

CLAIMS MANAGEMENT INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (3) section 137R (Financial promotion rules);
 - (4) section 137T (General supplementary powers);
 - (5) section 138D (Actions for damages);
 - (6) section 139A (The FCA’s power to give guidance);
 - (7) section 226 (Compulsory jurisdiction); and
 - (8) paragraph 13 (FCA’s rules) of Schedule 17.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 March 2022.

Amendments to the FCA Handbook

- D. The Claims Management: Conduct of Business sourcebook (CMCOB) is amended in accordance with Annex A to this instrument.
- E. The Consumer Redress Schemes sourcebook (CONRED) is amended in accordance with Annex B to this instrument.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex C to this instrument.

Citation

- G. This instrument may be cited as the Claims Management Instrument 2021.

By order of the Board
25 November 2021

Annex A

Amendments to the Claims Management: Conduct of Business sourcebook (CMCOB)

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

2 Conduct of business

2.1 General principles

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- 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~~ or
 - (b) the settlement of the *claim*.

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4 Pre-contractual requirements

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4.2 Pre-contract information and advice

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Provision of information and advice

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- 4.2.8 R ...
- (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; ~~and~~ and
 - (15) any relevant statutory compensation scheme to which the *firm* is subject.

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- 4.2.14 G When providing information concerning any ombudsman or the statutory compensation scheme as required by *CMCOB* 4.2.8R(14) or *CMCOB*

4.2.8R(15) or otherwise in CMC OB 4.2.8R, a firm's communications with a customer should:

- (a) comply with the fair, clear and not misleading rule and the client's best interests rule; and
- (b) specify whether the scheme or schemes to which the firm is subject cover all the activities and/or services which the firm proposes to undertake for the customer, and specify which activities (if any) are not within the jurisdiction of the scheme or schemes.

4.3 Pre-contract requirements

4.3.1 R ...

- (6) ask the *customer* if they, whether in *Great Britain* or in another jurisdiction:
 - (a) have ever been declared bankrupt;
 - (b) are subject to a bankruptcy petition;
 - (c) are subject to, or have ever been 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 currently subject to, or have ever been subject to, a debt relief order; or
 - (f) are or have ever been subject to any other ~~similar~~ process or arrangement which is similar 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).

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7 Prudential requirements and professional indemnity insurance

7.1 Purpose

7.1.1 G ...

- (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~~ personal injury claim*.

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7.3 Calculation of prudential resources

Eligible prudential resources

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

	Item	Additional explanation	
...			
3	Reserves (Note 1)	These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners</i> ' drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i> .	
		For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:	
		(1)	a <i>firm</i> must deduct any realised <u>unrealised</u> gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;
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Annex B

Amendments to the Consumer Redress Schemes sourcebook (CONRED)

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

1 General

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1.4 Scope of a consumer redress scheme

The ~~financial~~ services that a consumer redress scheme can apply to

1.4.1 G In accordance with section 404E(2) of the *Act*, a *consumer redress scheme* can secure redress for consumers of services provided by:

(1) ...

...

(3) *authorised persons* in communicating, or approving the communications by others of, invitations or inducements; ~~to engage in investment activity;~~

(a) to engage in investment activity; or

(b) to enter into or offer to enter into an agreement the making or performance of which by either party constitutes a *controlled claims management activity*.

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1.4.4 G Where the ~~financial~~ services to which a scheme applies are those provided by *authorised persons* in carrying on *regulated activities*, the limitation to '*regulated activities*' means that a *consumer redress scheme* cannot apply to services that were provided before the activity in question first became regulated by the *FSA* or *FCA* (e.g. the start date of a scheme applying to general insurance mediation could not be earlier than 14 January 2005, which was the commencement of regulation of general insurance mediation).

1.4.5 G That said, it would be possible for the Treasury by order to widen the type of ~~financial~~ services that a *consumer redress scheme* can cover in order to encompass pre-regulation activities (see section 404G of the *Act*).

Consumers that can be covered by a consumer redress scheme

- 1.4.6 G (1) For the purposes of a scheme, a consumer can be any person:
- (a) who has used, or may have contemplated using, any of the ~~financial~~ services listed in section 404E(2) of the *Act* (see *CONRED* 1.4.1G); ~~or;~~
 - (b) who has relevant rights or interests in relation to any of those services; or
 - (c) 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.
- (2) As such, the section 404 power is not limited to retail customers only.

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- 1.4.10 G The fact that a consumer “who may have contemplated using” a relevant ~~financial~~ service can be covered by a *consumer redress scheme* is unlikely to catch many cases in practice. One example of a case where it might be used is where there has been widespread discrimination: the section 404 power could be used to ensure redress for consumers who were unlawfully denied access to a ~~financial~~ service contrary to any relevant equality legislation. All the restrictions and evidence requirements explained in *CONRED* 1 would apply equally to any scheme developed in this sort of area.

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1.6 Role of the Financial Ombudsman Service and the Financial Services Compensation Scheme

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Failures by firms that span the period before and after an activity became regulated by the FCA

- 1.6.22 G In this situation, the *Act* would require the *Financial Ombudsman Service* to decide *complaints* within the scope of a scheme by applying the scheme (unless the relevant firm and consumer otherwise agreed – see section 404B of the *Act*) and *complaints* outside the scope of a scheme on the basis of its usual approach (see section 228 of the *Act*). However, as explained in *CONRED* 1.4.5G, it would be possible for the Treasury by order to widen the type of ~~financial~~ services that *consumer redress schemes* can cover in order to encompass the pre-regulation activities (see section 404G of the *Act*).

Annex C

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

8 Financial promotion and related activities

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8.4 Invitation or inducement

Promotional element

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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) regard the communication as seeking to persuade or incite the recipient to *engage in investment activity* or to *engage in claims management activity*.

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