)(a) is for those that are subject to the Compulsory Jurisdiction for regulated activities but are not covered by the Ombudsman...
Transitional Order, or the Mortgage and General Insurance Complaints Transitional Order, or the Claims Management Order. It enables the Financial Ombudsman Scheme to cover complaints about earlier events relating to those activities before they became regulated activities.

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R (1) The Compulsory Jurisdiction covers complaints about the activities of a firm (including its appointed representatives), of a payment service provider (including agents of a payment institution), of an electronic money issuer (including agents of an electronic money institution), of a CBTL firm, of a designated credit reference agency or of a designated finance platform which:

(a) (except for regulated claims management activities and activities ancillary to regulated claims management activities) are carried on from an establishment in the United Kingdom;

or:

(b) are, or are ancillary to, regulated claims management activities.

2.6.2 G This:

(2) excludes complaints about business conducted in the United Kingdom on a services basis from an establishment outside the United Kingdom other than:

(a) … ; and

(b) … ; and

(c) complaints in relation to regulated claims management activity.

2.6.2A G For an activity to amount to a regulated claims management activity it must be carried on in Great Britain (see PERG 2.4A). The application of the Compulsory Jurisdiction to firms which carry on regulated claims management activities (and activities ancillary to regulated claims management activities) depends on whether the activity is carried on in Great Britain rather than whether it is carried on from an establishment maintained in the United Kingdom.
Voluntary Jurisdiction

...

2.6.4A  G Complaints about activities which are claims management services but which are not regulated claims management activity (for example, services provided by a company incorporated in Northern Ireland to a natural person ordinarily resident in Northern Ireland) may be covered by the Voluntary Jurisdiction under DISP 2.6.4R(1) where the activities are carried on from an establishment in the United Kingdom.

...

2.7 Is the complainant eligible?

...

Eligible complainants

...

2.7.6 R ...

(17) the complainant is a customer of the respondent in relation to regulated claims management activity.

...

2.7.8 G In the Compulsory Jurisdiction, under the Ombudsman Transitional Order, and the Mortgages and General Insurance Complaints Transitional Order and Claims Management Order, where a complainant:

(1) wishes to have a relevant new complaint, or a relevant transitional complaint or a relevant new claims management complaint dealt with by the Ombudsman; and

(2) is not otherwise eligible; but

(3) would have been entitled to refer an equivalent complaint to the former scheme in question immediately before the relevant transitional order came into effect;

if the Ombudsman considers it appropriate, he may treat the complainant as an eligible complainant.

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction as at 27 July 2018 1 April 2019

...
The activities which were covered by the Compulsory Jurisdiction (at 27 July 2018 1 April 2019) were:

…

The activities which (at 27 July 2018 1 April 2019) were regulated activities were, in accordance with section 22 of the Act (Regulated Activities), any of the following activities specified in Part II and Parts 3A and 3B of the Regulated Activities Order (with the addition of auction regulation bidding and administering a benchmark):

…

(41) seeking out, referrals and identification of claims or potential claims (article 89G);

(42) advice, investigation or representation in relation to a personal injury claim (article 89H);

(43) advice, investigation or representation in relation to a financial services or financial product claim (article 89I);

(44) advice, investigation or representation in relation to a housing disrepair claim (article 89J);

(45) advice, investigation or representation in relation to a claim for a specified benefit (article 89K);

(46) advice, investigation or representation in relation to a criminal injury claim (article 89L);

(47) advice, investigation or representation in relation to an employment-related claim (article 89M);

which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (22), (22A), (22B), (22C), (22D), (22E) and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a person’s financial standing or, in the case of (41) to (47), is or relates to claims management services and is carried on in Great Britain.

3 Complaint handling procedures of the Financial Ombudsman Service

3.1 Purpose, interpretation and application

…

Interpretation

…
3.1.4 G The Ombudsman Transitional Order and the Claims Management Order requires the Financial Ombudsman Service to complete the handling of relevant existing complaints and relevant existing claims management complaints, in a significant number of respects, in accordance with the requirements of the relevant former scheme rather than in accordance with the requirements of this chapter.

3.3 Dismissal without consideration of the merits and test cases

3.3.3 G Under the Ombudsman Transitional Order and the Mortgage and General Insurance Complaints Transitional Order and the Claims Management Order, where the Ombudsman is dealing with a relevant complaint, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the former scheme in question, as it had effect immediately before the relevant transitional order came into effect.

3.3.3A G Under the Claims Management Order the Ombudsman may dismiss a relevant claims management complaint, if he considers that the complaint would have been dismissed under the rules of the former scheme or should be dismissed under the grounds for dismissal in DISP 3.3.4R or DISP 3.3.4AR. Where the Ombudsman is dealing with a relevant new claims management complaint the rules of the former scheme must be read as if they were subject to paragraph 13 of Schedule 3 of the ADR Regulations.

3.6 Determination by the Ombudsman

Fair and reasonable

3.6.5 G Where the Ombudsman is determining what is fair and reasonable in all the circumstances of a relevant new complaint or a relevant transitional complaint or a relevant new claims management complaint, the Ombudsman Transitional Order, and the Mortgage and General Insurance Complaints Transitional Order and the Claims Management Order require make provision for him to take into account what determination the former Ombudsman might have been expected to reach in relation to an equivalent complaint dealt with under the former scheme in question immediately before the relevant transitional order came into effect.

3.7 Awards by the Ombudsman
Money awards

3.7.3 G Where the Ombudsman is determining what amount (if any) constitutes fair compensation as a money award in relation to a relevant new complaint, a relevant transitional complaint or a relevant new claims management complaint, the Ombudsman Transitional Order, and the Mortgages and General Insurance Complaints Transitional Order and the Claims Management Order require make provision for him to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the former scheme in question immediately before the relevant transitional order came into effect.

TP 1 Transitional provisions

TP1.1 Transitional provisions table

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<tbody>
<tr>
<td>47</td>
<td>DISP 1.10.1R, DISP 1.10.4AR, DISP 1.10.5R, and DISP 1 Annex 1ABR</td>
<td>R</td>
<td>(1) This transitional provision applies where a firm with permission to carry on only regulated claims management activities is required to provide the FCA with its first report under DISP 1.10.1R in the form of DISP 1 Annex 1ABR.</td>
<td>From 1 April 2019 to 1 July 2020</td>
<td>1 April 2019</td>
</tr>
</tbody>
</table>
(3) If the firm does not provide a report in the form of DISP 1 Annex 1ABR under DISP 1.10.1R in respect of a period ending on an accounting reference date of the firm earlier than 1 July 2019, the first report in the form of DISP 1 Annex 1ABR provided under DISP 1.10.1R must cover the period from 1 April 2019 to the firm’s first accounting reference date which occurs on or after 1 July 2019.

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<th><strong>48</strong></th>
<th><strong>DISP 2 and DISP 3</strong></th>
<th><strong>R</strong></th>
<th><strong>In DISP 2 and DISP 3 references to a “firm” or “firms” include unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant claims management complaints in accordance with the Claims Management Order.</strong></th>
<th><strong>From 1 April 2019</strong></th>
<th><strong>From 1 April 2019</strong></th>
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<tbody>
<tr>
<td></td>
<td><strong>49</strong></td>
<td><strong>DISP 2 and DISP 3</strong></td>
<td><strong>G</strong></td>
<td>Under the Claims Management Order, a relevant claims management complaint is subject to the Compulsory Jurisdiction whether or not it is about a firm or an unauthorised person. Unauthorised persons are not subject to DISP 1, but references to “firm” in DISP 2</td>
<td>From 1 April 2019</td>
<td>From 1 April 2019</td>
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</tbody>
</table>
and DISP 3 include *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to relevant claims management complaints, where applicable.

| 50 | **DISP 1, DISP 2, DISP 3 and DISP 4** | R | In relation to *relevant claims management complaints*, references in **DISP 1, DISP 2, DISP 3 and DISP 4** to an “eligible complainant” include a person who is to be treated as an eligible complainant in accordance with the *Claims Management Order* and references to a *complaint* shall be construed accordingly. | From 1 April 2019 | From 1 April 2019 |
Annex H

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Conduct of business standards: general

... 

2.5 Conduct of business: credit broking

2.5.3 R A firm must:

... 

(4) before referring the customer to a third party which carries on regulated activities or a claims management service (within the meaning of section 4 of the Compensation Act 2006 419A of the Act) or other services, obtain the customer’s consent, after having explained why the customer’s details are to be disclosed to that third party;

[Note: paragraph 3.9r of CBG]

... 

... 

3 Financial promotions and communications with customers

... 

3.9 Financial promotions and communications: debt counsellors and debt adjusters

... 

3.9.5 R A financial promotion or a communication with a customer by a firm must not:

... 

(3) promote a claims management service (within the meaning of section 4 of the Compensation Act 2006 419A of the Act) as a way of managing a customer’s debts;

[Note: paragraph 3.18k of DMG]

...
Annex I

Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, all the text is new and is not underlined.

Claims Management: Conduct of Business sourcebook (CMCOB)

1 Application and purpose

1.1 Application

Application

1.1.1 G (1) The Claims Management: Conduct of Business sourcebook (CMCOB) is the specialist sourcebook for regulated claims management activities.

(2) 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 CMCOB applies to a firm with respect to carrying on regulated claims management activities and ancillary activities, unless otherwise stated in, or in relation to, a rule.
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.

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 CMCOB 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) CMCOB 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 CMCOB 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 CMCOB 4 (Pre-contractual requirements), including the requirement to take reasonable steps to ensure that the customer understands the agreement (see CMCOB 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 R (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 R (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]

(2) This rule is subject to CMCOB 2.1.14R.

2.1.14 R (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]

2.2 Generating, obtaining and passing on leads

2.2.1 G (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  R  (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):

(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).

2.2.3  G  (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) the General Data Protection Regulation (EU) No 2016/679) 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 (EU) No 2016/679.

(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.

2.2.6 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

2.2.8 R (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 G

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.

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:

(1) the customer withdrawing or deciding not to pursue the claim;

(2) the settlement of the claim;

(3) 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.

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.

3.2.2 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.

3.2.3 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.

(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.

3.2.6 R (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 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 (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.

<table>
<thead>
<tr>
<th>Claim</th>
<th>Ombudsman or compensation scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>criminal injury claim</td>
<td>the Criminal Injuries Compensation Authority</td>
</tr>
<tr>
<td>employment-related claim</td>
<td>none specified</td>
</tr>
<tr>
<td>financial services or financial product</td>
<td>the Financial Ombudsman Service: for any financial promotion which is generic in nature or where the firm would expect those to whom the financial promotion is addressed to be eligible to pursue their claim with the Financial Ombudsman Service</td>
</tr>
<tr>
<td>product claim</td>
<td>the compensation scheme: for any financial promotion addressed to persons who may have a claim against a person which is no longer in business, where the firm would expect those to whom the financial promotion is addressed to be eligible to pursue their claim with compensation scheme</td>
</tr>
<tr>
<td></td>
<td>the Pensions Ombudsman: for any financial promotion addressed to persons who may to be eligible to pursue their claim with the Pensions</td>
</tr>
</tbody>
</table>
Ombudsman, for example where the financial promotion relates to claims against an occupational pension provider

<table>
<thead>
<tr>
<th>claim type</th>
<th>financial promotion</th>
</tr>
</thead>
<tbody>
<tr>
<td>housing disrepair claim</td>
<td>a housing complaint service</td>
</tr>
<tr>
<td>personal injury claim</td>
<td>none specified</td>
</tr>
<tr>
<td>claim for a specified benefit</td>
<td>none specified</td>
</tr>
</tbody>
</table>

(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
(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).

(5) 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:

(a) 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,

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

(c) 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.

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 (1) 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.

(2) 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:

(i) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and

(ii) 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) Where the fee would be payable by reference to the amount recovered for the customer, the firm must provide an illustration of what its fee would be by reference to each of the following amounts recovered for the customer:

(a) £1,000;
(b) £3,000; and
(c) £10,000.

(3) For the purposes of (2), 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 (2), but is instead dependent on factors which cannot be known in advance (for example, where the firm charges an hourly rate), the firm must provide an estimate calculated by reference to:

(a) the fact and circumstances of the claim, to the extent that the firm has knowledge of them; and
(b) 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:

(a) where (2) applies, 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;
(b) where (4) applies, an explanation of how the estimate has been calculated; and
(c) 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.
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 CMCOB 2.1.12R);

(13) the nature and frequency of updates that the firm will give the
customer on the progress of the claim; and

(14) the Financial Ombudsman Scheme or any other Ombudsman 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 CMCOB 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 CMCOB 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 CMCOB 4.3.1R(6)(a) to (f).

4.2.10 G (1) Examples of outstanding liabilities in CMCOB 4.2.9R(1) include:

   (a) late repayments due under a credit agreement for financial services claims; or

   (b) 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 R When a firm gives information to a customer as required by CMCOB
4.2.1R, CMCOB 4.2.7R, CMCOB 4.2.8R and CMCOB 4.2.9R, the firm must accompany the information with:

(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(1)]

4.2.12 G (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 G 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.

4.3 Pre-contract requirements

4.3.1 R 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]

(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 been declared bankrupt;

   (b) are subject to a bankruptcy petition;

   (c) are 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 subject to a debt relief order; or

   (f) have any other similar process or arrangement 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 G (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 G (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.

5 Fee cap for regulated claims management activities

5.1 Fee cap for payment protection insurance claims

5.1.1 G (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 claims management fee cap in connection with a PPI claim; 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 claims management fee cap in connection with a PPI claim.

(3) Any payment in excess of the 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 claims management fee cap are not enforceable to the extent that they provide for such a payment.

(5) A firm that breaches the claims management fee cap is subject to the FCA’s disciplinary powers in the same way as if the firm had breached a rule.

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:

(a) promptly, and in any event within ten business days of receiving the information or request; and

(b) in a durable medium.
6.1.5 R  (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) A firm must obtain the customer’s consent in (3) and (4):

(a) over the telephone; or
(b) in a durable medium.

6.1.6 G (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 R 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 G (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 missold 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:

(a) 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

(b) 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 R (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:

(a) 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

(b) 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 \(\text{CMCOB 6.1.9R does not apply if the customer expressly requests not to receive such updates.}\)

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:

(a) promptly, and in any event within ten business days; and

(b) 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.

(3) 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 G (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 R (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.

6.2.2 G 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 R A firm must establish and implement clear, effective and appropriate policies and procedures for:

(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.

6.2.4 R (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 G (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/resources/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 G 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*:
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 G 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 R (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.

7 Prudential requirements and professional indemnity insurance

7.1 Purpose

7.1.1 G (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 criminal injury claim.

7.1.2 R 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

General solvency requirement

7.2.1 R A firm must ensure that it is able at all times to meet its liabilities as they fall due.

General prudential resources requirement

7.2.2 R 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.

Prudential resources: general accounting principles

7.2.3 R 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.

Prudential resources requirement: firms carrying on other regulated activities

7.2.4 R 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.

Classification of firms for prudential resources purposes

7.2.5 R (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 £1 million; and

(b) a “Class 2 firm” if its total income in the year ending on its most recent accounting reference date is less than £1 million.

(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:

(a) £10,000; 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).

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;

(iii) 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.

(8) 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 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.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Additional explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Share capital</td>
</tr>
<tr>
<td></td>
<td>This must be fully paid and may include:</td>
</tr>
<tr>
<td></td>
<td>(1) ordinary share capital; or</td>
</tr>
<tr>
<td></td>
<td>(2) preference share capital (excluding preference shares redeemable by shareholders within two years).</td>
</tr>
<tr>
<td>2</td>
<td>Capital other than share capital (for example, the capital of a sole trader, partnership or limited liability partnership)</td>
</tr>
<tr>
<td></td>
<td>The capital of a sole trader is the net balance on the firm’s capital account and current account. The capital of a partnership is the capital made up of the partners’:</td>
</tr>
<tr>
<td></td>
<td>(1) capital account, that is the account:</td>
</tr>
<tr>
<td></td>
<td>(a) into which capital contributed by the partners is paid; and</td>
</tr>
<tr>
<td></td>
<td>(b) from which, under the terms of the partnership agreement, an amount representing capital may be withdrawn by a partner only if:</td>
</tr>
<tr>
<td></td>
<td>(i) the person ceases to be a partner and an equal amount is transferred to another such account by the person’s former partners or any person replacing that person as their partner; or</td>
</tr>
<tr>
<td></td>
<td>(ii) the person ceases to be a partner and an equal amount is transferred to another such account by the person’s former partners or any person replacing that person as their partner; or</td>
</tr>
<tr>
<td></td>
<td>(iii) the partnership is otherwise dissolved or wound up; and</td>
</tr>
<tr>
<td></td>
<td>(2) current accounts according to the most recent financial statement.</td>
</tr>
</tbody>
</table>
For the purpose of the calculation of capital resources in respect of a *defined benefit occupational pension scheme*:

3 Reserves

(3) a firm must derecognise any *defined benefit asset*;

(4) a firm may substitute for a *defined benefit liability* the firm’s *deficit reduction amount*, provided that the election is applied consistently in respect of any one financial year.

4 Interim net profits

If a firm 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 firm’s external auditor, net of tax, anticipated dividends or proprietors’ drawings and other appropriations.

5 Revaluation reserves

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.
### Subordinated loans/debt

Subordinated loans/debt must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans/debts.

**Note:**

1. Reserves must be audited and interim net profits, general and collective provisions must be verified by the firm's external auditor unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemption from audit) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies; Conditions for exemption from audit)) relating to the audit of accounts.

#### 7.3.3R Table: Items which must be deducted in arriving at prudential resources

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Investments in own shares</td>
</tr>
<tr>
<td>2</td>
<td>Investments in subsidiaries (Note 1)</td>
</tr>
<tr>
<td>3</td>
<td>Intangible assets (Note 2)</td>
</tr>
<tr>
<td>4</td>
<td>Interim net losses (Note 3)</td>
</tr>
<tr>
<td>5</td>
<td>Excess of drawings over profits for a sole trader or a partnership (Note 3)</td>
</tr>
</tbody>
</table>

**Notes:**

1. *Investments 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.

### Subordinated loans/debt

#### 7.3.4 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:
   - at least five years; or
   - 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:

\[ a = \text{the sum of Items 1-5 in the Table of items, which are eligible to contribute to a firm’s capital resources (see CMCOB 7.3.2R)} \]

\[ b = \text{the sum of Items 1-5 in the Table of items, which must be deducted in arriving at a firm’s capital resources (see CMCOB 7.3.3R)} \]

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share capital</td>
<td>£20,000</td>
</tr>
<tr>
<td>Reserves</td>
<td>£30,000</td>
</tr>
<tr>
<td>Subordinated loans/debts</td>
<td>£10,000</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>£10,000</td>
</tr>
</tbody>
</table>

As subordinated loans/debts (£10,000) are less than the total of share capital + reserves - intangible assets (£40,000) the firm need not exclude any of its subordinated loans/debts pursuant to CMCOB
7.3.4R when calculating its prudential resources. Therefore the firm’s total prudential resources will be £50,000.

<table>
<thead>
<tr>
<th>(2)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Share capital</td>
<td>£20,000</td>
</tr>
<tr>
<td>Reserves</td>
<td>£30,000</td>
</tr>
<tr>
<td>Subordinated loans/debts</td>
<td>£60,000</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>£10,000</td>
</tr>
</tbody>
</table>

As subordinated loans/debts (£60,000) exceed the total of share capital + reserves - intangible assets (£40,000) by £20,000, the firm should exclude £20,000 of its subordinated loans/debts pursuant to CMCOB 7.3.5R when calculating its prudential resources. Therefore the firm’s 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.
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.

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

<table>
<thead>
<tr>
<th>Module</th>
<th>Disapplication or modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Threshold Conditions</td>
<td>Guidance applies with necessary modifications to reflect the Claims Management Order (see Note 1).</td>
</tr>
<tr>
<td>(COND)</td>
<td>Note 1</td>
</tr>
<tr>
<td>Supervision Manual (SUP)</td>
<td>Note 2</td>
</tr>
</tbody>
</table>

For a firm with only claims management temporary permission: 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 firm intends to implement the change of name” and “and the date of the change” are omitted.

TP 1  Transitional provisions

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

Record keeping requirements

1.1 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.

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

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Content of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMCOB 2.2.2R</td>
<td>Lead generators</td>
<td>Steps taken to ascertain whether lead generator authorised and has systems and processes in place to comply with data protection legislation and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and conclusions reached</td>
<td>When the steps are taken</td>
<td>Not specified</td>
</tr>
<tr>
<td>CMCOB 2.2.4R</td>
<td>Source of sales leads</td>
<td>Lead generator which supplied the lead</td>
<td>When the lead is accepted</td>
<td>Not specified</td>
</tr>
<tr>
<td>CMCOB 2.3.2R and 2.3.6R</td>
<td>Telephone calls and electronic communications</td>
<td>Call recording; and retention of electronic communications</td>
<td>When the call or the electronic communication is made or received</td>
<td>At least 12 months for call recording; according to SYSC 9.1.1R for electronic</td>
</tr>
<tr>
<td>CMCOB 4.3.1R</td>
<td>Availability of alternative methods for pursuing a claim; whether customer has outstanding liabilities with the person claim made against; and whether customer subject to bankruptcy etc</td>
<td>The customer’s confirmation that they have alternative methods and the reasons for not using them; and the customer’s confirmation regarding outstanding liabilities and bankruptcy etc</td>
<td>Before an agreement is entered into with the customer</td>
<td>Not specified</td>
</tr>
<tr>
<td>CMCOB 6.1.5R</td>
<td>Costs not previously notified or changes to notified costs</td>
<td>Customer’s consent in relation to costs</td>
<td>When consent obtained</td>
<td>Not specified</td>
</tr>
</tbody>
</table>

**Schedule 2**

Notification and reporting requirements

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.

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

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger Event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMCOB 2.2.7R</td>
<td>Lead generator not an authorised person</td>
<td>Identity and contact details (if known) of the lead generator, and the firm’s reasons for not being satisfied that</td>
<td>The firm not being satisfied that the lead generator may carry on seeking out, referrals and identification of claims or</td>
<td>Promptly</td>
</tr>
</tbody>
</table>
the lead generator may carry on seeking out, referrals and identification of claims or potential claims without breaching the general prohibition

| CMCOB 7.2.8R | Changes in prudential resources requirement | Change in prudential resources requirement | The firm changing its prudential resources requirement | Within 14 days of that change |

Sched ule 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.

<table>
<thead>
<tr>
<th>Chapter / Appendix</th>
<th>Section/Annex</th>
<th>Paragraph</th>
<th>For private person?</th>
<th>Removed?</th>
<th>For other person?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The clear, fair and not misleading rule in CMCOB 3.2.3 R</td>
<td></td>
<td></td>
<td>Yes</td>
<td>In part (Note 1)</td>
<td>No</td>
</tr>
<tr>
<td>The prudential rules for firms carrying on regulated claims management activity in CMCOB 7.2 and 7.3</td>
<td>No</td>
<td>Yes, CMCOB 7.1.2R</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All other rules in CMCOB</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.
Annex J

Amendments to the Financial Crime Guide (FC)

In this Annex, striking through indicates deleted text.

5 Data Security

...  

5.1 Customers routinely entrust financial firms with important personal data; if this falls into criminal hands, fraudsters can attempt to undertake financial transactions in the customer’s name. Firms must take special care of their customers’ personal data, and comply with the data protection principles set out in Schedule 1 to the Data Protection Act 1998. The Information Commissioner’s Office provides guidance on the Data Protection Act and the responsibilities it imposes on data controllers and processors.

...
Annex K

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2 Authorisation and regulated activities

... 

2.3 The business element

2.3.2 G ...

(3C) No provision in relation to the business element is made in respect of not-for-profit bodies carrying on regulated claims management activity; but article 89O of the Regulated Activities Order provides an exclusion for such bodies (see PERG 2.8.14DG(2)).

...

After PERG 2.4 (Link between activities and the United Kingdom) insert the following new section PERG 2.4A. The text is not underlined.

2.4A Link between regulated claims management activities and Great Britain

2.4A.1 G Under section 22(1B) of the Act, a claims management activity specified in the Regulated Activities Order is only a regulated activity if it is carried on by way of business in Great Britain.

2.4A.2 G (1) Article 89F(3) of the Regulated Activities Order provides that a person is to be treated as carrying on a regulated claims management activity when either or both of the conditions in (2) and (3) are met.

(2) The condition in this paragraph is that the activity is carried on by a person who is:

(a) a natural person who is ordinarily resident in Great Britain; or

(b) a person, other than a natural person, who is constituted under the law of a part of Great Britain.

(3) The condition in this paragraph is that the activity is carried on in
2.4A.3 G Ordinary residence is to be determined for these purposes by reference to the Statutory Residence Test set out in Schedule 45 to the Finance Act 2013:

(1) at the time of the facts giving rise to the claim or potential claim; or

(2) at the time when the activity is carried out in respect of that claimant or potential claimant.

2.4A.4 G Accordingly, the following list gives examples of activity which would be regulated claims management activity if carried on by way of business and where no exemption or exclusion applies:

(1) a sole trader in England and Wales advising a natural person who is ordinarily resident in Northern Ireland in relation to a financial services or financial product claim;

(2) a company incorporated in Northern Ireland advising a natural person who is ordinarily resident in Scotland in relation to a personal injury claim;

(3) a company incorporated in France advising a natural person who is ordinarily resident in England in relation to a financial services or financial product claim;

(4) a company incorporated in Scotland investigating a personal injury claim for a natural person who is ordinarily resident in Germany; and

(5) a company incorporated in India seeking out details of claimants with personal injury claims who are ordinarily resident in Great Britain.

Amend the following as shown.

2.7 Activities: a broad outline

... 

Regulated claims management activity

2.7.20M G (1) Section 22(1B) of the Act provides that an activity is a regulated activity if it is an activity of a specified kind which:
(a) is, or relates to, claims management services; and

(b) is carried on in Great Britain.

(2) The activities which have been specified are those set out in articles 89G to 89M of the Regulated Activities Order; these are listed in the Glossary definition of “regulated claims management activity” and set out in PERG 2.7.20N. However, these are subject to the exclusions set out in articles 89N to 89W of the Regulated Activities Order: an activity which falls within one of the exclusions is not a regulated activity (see PERG 2.8.14D).

(3) The activity must be or relate to a claims management service. The drafting of the Regulated Activities Order has the effect that the regulated claims management activities all meet this condition.

(4) The activity must be carried on in Great Britain: see PERG 2.4A. A person outside Great Britain (including a person outside the United Kingdom) may require permission for a regulated claims management activity if they deal with claims involving claimants who are constituted or ordinarily resident in Great Britain or handle details of such claimants, even if that person has no branch, office or establishment in Great Britain.

2.7.20N G (1) Seeking out, referrals and identification of claims or potential claims, as specified in article 89G of the Regulated Activities Order, involves any or all of the following:

(a) seeking out persons who may have a claim (unless that activity constitutes a controlled claims management activity: see PERG 8.7A.5G);

(b) referring details of a claim or a potential claim or a claimant or potential claimant to another person; and

(c) identifying a claim or potential claim, or a claimant, or potential claimant;

when carried on in relation to a personal injury claim, a financial services or financial product claim, a housing disrepair claim, a claim for a specified benefit, a criminal injury claim or an employment-related claim.

(2) The other regulated claims management activities are:

(a) advice, investigation or representation in relation to a personal injury claim;

(b) advice, investigation or representation in relation to a financial services or financial product claim;
(c) advice, investigation or representation in relation to a housing
disrepair claim;

(d) advice, investigation or representation in relation to a claim
for a specified benefit;

(e) advice, investigation or representation in relation to a criminal
injury claim; and

(f) advice, investigation or representation in relation to an
employment-related claim.

(2) Advice includes any type of advice in relation to a claim, including
advice on the merits of a claim, advice on the procedure for pursuing a
claim, advice on how best to present a claim, and advice on possible
means of challenging an unsatisfactory outcome to a claim.

(3) Investigation of a claim means carrying out an investigation into, or
commissioning the investigation of, the circumstances, merits or
foundation of a claim (see article 89F(2)(i) of the Regulated Activities
Order).

(4) Representation of a claimant means representation in writing or orally,
regardless of the tribunal, body or person before which or to whom the
representation is made (see article 89F(2)(j) of the Regulated
Activities Order).

2.8 Exclusions applicable to particular regulated activities

Regulated claims management activity

2.8.14D G The Regulated Activities Order excludes a number of activities from
regulated claims management activity. The exclusions include:

(1) activity carried on by or through a legal practitioner, or by a natural
person who carries on that activity at the direction of, and under the
supervision of, a legal practitioner, provided that the legal practitioner
carries on that activity in the ordinary course of legal practice pursuant
to the professional rules to which that legal practitioner is subject
(article 89N);

(2) activity carried on by a charity or not-for-profit body (article 89O);

(3) exclusion from seeking out, referrals and identification of claims or
potential claims for providers of referrals who meet all the following
conditions (article 89V):
(a) the person who refers those details ("the introducer") carries on no other regulated claims management activity;

(b) the activity is incidental to the introducer’s main business;

(c) the details are only referred to authorised persons, legal practitioners, or a firm, organisation, or body corporate that provides the service through legal practitioners;

(d) of the claims that the introducer refers to such persons, that introducer is paid, in money or money’s worth, for no more than 25 claims per calendar quarter;

(e) the introducer, in obtaining and referring those details, has complied with the provisions of the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (EU) and the Unfair Trading Regulations (but this condition does not apply in the case of a referral to a legal practitioner, or to a firm, organisation, or body corporate that carries on the activity through legal practitioners); and

(4) any regulated activity of the kind specified in articles 21, 25, 39A, 53 or 64 of the Regulated Activities Order carried on by a person who has permission to carry on that activity in relation to a contract of insurance (article 89U).

5 Guidance on insurance distribution activities

5.1 Application and purpose

... Guidance on other activities

5.1.11 A person may wish to carry on activities related to other forms of investment in connection with contracts of insurance, such as advising on and arranging regulated mortgage contracts. Such a person should also consult the guidance in PERG 2 (Authorisation and Regulated Activities), PERG 4 (Regulated activities connected with mortgages) and PERG 8 (Financial Promotion and Related Activities). A person may also wish to carry on regulated claims management activities (where their activities are not insurance distribution activities, and they fall outside of the exclusion in article 89U of the Regulated Activities Order). Such a person should also consult the guidance in PERG 2.7.20M and PERG 2.7.20N.

...
contract of insurance

5.7.1 G The regulated activity of assisting in the administration and performance of a contract of insurance (article 39A) relates, in broad terms, to activities carried on by intermediaries after the conclusion of a contract of insurance and for or on behalf of policyholders, in particular in the event of a claim. Loss assessors acting on behalf of policyholders in the event of a claim are, therefore, likely in many cases to be carrying on this regulated activity. By contrast, managing claims management on behalf of certain insurers is not a regulated activity (see PERG 5.7.7G (Exclusions)).

5.7.8 G …

So, a person whose activities are excluded under article 12 of the Regulated Activities Order (Breakdown insurance) will not be a relevant insurer for these purposes and any person who performs loss adjusting or managing claims management on behalf of such a person will not be able to use the exclusion in article 39B.

5.15 Illustrative tables

5.15.4 G Types of activity – are they regulated activities and, if so, why?

<table>
<thead>
<tr>
<th>Type of activity</th>
<th>Is it a regulated activity?</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS

Negotiation of settlement of claims on behalf of an insurance undertaking  No.   Claims management Managing claims on behalf of an insurance undertaking does not amount to assisting in the administration and performance of a contract of insurance by virtue of the exclusion in article 39B (see PERG 5.7.7G)

…

Loss adjusters adjusting and claims management Potentially. These activities may amount to assisting in the administration and performance of a contract
claims services (for example, by administration outsourcing providers)
of insurance. Article 39B excludes these activities, however, when undertaken on behalf of an insurance undertaking only (see PERG 5.7.7G).

8 Financial promotion and related activities

8.1 Application and purpose

Purpose of guidance

8.1.3 In particular, this guidance covers:

... (4A) meaning of ‘engage in claims management activity’ (see PERG 8.7A);

8.2 Introduction

8.2.1 The effect of section 21 of the Act (Restrictions on financial promotion) is that in the course of business, an unauthorised person must not communicate an invitation or inducement to engage in investment activity or to engage in claims management activity unless either the content of the communication is approved for the purposes of section 21 by an authorised person or it is exempt. ...

8.2.4 A person who is concerned to know whether his communications will require approval or, if he is an authorised person, whether the appropriate financial promotion rules will apply to his communications will need to consider the following:

... (4A) alternatively, is the invitation or inducement to engage in claims management activity? (see PERG 8.7A);
8.3 Financial promotion

8.3.2 G Section 21 of the Act does not itself (other than in its heading and side-note) refer to a ‘financial promotion’ but rather to the communication of ‘an invitation or inducement (a) to engage in investment activity or (b) to engage in claims management activity’. References in this guidance to a financial promotion mean an invitation or inducement to engage in investment activity or to engage in claims management activity.

8.3.3 G Section 21 of the Act contains a number of key expressions or phrases which will determine whether or not it will apply. These are:

…

(4) …; and

(4A) ‘engage in claims management activity’ (see PERG 8.7A); and

…

8.4 Invitation or inducement

Promotional element

…

8.4.4 G The FCA considers that it is appropriate to apply an objective test to decide whether a communication is an invitation or an inducement. In the FCA’s view, the essential elements of an invitation or an inducement under section 21 are that it must both have the purpose or intent of leading a person to engage in investment activity or to engage in claims management activity, and be promotional in nature. So it must seek, on its face, to persuade or incite the recipient to engage in investment activity or to engage in claims management activity. The objective test may be summarised as follows.

Would a reasonable observer, taking account of all the circumstances at the time the communication was made:

(1) consider that the communicator intended the communication to persuade or incite the recipient to engage in investment activity or to engage in claims management activity, or that that was its purpose; and

(2) …
Invitations

8.4.5 G An invitation is something which directly invites a person to take a step which will result in his engaging in investment activity or engaging in claims management activity. It follows that the invitation must cause the engaging in investment activity or engaging in claims management activity. Examples of an invitation include:

…

Inducements

8.4.7 G An inducement may often be followed by an invitation or vice versa (in which case both communications will be subject to the restriction in section 21 of the Act). An inducement may be described as a link in a chain where the chain is intended to lead ultimately to an agreement to engage in investment activity or to engage in claims management activity. But this does not mean that all the links in the chain will be an inducement or that every inducement will be one to engage in investment activity or to engage in claims management activity. Only those that are a significant step in persuading or inciting or seeking to persuade or incite a recipient to engage in investment activity or to engage in claims management activity will be inducements under section 21. …

8.4.8 G PERG 8.4.9G to PERG 8.4.34G apply the principles in PERG 8.4.4G to PERG 8.4.7G to communications made in certain circumstances. They do not seek to qualify those principles in any way. A common issue in these circumstances arises when contact details are given (for example, of a provider of investments or investment services). In the FCA’s view, the inclusion of contact details should not in itself decide whether the item in which they appear is an inducement or, if so, is an inducement to engage in investment activity or to engage in claims management activity. However, they are a factor which should be taken into account. The examples also refer, where appropriate, to specific exemptions which may be relevant if a communication is an invitation or inducement to engage in investment activity or to engage in claims management activity.

Directory listings

8.4.9 G Ordinary telephone directory entries which merely list names and contact details (for example where they are grouped together under a heading such as ‘stockbrokers’) will not be inducements. They will be sources of information. Were they to be presented in a promotional manner or accompanied by promotional material they would be capable of being inducements. Even so, they may merely be inducements to make contact with the listed person. Specialist directories such as ones providing details of venture capital providers, unit trust managers, contractual scheme managers or investment trusts will usually carry greater detail about the services or products offered by the listed firms and are often produced by
representative bodies. Such directories may also be essentially sources of information. Whether or not this is the case where individual entries are concerned will depend on their contents. If they are not promotional, the entries will not be inducements to engage in investment activity or to engage in claims management activity. However, it is possible that other parts of such a directory might, for example, seek to persuade recipients that certain controlled investments offer the best opportunity for financial gain. They may go on to incite recipients to contact one of the member firms listed in the directory in order to make an investment. In such cases, that part of the directory will be an inducement to engage in investment activity. But this does not mean that the individual entries or any other part of the directory will be part of the inducement. PERG 8.6 provides guidance on the meaning of ‘communicate’ and ‘causing a communication’. This is of relevance to this example and those which follow.

Tombstone advertisements (announcements of a firm’s past achievements)

8.4.10 G Such advertisements are almost invariably intended to create awareness, hopefully generating future business. So they may or may not be inducements. This depends on the extent to which their contents seek to persuade or incite persons to contact the advertiser for details of its services or to do business with it. Merely stating past achievements with no contact details will not be enough to make such an advertisement an inducement. Providing contact details may give the advertisement enough of a promotional feel for it to be an inducement. But, if this is the case, it will be an inducement to contact the advertiser to find out information or to discuss what he can offer. Only if the advertisement contains other promotional matter will it be capable of being an inducement to engage in investment activity or to engage in claims management activity. In practice, such advertisements are often aimed at influencing only investment professionals. Where this is the case, the exemption in article 19 of the Financial Promotion Order (Investment professionals) may be relevant (see PERG 8.12.21G). Tombstone advertisements will not usually carry the indicators required by article 19 to establish conclusive proof. However, article 19 may apply even if none of the indicators are present if the financial promotion is in fact directed at investment professionals.

Links to a website

8.4.11 G Links on a website may take different forms. Some will be inducements. Some of these will be inducements under section 21 and others not. Links which are activated merely by clicking on a name or logo will not be inducements. The links may be accompanied by or included within a narrative or, otherwise, referred to elsewhere on the site. Whether or not such narratives or references are inducements will depend upon the extent to which they may seek to persuade or incite persons to use the links. Simple statements such as ‘these are links to stockbrokers’ or ‘click here to find out about stockmarkets – we provide links to all the big exchanges’ will either not amount to inducements or be inducements to access another site to get information. If they are inducements, they will be inducements to engage in investment activity or to engage in claims management activity only if they...
specifically seek to persuade or incite persons to use the link for that purpose. Where this is the case, but the inducement does not identify any particular person as a provider of a controlled investment or as someone who carries on a controlled activity or a controlled claims management activity, the exemption in article 17 of the Financial Promotion Order (Generic promotions) may be relevant (see PERG 8.12.14G).

Banner advertisements on a website

8.4.12 G These are the Internet equivalent to an advertisement in a newspaper and are almost bound to be inducements. So whether they are inducements to engage in investment activity or to engage in claims management activity will depend upon their contents as with any other form of advertising and the comments in PERG 8.4.11G will be relevant.

…

Journalism

8.4.15 G Journalism can take many forms. But typically a journalist may write an editorial piece on a listed company or about the investments or investment services that a particular firm provides or the controlled claims management activity that it carries on. This may often be in response to a press release. The editorial may or may not contain details of or, on a website, a link to the site of the company or firm concerned. Such editorial may specifically recommend that readers should consider buying or selling investments (whether or not particular investments) or obtaining investment services (whether or not from a particular firm) or obtaining services which constitute a controlled claims management activity (whether or not from a particular firm). If so, those recommendations are likely to be inducements to engage in investment activity (bearing in mind that a recommendation not to buy or sell investments cannot be an inducement to engage in investment activity) or to engage in claims management activity. In other cases, the editorial may be an objective assessment or account of the investment or its issuer or of the investment firm and may not encourage persons to make an investment or obtain investment services or other services which constitute a controlled claims management activity. If so, it will not be an inducement to engage in investment activity or to engage in claims management activity.

…

Image advertising

8.4.20 G Activities which are purely profile raising and which do not identify and promote particular investments or investment services or services which constitute a controlled claims management activity may not amount to either an invitation or inducement of any kind. Examples of this include where listed companies sponsor sporting events or simply put their name or logo on the side of a bus or on an umbrella. This is usually done with a view, among other things, to putting their names in the minds of potential
investors or consumers. In other cases, an image advertisement for a company which provides investment services (for example, on a pencil or a diary) may include, along with its name or logo, a reference to its being an investment adviser or fund manager or a telephone or fax number or both. Profile raising activities of this kind may involve an inducement (to contact the advertiser) but will be too far removed from any possible investment activity or, where relevant, controlled claims management activity, to be considered to be an inducement to engage in investment activity or to engage in claims management activity.

Advertisements which invite contact with the advertiser

8.4.21 G These will be advertisements that contain encouragement to contact the advertiser. They are likely to be inducements to do business with him or to get more information from him. If so, they will be inducements to engage in investment activity or to engage in claims management activity if they seek to persuade or incite persons to buy or sell investments or to get investment services or services which constitute a controlled claims management activity. See PERG 8.4.7G for more guidance on preliminary communications and whether they are a significant step in the chain of events which are intended to lead to the recipient engaging in investment activity or engaging in claims management activity. Where advertisements invite persons to send for a prospectus, article 71 (Material relating to prospectus for public offer of unlisted securities) may provide an exemption. Any financial promotion which contains more information than is allowed by article 71 but which is not the prospectus itself is likely to require approval by an authorised person unless another exemption applies.

Introductions

8.4.22 G (1) Introductions may take many forms but typically involve an offer to make an introduction or action taken in response to an unsolicited request. An introduction may be an inducement if the introducer is actively seeking to persuade or incite the person he is introducing to do business with the person to whom the introduction is made. So it may fall under section 21 if its purpose is to lead to investment activity or controlled claims management activity. For example, if a person answers the question ‘do you or can you provide investment advice’ with a simple ‘no, but I can introduce you to someone who does’, that may be an inducement. But, if so, it is likely to be an inducement to contact someone to find out information about his services rather than to engage in investment activity or to engage in claims management activity.

Invitations to attend meetings or to receive telephone calls or visits

8.4.25 G These are clearly invitations or inducements. Whether they will involve...
invitations or inducements to engage in investment activity or to engage in claims management activity rather than to attend the meeting or receive the call or visit, will depend upon their purpose and content. PERG 8.4.7G discusses communications which are a significant step in the chain of events leading to an agreement to engage in investment activity or to engage in claims management activity. The purpose of the meeting, call or visit to which the invitation or inducement relates may be to offer the audience or recipient investment services or services which constitute a controlled claims management activity. In this case, the invitation or inducement will be a significant step in the chain if it seeks to persuade or incite the invitee to engage in investment activity or to engage in claims management activity at the meeting, call or visit. Any financial promotions made during the meeting, call or visit would still need to be communicated or approved by an authorised person or be exempt.

Enquiries about a person’s status or intentions

8.4.27 G A person (‘A’) may enquire:

(3) …; or

(4) whether a person has been involved in an accident.

Enquiries of this or a similar kind will not amount to inducements to engage in investment activity or to engage in claims management activity unless they involve persuasion or incitement to do so. …

Solicited and accompanying material

8.4.28 G Solicited or accompanying material which does not contain any invitation or inducement to engage in investment activity or to engage in claims management activity will not itself be a financial promotion. This is provided that the material is not part of any financial promotion which may accompany it. This is explained in greater detail in PERG 8.4.29G to 8.4.30G.

Telephone services

8.4.31A G Where the telephone services that P provides, or other services provided in conjunction with those telephone services, have the result that P is carrying on the regulated activity of seeking out, referrals and identification of claims or potential claims, instead of (or in addition to) communicating a financial promotion that relates to controlled claims management activity, P will require permission to carry on the regulated activity of seeking out, referrals and identification of claims or potential claims.
8.7 Engage in investment activity

8.7.1 G A communication must be an invitation or inducement to engage in investment activity (or to engage in claims management activity (see PERG 8.7A)) for the restriction in section 21 to apply. …

After PERG 8.7 (Engage in investment activity) insert the following new section PERG 8.7A. The text is not underlined.

8.7A Engage in claims management activity

Controlled claims management activity

8.7A.1 G A communication must be an invitation or inducement to engage in claims management activity (or to engage in investment activity (see PERG 8.7)) for the restriction in section 21 to apply. Section 21(10A) of the Act defines this phrase as “entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity”. And section 21(10B) of the Act provides that an activity is a “controlled claims management activity” if:

(a) it is an activity of a specified kind;

(b) it is, or relates to, claims management services; and

(c) it is carried on in Great Britain.

8.7A.2 G The activities which have been specified are those set out in Part 1A of the Financial Promotion Order (which are listed in the Glossary definition of “controlled claims management activity”). These are the same as the activities which have been specified in the Regulated Activities Order as regulated claims management activities; the exclusions set out in articles 89N to 89W of the Regulated Activities Order in relation to regulated claims management activities are set out as exemptions in articles 73A to 73J of the Financial Promotions Order in relation to controlled claims management activity.

8.7A.3 G The activity must be or relate to a claims management service. The drafting of the Financial Promotions Order has the effect that the controlled claims management activities all meet this condition.

8.7A.4 G The activity must be carried on in Great Britain: see PERG 2.4A.
The distinction between controlled claims management activity and regulated claims management activity

8.7A.5 G The regulated activity of seeking out, referrals and identification of claims or potential claims, as specified in article 89G of the Regulated Activities Order, constitutes three activities one of which is seeking out persons who may have a claim unless that activity constitutes a controlled claims management activity.

8.7A.6 G For a communication to constitute a financial promotion, it must constitute an invitation or inducement to engage in claims management activity (or to engage in investment activity): see PERG 8.4. Where a person advertises the services of a firm which carries on a regulated claims management activity with a view to seeking out customers, the person is likely to be communicating an invitation or inducement to engage in claims management activity: the person will therefore have to be an authorised person or the communication will have to be approved by an authorised person, if the person is not to breach the prohibition in section 21 of the Act.

8.7A.7 G It may be possible for a person (for example, for a lead generator) to seek out claimants or potential claimants without communicating an invitation or inducement to engage in claims management activity. Whether or not there is an invitation or inducement would depend on the facts and circumstances of the communication. Where there is no invitation or inducement, the seeking out would constitute the regulated activity of seeking out, referrals and identification of claims or potential claims, and the person would need to be an authorised person if they are not to breach the general prohibition, or to hold the necessary permission if they are not to breach the requirement for permission in section 20 of the Act.

Amend the following as shown.

8.9 Circumstances where the restriction in section 21 does not apply

8.9.4 G With approval generally, issues may arise as to what would be subject to the restrictions in section 21 where an invitation or inducement to engage in investment activity or to engage in claims management activity is made through a publication, broadcast or website or is accompanied by other material. …

8.10 Types of financial promotion

…
Solicited v unsolicited real time financial promotions

8.10.10 G Article 8(3) of the Financial Promotion Order also has the effect in broad terms that financial promotions made during a visit, call or dialogue will be solicited only if they relate to controlled activities or controlled investments or controlled claims management activities of the kind to which the recipient envisaged that they would relate. …

8.10.11 G … Article 8(4) of the Financial Promotion Order recognises this and has the effect that an unsolicited real time financial promotion will have been made to the persons other than the person who expressly asked for or initiated the call, visit or dialogue in which it was made unless they are:

(1) …; or

(2) expected to engage in any investment activity or to engage in claims management activity jointly with that person.

8.10.12 G In the FCA’s view, persons who may be engaging in investment activity or engaging in claims management activity jointly include:

…

8.10.13 G There will be occasions when financial promotions are received by persons other than those in PERG 8.10.11G(1) or PERG 8.10.11G(2) who will not have solicited them. For example, a more distant relative or friend (‘F’) who acts as a support to the person who is to engage in investment activity or to engage in claims management activity (‘P’) or P’s professional adviser (‘A’). As explained in PERG 8.6.10G, in such cases the financial promotion will not be made to F or A unless it is also addressed to them. And it will only be addressed to F or A if the invitation or inducement relates to F or A engaging in investment activity or engaging in claims management activity. So a solicited financial promotion made to P will not also be an unsolicited financial promotion made to F or A.

…

8.11 Types of exemption under the Financial Promotion Order

…

8.11.5 G … If the indication is given enough prominence, taking account of the medium through which it is communicated, to ensure that the recipient will be aware of it and able to consider it before deciding whether to engage in investment activity or to engage in claims management activity, the FCA would regard article 9 as being satisfied.
8.12 Exemptions applying to all controlled activities

... Financial promotions to overseas recipients (article 12)

8.12.2 G This exemption concerns financial promotions which are made to or directed only at overseas persons (except in the circumstances referred to in PERG 8.12.8G). But this exemption does not apply to communications in respect of controlled claims management activity.

... Financial promotions from customers and potential customers (article 13)

8.12.9 G Financial promotions made by a prospective customer to a person who supplies a controlled investment or services comprising controlled activities or controlled claims management activities with a view to his acquiring the investment, or receiving the services or receiving information about those investments or services, are exempted. This exemption will only be of relevance to corporate customers or others who are acting in the course of business. Other types of customers will not be subject to section 21 to begin with.

... Introductions (article 15)

... 8.12.11B G This exemption also does not apply to any financial promotion that is made with a view to, or for the purpose of, an introduction to a person who carries on a controlled claims management activity.

Exempt persons (article 16)

8.12.12 G … Article 16(1) applies to all exempt persons where they make financial promotions for the purpose of their exempt activities. …. So, it allows exempt persons both to promote that they have expertise in certain controlled activities or controlled claims management activities and to make financial promotions in the course of carrying them on.

... Generic promotions (article 17)

8.12.14 G Under this exemption, the financial promotion itself must not relate to a controlled investment provided by a person who is identified in it, nor must it identify any person as someone who carries on any controlled activity or controlled claims management activity. So, it will apply where there is a financial promotion of a class of products. For example ‘ISAs are great’ or ‘buy into an investment trust and help the economy’. Such financial
promotions may be made by a person such as a trade association which is not itself carrying on a controlled activity or a controlled claims management activity. …

…

8.12.16 G Other persons may be able to take advantage of the exemption. For example, a person making a generic financial promotion may identify himself, whether he may carry on a controlled activity or controlled claims management activity, or not. This is provided that the financial promotion does not (directly or indirectly) identify him as someone who carries on a controlled activity or a controlled claims management activity.

…

Investment professionals (article 19)

…

8.12.22 G This exemption does not apply to communications in respect of controlled claims management activity.

Journalists (article 20)

8.12.23 G The broad scope of the restriction in section 21 of the Act will inevitably mean that it will, from time to time, apply to journalists and others who make their living from commenting on news including financial affairs (such as broadcasters). This is liable to happen when such persons offer share tips or recommend the use of a particular firm for investment purposes or claims management services. Such tips or recommendations are likely to amount to inducements to engage in investment activity or to engage in claims management activity.

…

8.12.26 G Provided the conditions in PERG 8.12.25G are met, the exemption in article 20 applies to any non-real time financial promotion. However, there is an additional condition where the subject matter of the financial promotion is shares or options, futures or contracts for differences relating to shares and the financial promotion identifies directly a person who issues or provides such an investment, or the subject matter of the financial promotion is a controlled claims management activity and the financial promotion directly identifies a person who undertakes that activity. In such cases, the exemption is subject to a disclosure requirement which is itself subject to certain exceptions (see PERG 8.12.27G). …

…

8.14 Other financial promotions

…
8.14.2A  G  The exemptions in Part 6 of the Financial Promotions Order apply to communications which relate to “controlled claims management activity” except where stated otherwise in that Part (article 27).

One-off financial promotions (articles 28 and 28A)

8.14.3  G  Article 28 exempts financial promotions, other than unsolicited real time financial promotions, which are one-off in nature. Whether or not any particular financial promotion is one-off in nature will depend upon the individual circumstances in which it is made. Article 28(3) sets out conditions which, if all are met, are conclusive. Otherwise they are indicative. Even if none are met the exemption may still apply. This makes it clear that the overriding issue is whether the financial promotion is, in fact, a one-off. The conditions are that:

(1) the financial promotion is made only to one recipient or to a group of recipients in the expectation that they would engage in investment activity or engage in claims management activity jointly;

...

8.14.4  G  The FCA considers the effect of each of the conditions in PERG 8.14.3G(1) to PERG 8.14.3G(3) to be as follows.

(1) … If the financial promotion is addressed to more than one person they must be proposing to engage in investment activity or engage in claims management activity jointly (see PERG 8.14.6G).

...

8.14.6  G  In the FCA’s view, a group of recipients who may be engaging in investment activity or engaging in claims management activity jointly could include:

...

8.14.7  G  A financial promotion may fail to satisfy all of the indicators referred to in PERG 8.14.4G because it is addressed to more than one recipient and they are not persons who will engage in investment activity or engage in claims management activity jointly. …

...

8.14.13  G  The article 28A exemption does not apply to communications in respect of controlled claims management activity.

...

Overseas communicators (articles 30-33)

8.14.14  G  There are a number of exemptions in the Financial Promotion Order relating to financial promotions sent into the United Kingdom by an
overseas communicator who does not carry on certain controlled activities in the United Kingdom. These exemptions apply in addition to any other exemptions which may apply to any particular financial promotion by an overseas communicator. The article 30-33 exemptions do not apply to any communications in respect of controlled claims management activity.

...

Nationals of EEA States other than the United Kingdom (article 36)

8.14.18 G This exemption allows a person in another EEA State who lawfully carries on a controlled activity in that State to promote into the United Kingdom. This exemption does not apply to any communication in respect of a controlled claims management activity. ...

Joint enterprises (article 39)

8.14.19 G … A joint enterprise means, in general terms, arrangements entered into by two or more persons for commercial purposes related to a business that they carry on. The business must not involve a controlled activity or a controlled claims management activity. …

8.14.20 G … This means that the sponsors or promoters of a company who arrange for private investors to become shareholders will not be setting up a joint enterprise simply because the company may intend to carry on a relevant business which is not a controlled activity or a controlled claims management activity. …

...

High net worth companies, unincorporated associations and trusts (article 49)

...

8.14.26- G The article 49 exemption does not apply to communications in respect of controlled claims management activity.

...

Advice centres (article 73)

8.14.40B G Article 73 exempts any financial promotion made by a person in the course of carrying out his duties as an adviser for, or employee of, an advice centre. This is provided the financial promotion relates to:

(3) … or

(4) controlled claims management activity.

...

8.15 Financial promotions by members of the professions (articles 55 and 55A)
Non-real time financial promotions by professional firms

8.15.6 G A financial promotion made under article 55A must contain a statement in the following terms: “The [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment and consumer credit-related and claims-management related services to clients because we are members of [relevant designated professional body]. We can provide these investment and consumer credit-related and claims-management related services if they are an incidental part of the professional services we have been engaged to provide”. …

8.22 The Internet

8.22.2 G The test for whether the contents of a particular website may or may not involve a financial promotion is no different to any other medium. If a website or part of a website, operated or maintained in the course of business, invites or induces a person to engage in investment activity or to engage in claims management activity, it will be a financial promotion. …

8.22.3 G … The FCA’s views on the position of hypertext links (which should be read with the remainder of PERG 8, especially PERG 8.4 (Invitation or inducement)) are as follows.

(2) The material on a host website which contains the hypertext link may in itself be a financial promotion. For example, it may contain text which seeks to encourage or incite persons to activate the link with a view to engaging in investment activity or engaging in claims management activity.

(3) Website material which represents a directory of website addresses or e-mail addresses will not be a financial promotion in its own right. That is unless the material also contains an inducement to contact a named addressee with a view to engaging in investment activity or engaging in claims management activity.

8.23 Regulated activities

…
8.23.6 G  Guidance on the distinction between controlled claims management activity and regulated claims management activity can be found at PERG 8.7A.5G to PERG 8.7A.7G.
3 The concept and process of wind-down planning

3.6 Impact assessment: who will be affected by a wind-down?

3.6.4 Firms can support their impact assessment of winding down by a risk assessment of each stakeholder group along with the mitigating actions the firm would consider appropriate. Some factors that a firm may consider include:

(1) How quickly can a firm conclude any outstanding transactions? Will there be any tax or other implications for customers?

(2) Can the firm help transfer its customers to another financial institution or, where relevant, firm with a permission to carry on regulated claims management activities? If the firm has many customers to be transferred out, do other firms in the same sector have the capacity to take them on?

(3) How quickly can client monies and custody assets be returned?

...
Annex M

Amendments to the Reader’s Guide

In this Annex, underlining indicates new text.


…


The Handbook is divided into the following blocks. The Handbook also contains a Glossary of definitions https://www.handbook.fca.org.uk/handbook/glossary/ which specifies what the legal meaning is of various phrases and wording used.

…

Business Standards

Day-to-day conduct rules that apply to firms, as specified.

…

• BCOBS (Banking: Conduct of Business sourcebook) – applies to firms that accept deposits from banking customers

• CMCOB (Claims Management: Conduct of Business sourcebook) – applies to firms that provide claims management services

…