

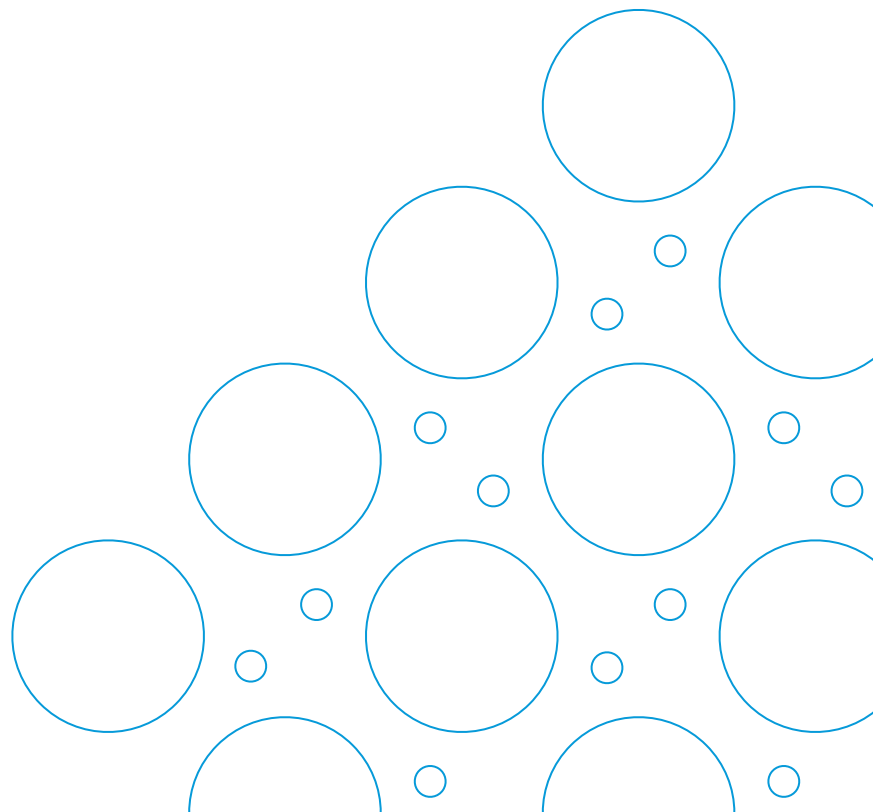


Ministry
of Justice

Claims Management Regulation

Guidance Note on the Conduct of Authorised Persons Rules 2014

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Introduction

We published our consultation paper 'Claims Management Regulation – Proposals to amend the Conduct of Authorised Persons Rules 2014 - <https://www.gov.uk/claims-management-company-regulations-guidance-and-legislation#conduct-rules>. The Financial Services Perspective' in November 2013. We explained that the purpose of changing the Rules was to address the high levels of misconduct in the financial products and services sector. We published the response to the consultation on 27 June 2014 which summarised the consultation responses we received and outlined the final version of the new rules. The final version of the revised Conduct of Authorised Persons Rules 2014 was published as an annex to the consultation response.

We have carefully considered the effect of these changes on businesses in other regulated claims sectors to make sure that they remain fit for purpose. The Rules apply to all persons authorised to provide claims management services under the Compensation Act 2006, so all authorised persons should be aware of the content of this guidance and apply its provisions.

This guidance explains the changes made to the Rules. The changes to the Rules come into force from 1 October 2014 and the complete document can be found here: Conduct of Authorised Persons Rules 2014. They replace the previous version, Conduct of Authorised Persons Rules 2013(2).

Complying with the amended rules

Definitions

We have added a new definition to the Rules that sets out what we mean by “document”. This is to make clear the standards of record keeping that the Regulator expects. The definition reads:

“document” means a business must arrange for written, printed or electronic records to be kept which must be sufficient to enable the Regulator to monitor compliance with the requirements of regulations.

If you record telephone calls, including sales and service calls, ‘voice recordings’ are electronic records within the meaning of the Rules.

Holding and disposing of information is an important part of record management. You are not obliged to hold data indefinitely and should carefully consider the need to retain data to demonstrate compliant business practices, and also consider your business needs in holding data.

The Rules do not set a statutory retention period. You will need to balance the need to retain data for a reasonable period with the requirement that you don’t keep information longer than necessary. We expect that you will have a policy for retaining data and will assess compliance on a case-by-case basis.

For further guidance on retaining information, please visit the Information Commissioner’s Office website www.ico.org.uk

General Rules pre-amble

We have introduced a new pre-amble before the General Rules to clarify the scope of the rules. The new pre-amble reads:

The rules must be complied with at all times, and a business must be able to demonstrate and, where practicable, document that it complies with the rules.

If you are authorised to provide claims management services, you are required to comply with the Rules. Failure to do so may result in investigation and enforcement action taken against you.

The new definition of “document” applies to this pre-amble. By “where practicable” we mean that if you are able and/or capable of recording an action, you should do so.

General Rule 2: The requirement to conduct yourself responsibly

A business shall conduct itself responsibly overall including, but not limited to, acting with professional diligence and carry out the following:

The sub-set of rules under General Rule 2 at a) – f) addresses the poor business practices that most commonly affect third parties. We have been clear that this is not an exhaustive list and we will determine in individual circumstances what does and does not amount to 'responsible' behaviour.

'**Professional diligence**' is a pre-existing expectation that we have clearly set out and means that you should apply high, consistent and demonstrable standards to work that you carry out.

General Rule 2 sub-set

a) Take all reasonable steps to investigate the existence and merits of each element of a potential claim before presenting it to a third party.

We have clearly set out an existing expectation. By '**all reasonable steps**' we mean that whatever can be done to investigate a claim, should be done. By '**each element of a potential claim**' we mean that where multiple heads of claim are submitted, you must evidence each allegation separately. If you submit generic claims that contain multiple heads of unsubstantiated claims, you will be in breach of this rule.

'**Reasonable steps**' will vary from sector to sector, and also between different types of claim within each sector. Claims management companies (CMCs) handling claims relating to a financial product or service should take all reasonable steps to:

- Establish that the customer and provider had a relationship;
- Establish that the product was sold to the consumer; and
- Establish the reasons why the customer believes the product was mis-sold

For mis-sold PPI claims you should refer to advice given on the Financial Ombudsman Service website. Their guidance outlines the basic requirements we expect when dealing with the financial service provider, and with the Ombudsman.

For mis-sold PPI claims we will consider these to be 'reasonable steps' although we expect you to make reasonable attempts to agree processes with financial service providers where possible and not to abuse pre-submission arrangements or data subject access request' processes.

- You must have a compliant claims investigation procedure
- You must hold documents demonstrating that the procedure has been followed in each claim.

b) Make representations to a third party that substantiate and evidence the basis of the claim, are specific to each claim and are not fraudulent, false or misleading.

We expect you to obtain information to satisfy yourself that a claim exists, and you will substantiate it. By '**substantiate**' we mean that you must hold evidence to establish a potential claim. 'Evidence' will not always mean 'proof' and will not always be in documentary form.

Documentation is the best form of substantiation and you are expected to use it wherever possible. Where the customer has not retained documentation, we expect you to have obtained sufficient information from the customer verbally to formulate the basis of a (potential) claim. This may include the approximate date the mis-sale took place, the product, the circumstances of the sale and the customer at that time e.g. employment status, previous name, previous address, where the sale took place etc.

If you submit spurious, generic and non-specific claims you will be in breach of this rule.

- Every CMC is expected to have evidence that the claims they submit are a direct outcome of the investigation they carried out under General Rule 2(a).

c) Claims referred to any recognised Ombudsman, dispute resolution scheme or compensation scheme must comply with those organisation's procedures, include specific, appropriate and relevant information on individual claims and take account of relevant past decisions.

If you deal with any of these organisations, you must follow their procedures and rules.

This principally refers to the Financial Ombudsman Service and Financial Services Compensation Scheme but will also apply to other relevant Ombudsman or schemes.

You must familiarise yourself with the requirements of any relevant organisation you are dealing with and ensure the referral falls within that organisations' jurisdiction, time limits and meets the minimum standards required. Failure to do so may not only result in regulatory consequences but also prejudice your customer's claim.

Please use the links below to more specific guidance on the procedures of other organisations you may deal with:

Financial Ombudsman Service - <http://www.financial-ombudsman.org.uk/faq/businesses/index.htm>

Financial Services Compensation Scheme - <http://www.fscs.org.uk/>

The requirement to '**take account of relevant past decisions**' in GR2c) is applicable to all CMCs that deal with third party organisations. The Financial Ombudsman Service in particular have received complaints from the same CMC based upon the same basic facts as previous cases despite finding against the consumer in those previous cases. We expect CMCs to learn from previous cases and decisions and for these to inform future policy and advice being given to customers.

The standard of '**demonstrate and, where practicable, document that it complies with the rules**' means that if we suspect you are in breach of GR2c) you will be required to demonstrate what you have learned from past decisions, how your policies have changed and that you are advising customers appropriately about the merits of their claims and when representing their claims.

- If you use an identified scheme you are expected to have a claims escalation procedure that takes account of the procedures and guidance of that scheme.

d) Maintaining appropriate records and audit trails.

You should hold documentation that allows you to effectively investigate customer complaints, to demonstrate compliance to the Rules and evidence decision-making. Examples of where documentary evidence should be collected include, but are not limited to:

- Voice recordings where a CMC has the ability and facility to record and store calls;
- Communications with clients, including records of conversations, provision of information and updates as well as correspondence;
- Communications with third parties (i.e. financial services providers) including exchanges of information, discussions about cases and chase calls as well as correspondence on claims;
- Product documentation, bank statements, terms and conditions, letters of authority etc.

The guidance on the requirement to 'document' under 'Definitions' is relevant to this rule, and you are expected to have adequate processes in place for document retention.

- You will need to demonstrate compliance, where practicable, with regulatory requirements and provide documents at the request of the Regulator Unit.

e) Take all reasonable steps in relation to any arrangement with third parties to confirm that any referrals, leads or data have been obtained in accordance with the requirements of the legislation and Rules.

If you purchase leads and referrals then you must comply with this rule. **'Take all reasonable steps'** means that whatever can be done to confirm the provenance and legitimacy of third-party referrals, leads and data, should be done. A step is not unreasonable if it is merely inconvenient, for instance if there is no existing procedure. You must satisfy yourself that the data complies with the relevant rules and legislation as follows:

- Conduct of Authorised Persons Rules 2014;
- Data Protection Act 1998;
- Privacy and Electronic Communications Regulations 2003

Assurances from third parties can form part of your due diligence process but you must not rely on third-party assurances alone and should complete your own checks to seek to verify that the information was obtained legally and compliantly.

If you cannot verify this or cannot demonstrate how you have reached a satisfactory conclusion, you should not use the referrals, leads or data. If the third party will not provide information sufficient for you to perform adequate due diligence checks, we do not expect you to use the data.

- Where you purchase referrals, leads or data you must operate a procedure that verifies its source.
- You must have evidence that you have followed your procedure for any referrals, leads or data that you receive.

f) Have appropriate procedures in place for early identification and protection of vulnerable consumers and give due consideration to obligations under any relevant legislation.

We expect that each CMC has in place a procedure for the early identification and protection of vulnerable consumers. By '**vulnerable consumers**' we mean people in need of special consideration, support or protection. Where you have identified a customer as potentially vulnerable, you should be able to demonstrate how and why this decision was made, what steps you have taken and any adjustments you have made in dealing with them.

In 2012 the Direct Marketing Association published a White Paper: Guidelines for call centres dealing with vulnerable consumers. Prior to this rule coming into force, where we have had concerns that CMCs have not been acting responsibly in dealing with vulnerable consumers, we have referred them to this publication. Although the paper is designed for call centres, we believe that most of the principles apply however you market and obtain customers.

The paper may assist you in producing or reviewing a vulnerable consumers policy and can be found on the Direct Marketing Association's website: http://dma.org.uk/uploads/call-centres-vulnerable-consumers_final_53d7c237289c1.pdf

- You must have a clear policy on vulnerable consumers.
- You are expected to provide evidence that the policy has been implemented i.e. via staff training records or an operational system where a customer identified as vulnerable can be flagged.
- You must record any reasonable adjustments made or reasons why they were not made when dealing with an identified vulnerable consumer.

General Rule 3: The requirement for CMCs to be directed by competent people

A business shall be directed by people with the necessary competence who must have a working knowledge of the legislation and rules relating to regulated claims management services.

We have conducted audits of CMCs where those responsible for running the business do not clearly understand the rules or how their business is operating (or sometimes both). Ignorance of the rules and the operating procedures of the CMC is no defence where there is evidence of rule breaches. It is the responsibility of those running CMCs to know their legal and regulatory requirements and to comply with them.

The test of this rule will be the ability of the directors and/or managers of the CMC to operate their business compliantly. Incompetence and lack of knowledge of legal/regulatory requirements are sometimes demonstrated by widespread malpractice and multiple rule breaches.

Where directors are unable or unwilling to manage risk, identify and address failings and fail to demonstrate that they understand their obligations, we will deem them to be in breach of this rule (amongst others) and take appropriate enforcement action.

- The application of 'working knowledge' can be demonstrated by the effective management of regulatory risk and a clear understanding and application of the Rules.
- We will consider a CMC to be directed by someone with a 'working knowledge' of the relevant legislation and Rules if it is run compliantly, displays high standards of service, submits good quality claims and does not breach other Rules.

General Rule 16: The requirements for providing information to the Regulator

A business shall provide to the Regulator the following information:

- a) notification within 20 working days of any changes to the information provided in the authorisation process or subsequently.
- b) any additional information that the Regulator determines it is reasonable for the business to provide within timescales provided for in the request.

The information provided must not be false or misleading.

This is a merging of two previous rules to emphasise the requirement for information provided to not be false or misleading. By 'reasonable' we mean information that we ask for, that you are able and/or capable of producing. A request for information is not unreasonable if it is merely inconvenient.

Client Specific Rules pre-amble

These rules set out how a business regulated under the Act must conduct itself. The rules must be complied with at all times, and a business must be able to demonstrate and, where practicable, document that it complies with the rules.

The requirement to document compliance with the Client Specific Rules (where practicable) will align requirements with the General Rules. **'Where practicable'** means where it would be reasonable and appropriate for a CMC to document an action.

The requirements around cold calling

Cold calling in person is prohibited. Any marketing by telephone, email, fax or text shall be in accordance with the Direct Marketing Association's Code and any related guidance issued by the Direct Marketing Association.

We updated this rule to reflect changes in the Direct Marketing Association's guidance which can be found here: The DMA Code - <http://dma.org.uk/the-dma-code>. If you market by telephone, email, fax or text, you should be aware of the code and complete a risk assessment to identify if your business practices are at risk of non-compliance, and have control measures in place to manage identified risks. The types and level of control measures you use will depend on the activity you are engaged in. If your business makes outbound telesales calls, control measures should include, but are not limited to:

- A procedure for carrying out Telephone Preference Service (TPS) screening;
- A procedure for handling suppression requests and managing a suppression list;
- A procedure for managing dialler software;
- A procedure for recording and monitoring outbound calls (where applicable).

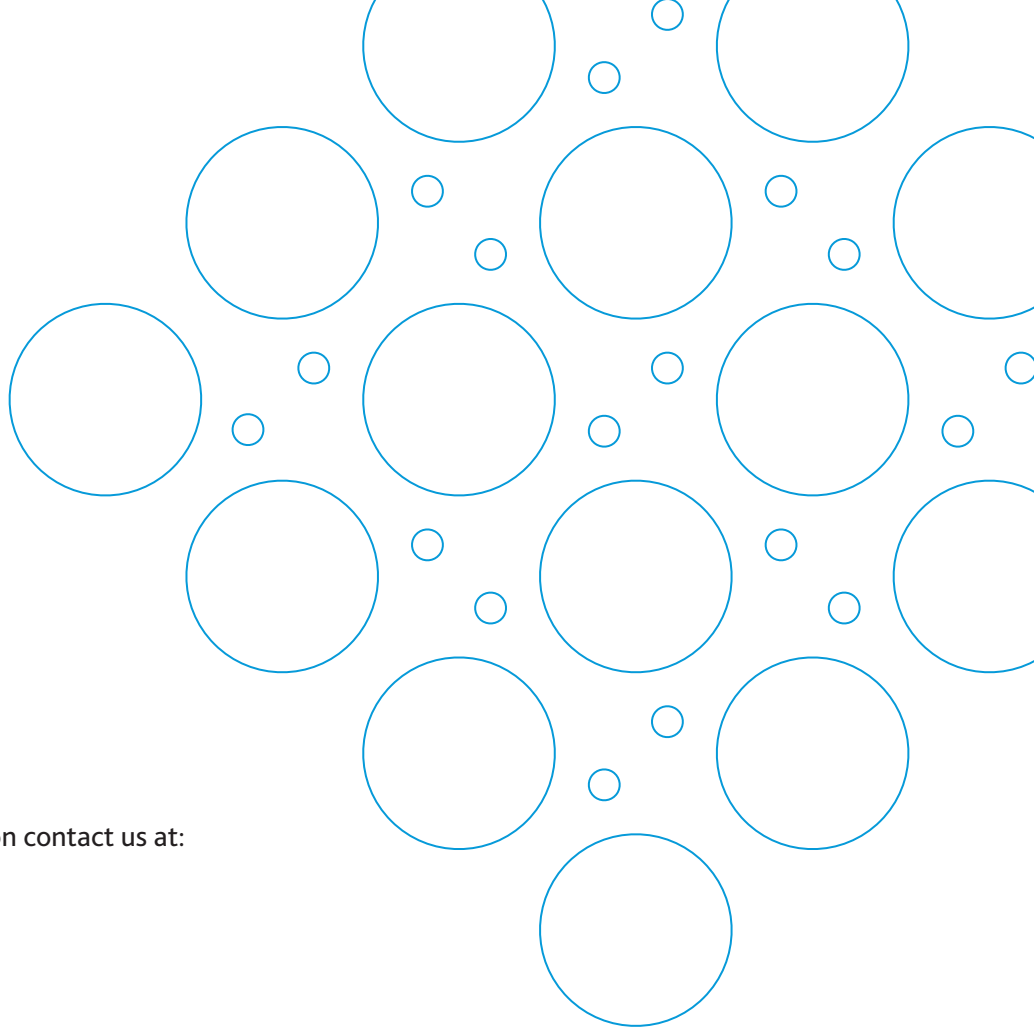
Client Specific Rule 15: The requirement to allow a cooling off period

A business, unless subject to Regulation (8) of the Damages-Based Agreements Regulations 2013, must allow a 'cooling off' period of at least 14 days after signing any agreement, during which period the client may cancel the agreement and be entitled to a refund of any payments made to the business or in connection with any insurance policy, loan or other agreement taken out in relation to the agreement.

Client Specific Rule 16: The requirement to allow a client to withdraw from a contract

A business, unless subject to Regulation (8) of the Damages-Based Agreements Regulations 2013, must permit the client to withdraw from a contract at any time. Any charge to the client shall be limited to what is reasonable in the circumstances and shall reflect work undertaken by the business.

Client Specific Rules 15 & 16 have been updated to reflect the Damages-Based Agreements (DBA) Regulations 2013 which are now in force.



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