

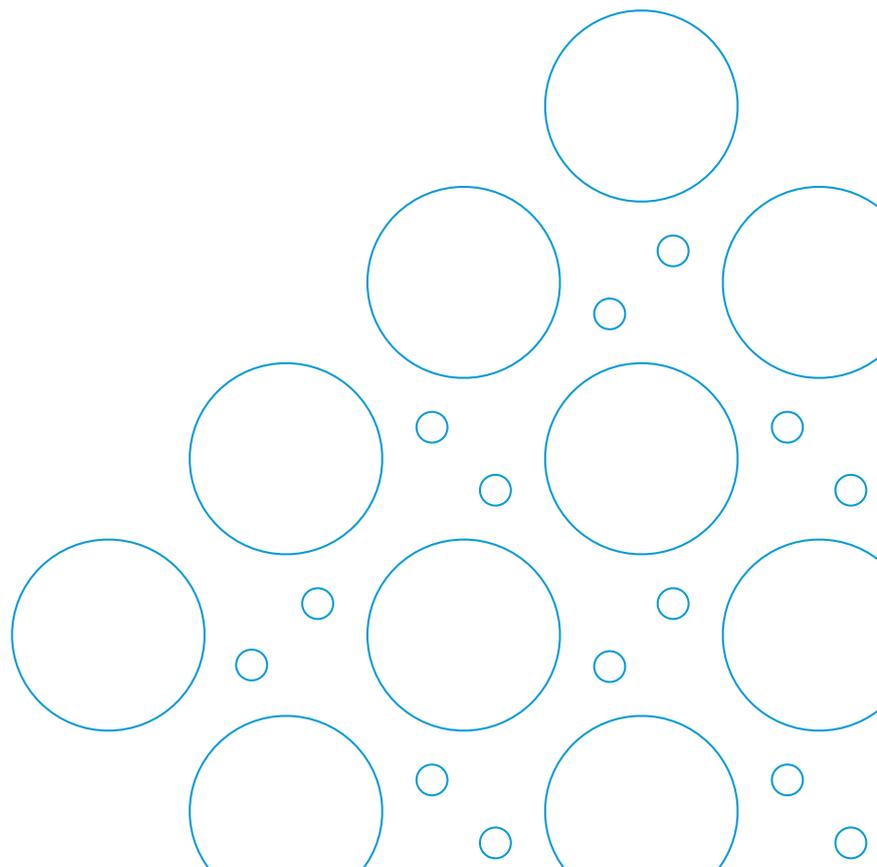


Ministry
of Justice

Claims Management Regulation

Who Needs to be Authorised Guidance Note

Revised September 2013



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Introduction

Under the Compensation Act 2006 (“the Act”), any persons wishing to carry out a regulated claims management service must be authorised unless they are exempt.

This guidance note is intended to help you establish whether your proposed business requires you to apply for authorisation to carry on regulated activities.

Summary

Businesses providing regulated services must be authorised to do so under the Act. Once authorised, businesses are required to comply with the Conduct of Authorised Persons Rules 2013 (2) (“Conduct Rules”).

Some businesses are exempt from the requirement to be authorised. This applies to those who provide certain activities that are already regulated by other regulatory agencies and to certain other categories of persons or organisations including charities, not-for-profit advice agencies and trade unions.

It is an offence to provide regulated services unless authorised or exempt.

1. Sectors

The Act covers the following six claim sectors –

Personal injury

Claims for damages in respect of personal injuries or in respect of a person's death. "Personal injuries" include any disease and any impairment of a person's physical or mental condition, road traffic accident or work-related injuries, disease or disability, accidents aboard and clinical negligence.

Financial products and services

Claims on behalf of individuals and businesses for financial products and services are broad and include (but are not limited to) claims for mis-sold payment protection insurance (PPI), mis-sold mortgages, SERPS, mis-sold interest rate swaps, mis-sold hedging products, mis-sold investments, etc.

Employment

Claims for compensation for wrongful or unfair dismissal, redundancy, discrimination and harassment. Also includes claims relating to unpaid wages and other employment-related payments. The Act applies to those acting for claimants only, i.e. employees.

Criminal injuries compensation

Claims under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995. Further information is available on the [Criminal Injuries Compensation Authority website](#).

Industrial Injuries Disablement Benefit

Claims for any industrial injuries benefits, supplements or allowances under the Social Security Contributions and Benefits Act 1992 or The Pneumoconiosis etc (Workers' Compensation Act) 1979. Further information can be found in [The Compensation \(Specification of Benefits\) Order 2006](#).

Housing disrepair

Claims for housing disrepair under section 11 of the Landlord and Tenant Act 1985 or section 4 of the Defective Premises Act 1972. Also includes claims in relation to the disrepair of premises under a term of a tenancy agreement or lease, or under the common law relating to nuisance or negligence. The Act does not cover claims for statutory nuisance under section 82 of the Environmental Protection Act 1990 or claims under an insurance policy for loss or damage to property.

2. Services

The following services are covered by the Act –

- **Advertising** for or seeking out persons who may have a claim. This includes (but is not limited to) operating a website, TV and radio advertising, leaflets, telemarketing (including consumer surveys), obtaining consent for a third party to contact a client about a potential claim, asking a potential client if they have a claim, etc.
- **Advising a claimant** or potential claimant in relation to his/her claim or cause of action.
- **Referring details of a claim** or claimant, or a cause of action or potential claimant, to another person. This includes the provision of data or the generation of leads.
- **Investigating** or commissioning the investigation of the circumstances, merits or foundation of a claim with a view to using the results in pursuing the claim.
- **Representation of a claimant** in writing or orally. This includes contacting a financial institution or the Financial Ombudsman Service about a mis-sold PPI claim, contacting an insurance company about a personal injury claim or representing a client in employment mediation or tribunal.

3. Location of business

The Act covers regulated claims management services **carried out in England and Wales**. The requirement to be authorised is not dependent on where your business is located but on where you carry out the regulated service. Therefore a business based outside of England and Wales or outside of the UK (e.g. Scotland, Poland, Bermuda, South Africa, etc.) that carries out regulated services in England and Wales must be authorised.

4. Corporate structure

Each separate corporate body (for example, limited company, sole trader or limited liability partnership) providing regulated claims services must be individually authorised. A legal entity cannot obtain authorisation and share it with another legal entity, even if that business is part of a group of companies.

Example: Jim Bloggs is a director of a limited company called Thames Claims (UK) Ltd in the personal injury sector, which has three trading names – Thames Claims, Thames Personal Injury Helpline and Kingston Claims For You. Jim also provides employment advice outside of the Thames Claims (UK) Ltd business as a sole trader under the name of Kingston Employment Services. Both Thames Claims (UK) Ltd and Jim Bloggs in his own right need to be authorised to provide claims management services.

5. Exemptions

The following are exempt from the need for authorisation –

- **Legal practitioners** providing services for which they are regulated by another regulator i.e. a solicitor, barrister or a Fellow of the Institute of Legal Executives. Where a legal practitioner has set up a separate corporate body, for example to market its services, that body is not exempt and would require authorisation. Other classes of legal practitioners can be found in the [Compensation \(Exemptions\) Order 2007](#).
- **Persons providing claims management services that are already regulated activities under the Financial Services and Markets Act 2000** or who are exempt from the need to be authorised under that Act. This includes insurance companies.
- **Insurance brokers** providing a service in respect of a policy that they have arranged (in accordance with section 19 of the Financial Services and Markets Act 2000). However, brokers who refer uninsured personal injury losses to a solicitor or to a claims management business are not covered by the exemption. Where brokers do this they need to be authorised (unless they qualify as an 'exempt introducer'. See section 5.1 below for further details).
- **Firms authorised by the Financial Conduct Authority (FCA) or one of their appointed representatives** who in the course of carrying on a regulated activity (e.g. advising on investments) only notify clients that they may have a claim against a previous adviser. Firms that fall within this category would not need to be authorised as this activity is likely to be an "ancillary activity". However, where an FCA authorised firm (or appointed representative) provides a regulated claims management service for which they receive remuneration, then the FCA authorised firm (or appointed representative) would need to be authorised.
- **Most charities and not-for-profit advice agencies** (for example, the Citizens Advice Bureau).
- **Trade unions** certified as independent, subject to compliance with the Code of Practice for the Provision of Regulated Claims Management Services by Trade Unions. A copy of the Code is available online on our [Authorisations page](#).
- Those **providing services to defendants** who in so doing may be involved in counter claims against the claimant or claims against a third party, typically loss adjusters.
- **Independent complaints reviewers**
- **Student Unions**
- **Motor Insurers Bureau, the Medical Protection Society and medical defence unions**
- **Persons who give or prepare to give evidence.** This covers, for example, people retained by claimants, defendants, insurers and solicitors to provide evidence about the cause or nature of a claim. Medical practitioners fall into this category.
- **Persons (typically loss adjusters) providing services to defendants** and who in so doing may be involved in subrogated claims, i.e. counter claims against the claimant or claims against a third party.

- **Small scale introducers** (i.e. 'exempt introducers') where this is incidental to their main business and the person to whom they introduce business takes responsibility for their activities. (See sections 5.1 and 5.2 below for further details).

5.1 Introducers acting as referrers

Some businesses refer a very small number of cases to solicitors or to claims management businesses. These businesses are classed as 'exempt introducers' providing they satisfy set criteria.

The requirements are set out in detail in the Compensation (Exemptions) Order 2007 but, in practice, apply as follows –

A business may refer claims and will not require authorisation where:

- they provide no other regulated claims management activity, including advertising or seeking out persons who may have a cause for a claim, or advising on a potential claim;
- the way they come across the case for referral is incidental to their main business i.e. the claim must arise as a result or consequence of the business being carried out by the introducer – not a separate feature of the business;
- the referral is made to an authorised business or legal practitioner; and
- the business is paid for no more than 25 referrals per calendar quarter.

All of these tests must be met for the business to be deemed exempt. Examples where a business may fail to satisfy the 'exempt introducer' criteria include:

- A person advertises for personal injury business and passes under 25 cases a quarter on to solicitors. (The business is advertising and so referring cases is not the only service provided).
- A person refers 50 cases a quarter to solicitors but no more than 25 to any one practice. (The limit is on the total number of referrals not the number passed to any one solicitor or authorised claims management business).
- A person refers very few personal injury claims but this is all the business does. (Claims management activities form the main part of the business and referrals are not acquired incidentally to other services provided).

This exemption is intended to apply to small scale introducers. If a business finds the volume test a constraint then it should seek authorisation. It may well be the case that some solicitors and claims management businesses will require their introducers to be authorised in their own right.

See the flowchart at **Annex A** below which can be used to assist your business in determining whether it fulfils the criteria to be deemed an 'exempt introducer'.

Ban on referral fees

You should be aware that on 1 April 2013, a ban on the payment and receipt of referral fees in personal injury cases came into effect as part of reforms to the costs and funding of civil litigation. The ban captures all relevant regulated businesses engaged in this practice – claims management businesses, solicitors, and insurers. For further information visit the [Referral Fee Ban](#) page on our website.

5.2 Introducers acting as agents for an authorised business

Where introducers are acting as agents of an authorised claims management business, their activities are covered by the principal business's authorisation. For example, where a claims management business employs agents to market on their behalf, then the agents will not require authorisation. Where an authorised business uses agents, they will be responsible for the activities (including breaches of the Conduct Rules) of the agent.

6. Volunteers

A person providing a regulated claims management service who is not paid in cash or does not receive any form of reward does not need to be authorised. This applies, for example, to volunteers or a friend giving advice.

Further information

More information can be found by reading the Conduct Rules, legislation and guidance on the Justice website at: www.justice.gov.uk/claims-regulation.

Contact us at:

If you require further advice on who needs to be authorised, contact our Business Support Team.

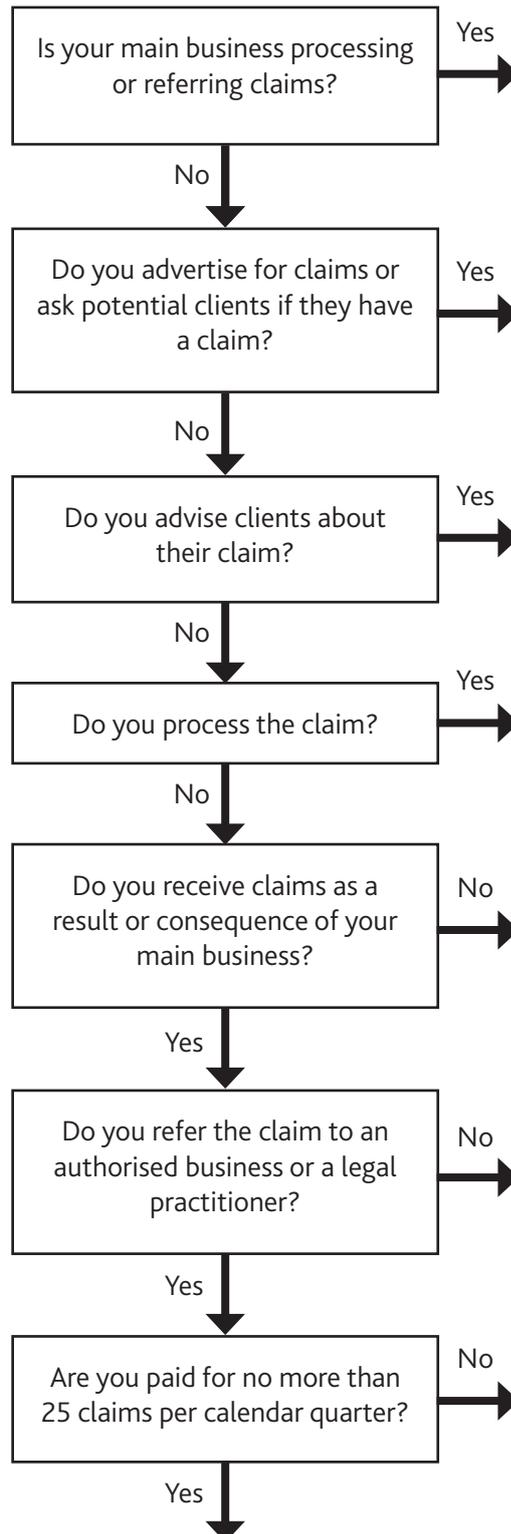
Tel: 0333 200 1320
(Lines open Monday to Friday 9:00 to 17:00)

Email: business@claimsregulation.gov.uk

This guidance note is not legal advice. If you require legal advice regarding your obligations under the Compensation Act 2006, you should request advice from a solicitor or barrister.

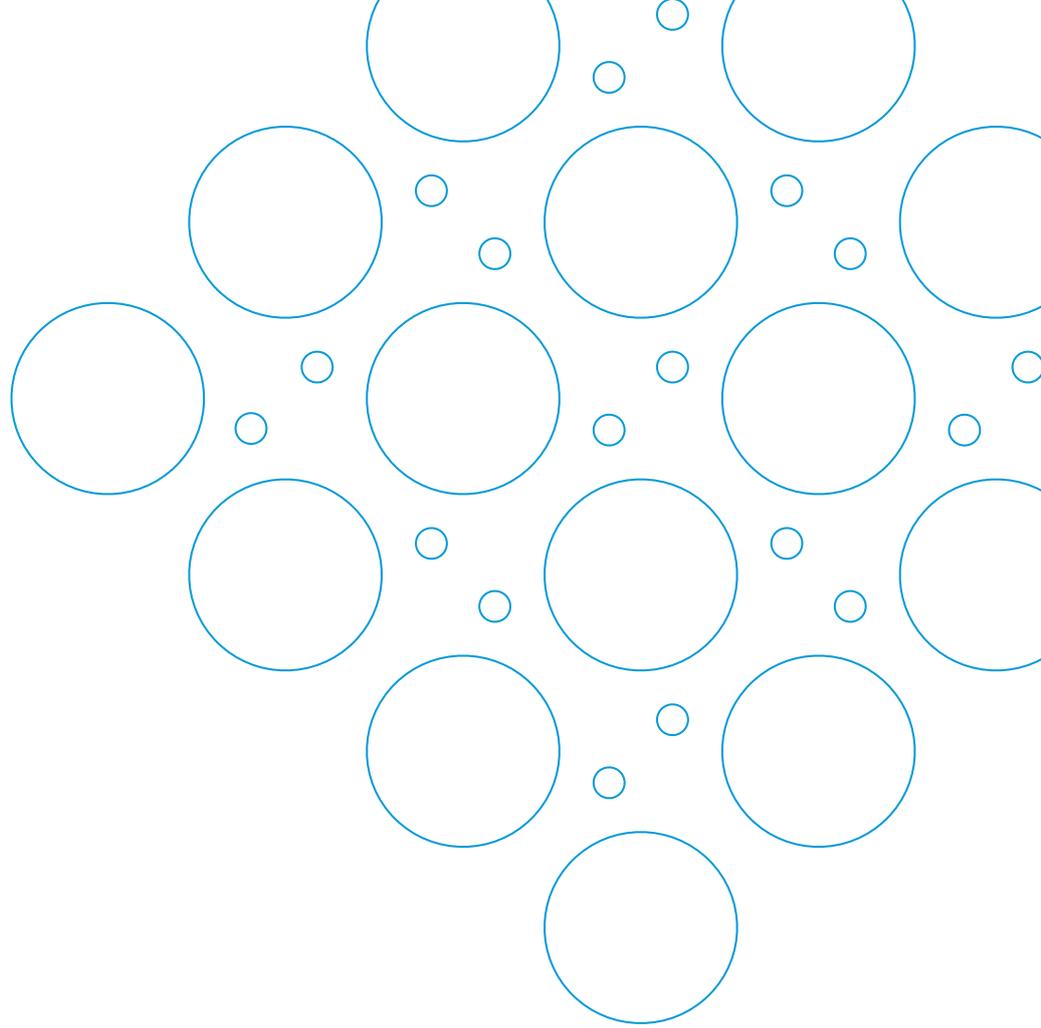
Annex A

Am I an exempt introducer?



You would not be deemed to be an exempt introducer

You would be deemed to be an exempt introducer



Contact Information

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