

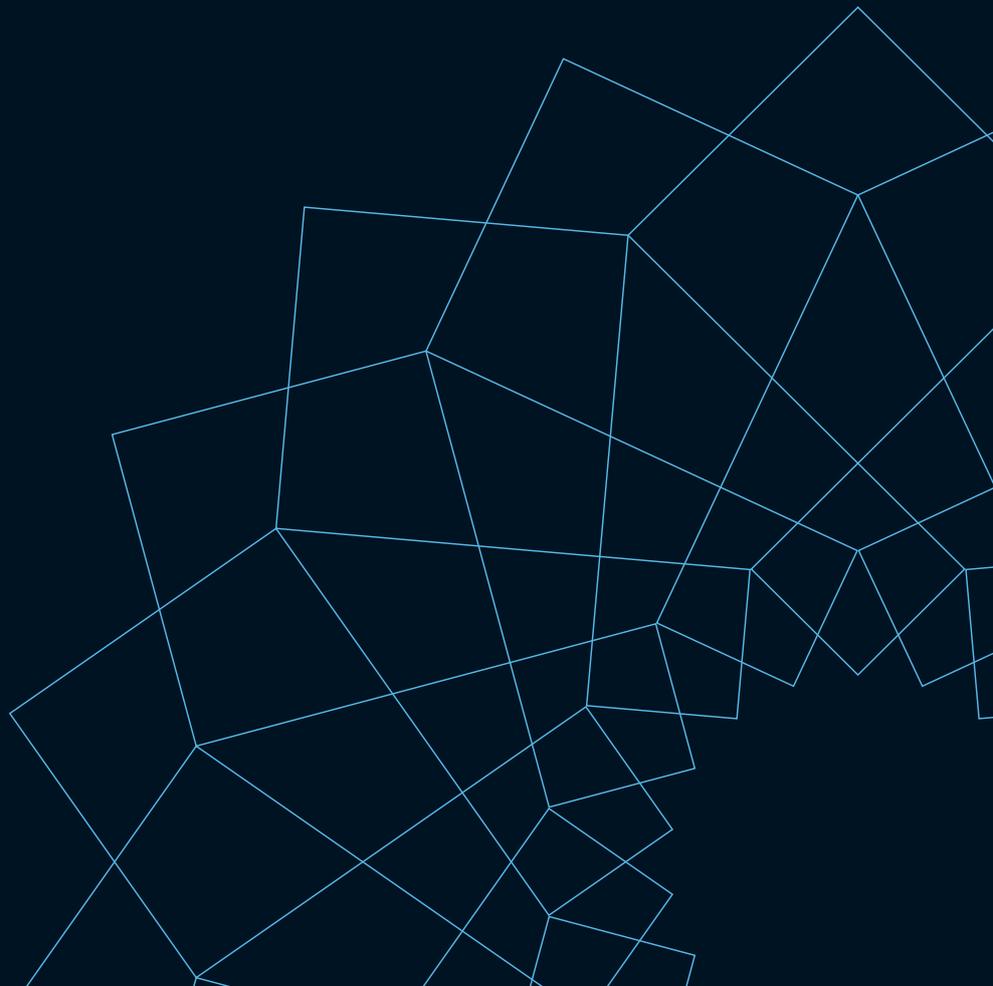


Ministry  
of Justice

Claims Management Regulation

# Enforcement Policy

Amended December 2014





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# Introduction

Under current regulatory arrangements, decisions about regulatory matters including those on enforcement, will be taken in the name of the Secretary of State for Justice (the "Regulator") by the Head of the Ministry of Justice's Claims Management Regulation Unit (the "CMR Unit"). The Regulator has delegated authority for specific enforcement actions to named officers of the CMR Unit.

For the purposes of this Enforcement Policy ("Policy"), references to the Regulator include references to the Head of the CMR Unit, and authorised officers of the CMR Unit acting under the Regulator's direction.

This Policy is intended to provide guidance regarding the Regulator's approach to enforcement for the Regulator, authorised persons (as defined by the Compensation Act 2006), unauthorised persons, consumers and the public.

The Policy does not affect the discretion of the Regulator to take a range of formal and informal enforcement actions in relation to compliance with the Compensation Act 2006 and the relevant regulations and orders made under that Act.

Any action taken by the Regulator may be made public where it is appropriate to do so and any publication will be in accordance with the **Publication Policy** which can be found online: [www.gov.uk/government/publications/claims-management-regulator-publication-policy](http://www.gov.uk/government/publications/claims-management-regulator-publication-policy)

This Policy supersedes the previous Policy dated January 2012 and has been updated to include information regarding the use of a financial penalties as an additional formal enforcement tool. This follows amendments to the Compensation Act 2006 which were made as part of the Financial Services (Banking Reform) Act 2013<sup>1</sup> to expand the enforcement provisions of the CMR Unit.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2013/33/section/139/enacted>

# 1. Basic Principles

- 1.1 The role of the Regulator is to ensure that in regulation and enforcement, the interests of the public are protected.
- 1.2 The Regulator is committed to the principles of good enforcement and in the exercise of its regulatory functions will have regard to The Regulators Code<sup>2</sup> and the principles that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.
- 1.3 The Regulator will have due regard to these principles and to any other relevant guidance, including:
  - the Code for Crown Prosecutors<sup>3</sup>
  - Ministry of Justice guidance – Simple Caution for Adult Offenders<sup>4</sup>.
- 1.4 This Policy outlines the approach the Regulator takes to ensure that the law is applied in a fair and consistent manner and that the Regulator is proactive and effective in ensuring the compliance of authorised and unauthorised persons by:
  - encouraging and assisting authorised and unauthorised persons to understand and meet the regulatory requirements, and
  - responding proportionately to regulatory breaches
- 1.5 Consideration will be given to all available enforcement tools, both formal and informal, to ensure that any action taken is proportionate and effective to the circumstances of the individual case.
- 1.6 Before formal action is initiated, the Regulator will usually engage with the authorised or unauthorised persons to discuss the circumstances of the case and, if possible, to resolve points of difference. This opportunity may not be provided where the Regulator decides that immediate action is required, for example to prevent evidence being destroyed.

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<sup>2</sup> <http://www.bis.gov.uk/brdo/regulators-code>

<sup>3</sup> [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

<sup>4</sup> <http://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf>

<sup>5</sup> <https://www.gov.uk/equality-act-2010-guidance#public-sector-equality-duty>

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2010/15/contents>

- 1.7 All decisions will be impartial, objective and in accordance with our Public Sector Equality Duties<sup>5</sup> under the Equality Act 2010<sup>6</sup>.
- 1.8 The Regulator will take into account the comments of any directly affected consumer or any other relevant person to establish:
  - their views about the circumstances in which enforcement action is deemed appropriate,
  - the nature and extent of any consumer detriment, and
  - its significance relative to the circumstances of a particular case.
- 1.9 The Ministry of Justice and the CMR Unit are public authorities for the purposes of the Human Rights Act 1998<sup>7</sup>. Officers will therefore apply the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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<sup>7</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

## 2. Enforcement Tools

2.1 A range of informal or formal statutory enforcement tools are available to the Regulator, allowing for flexibility in its approach when dealing with both authorised and unauthorised persons. These tools are detailed below.

2.2 The enforcement action taken in each case will be decided based on what is proportionate in the individual circumstances. Additionally, the Regulator may decide to refer a matter to another agency or service where it considers it is appropriate.

### 2.3 Authorised persons:

- informal enforcement action including advice, letters of warning and written undertakings, or
- formal enforcement action including the issuance of directions, the imposition of a financial penalty or the variation, suspension or cancellation of authorisation.

### 2.4 Authorised persons that obstruct the Regulator:

In addition to any of the options at 2.3

- simple caution or
- prosecution

### 2.5 Unauthorised persons:

- informal enforcement action including advice, letters of warning and written undertakings
- refusal of application for authorisation
- simple caution
- injunction, or
- prosecution

## 3. Informal Tools

### 3.1 Advice

- 3.1.1 Before deciding to adopt this course of action, the Regulator will need to be satisfied:
- that the authorised or unauthorised person will remedy the situation, without formal action being taken;
  - that any previous advice has not been ignored;
  - that the authorised or unauthorised person has not acted deliberately or negligently; and
  - that there has not been a similar previous alleged offence or breach committed by the same authorised or unauthorised person.
- 3.1.2 The advice will be set out clearly and simply in writing, with an explanation of the timescales for completing any remedial work required. Any additional legal requirements will be clearly distinguished from advice given about how compliance can best be achieved.
- 3.1.3 Any timescale given will be set in accordance with what the Regulator considers to be reasonable in relation to the individual circumstances.

### 3.2 Letters of warning

- 3.2.1 The Regulator may use a letter of warning to reinforce informal advice or as an alternative to informal advice in a situation where a business is believed to have breached their conditions of authorisation or a breach is ongoing.
- 3.2.2 The warning will be set out clearly and simply in writing, with an explanation of the timescales for completing any remedial work required. Any additional legal requirements will be clearly distinguished from advice given about how compliance can best be achieved.
- 3.2.3 Any timescale given will be set in accordance with what the Regulator considers to be reasonable in relation to the individual circumstances.
- 3.2.4 The letter will include a clear explanation of the possible consequences, such as formal enforcement action, of a failure to take remedial action.

### 3.3 Written Undertakings

- 3.3.1 Where an authorised or unauthorised person persistently fails to comply with legal requirements or with their conditions of authorisation, the Regulator may seek a written undertaking from them.
- 3.3.2 The Regulator may seek for the authorised or unauthorised person to undertake that they will comply in future, that they will undertake remedial work and/or agree to additional obligations or restrictions on their activities.

3.3.3 Where the authorised or unauthorised person gives such an undertaking, the Regulator may determine that no further formal action will be taken at that time.

## 4. Formal Tools

- 4.1 In most cases where an authorised person is believed to be in breach of the conditions of authorisation, the Regulator will first use informal enforcement tools to attempt to bring them to compliance. Where the authorised person fails to remedy the breaches, the Regulator may consider taking formal enforcement action.
- 4.2 Where an authorised person is believed to be in breach of their conditions of authorisation, and the severity of the suspected breaches would make it appropriate to do so, the Regulator may consider taking formal enforcement action, without first using informal enforcement tools.
- 4.3 Prior to formal enforcement action being taken, the Regulator will conduct an investigation into the authorised person's suspected or alleged failure to comply with the conditions of authorisation. If after the investigation the Regulator is satisfied that the authorised person has failed to comply with the conditions of authorisation, the Regulator may issue directions, impose a financial penalty or, where deemed necessary in order to protect the public, vary, suspend for a period or cancel that person's authorisation.
- 4.4 Before imposing formal enforcement action, the Regulator will notify the authorised person of the proposed action, the reasons for it and will consider any representations made before making a final decision.

### 4.5 Restriction on the Surrender of Authorisation

- 4.5.1 Where an authorised person has been provided with;
- A formal notice by the Regulator that they are the subject of a regulatory investigation under Regulation 35
  - A request for further information in relation to an investigation under Regulation 36
  - A notification regarding the issuing of a warrant under Regulation 40
- they may not surrender their authorisation without explicit written consent of the Regulator. This restriction applies only where the above notices and the alleged non-compliance that is the subject of the investigation occurs on or after 9 December 2014;
- 4.5.2 The Regulator will notify the authorised person of the restriction on surrender in writing, and where applicable, at the start of any formal investigation. The Regulator will also notify the authorised person in writing should the restriction cease to apply.
- 4.5.3 Where a decision regarding formal enforcement action is concerned, the Regulator will notify the authorised person of the removal of the restriction on surrender within 7 business days of any formal enforcement decision being imposed or a decision not to impose formal enforcement action being taken.

## 4.6 Directions

- 4.6.1 Where the Regulator is satisfied that a complaint against an authorised person is well-founded, or that the authorised person should alter its claims management procedures, the Regulator may give a direction to that person about:
- the future handling of the complaint,
  - the future handling of complaints in general, and/or
  - about any other aspect of the business that relates to the provision of claims management services.
- 4.6.2 Where an authorised person has failed to comply with the rules or a code of practice, the Regulator may direct them to make redress to a person aggrieved by the failure. This can include, but is not limited to, issuing an apology or to re-do work.
- 4.6.3 Before issuing a direction, the Regulator must notify the authorised person of the proposed direction, the reasons for giving it and consider any representations that they may make.
- 4.6.4 It is a condition of an authorised person's authorisation that they comply with any direction issued by the Regulator. Any failure to comply can result in formal enforcement action.

## 4.7 Financial Penalty Scheme

- 4.7.1 The Regulator may impose a financial penalty on an authorised person for failure to comply with the rules, a code of practice or other conditions of authorisation. A financial penalty may also be considered under the following circumstances;
- In relation to the investigation of a complaint about the professional conduct of the regulated CMC;
  - As a consequence of a failure to comply with a requirement to take out a policy of professional indemnity insurance;
  - As a consequence of a failure to comply with certain requirements regarding the provision of information or documents;
  - As a result of the Regulator being obstructed in its execution of a warrant to enter and search premises for the purposes of investigating a complaint about the activities of a regulated CMC; or assessing the regulated CMC's compliance with the conditions of its authorisation; and
  - As a result of the Regulator being obstructed from attempting to take possession of, or copies of written or electronic records found when executing a warrant to enter and search premises.

- 4.7.2 A financial penalty is likely to be imposed in situations where further enforcement action may be disproportionate. Unlike other forms of formal enforcement action however, a decision to impose a financial penalty does not need to be made in order to protect the public.
- 4.7.3 A decision to impose a financial penalty may be taken after the consideration of factors relating to the nature and seriousness of a breach or group of breaches. The **nature** of a breach or group of breaches will initially be assessed and attributed a score under one of the following categories; **Basic (1), Escalated (2) or Severe (3)**.
- 4.7.4 The second element of consideration is an assessment of the overall **seriousness** of a breach or collection of breaches. The level of seriousness is effectively based on the overall impact of any breaches and how far this has affected other parties. The seriousness of a breach or group of breaches will be attributed a score under one of the following categories; **Low (2), Medium (4) or High (6)**.
- 4.7.5 The Regulator will add the scores from both categories together to reach a total assessment figure. This figure will guide the overall level of assessment and be considered alongside an assessment of an authorised business' means. A penalty of up to £100,000 may be imposed on authorised persons with turnover of less than £500,000 over the previous 12 month period. Penalties for those with a turnover of £500,000 or above during the same period will be based on a percentage of the authorised persons turnover, up to a maximum of 20%.
- 4.7.7 The Regulator will notify the authorised person of the relevant due date for the payment of a financial penalty and may ultimately enforce any penalty as a civil debt, via the Courts if necessary.
- 4.7.8 The financial penalties scheme can be utilised in response to non-compliant activity occurring on or after **29 December 2014**. For breaches occurring prior to this date, all other enforcement provisions may be utilised. Further, comprehensive guidance regarding the calculation of financial penalties and the relevant penalty scoring bands is contained within Claims Management Regulation Financial Penalties Guidance which can be found online: [www.gov.uk/claims-management-company-regulations-guidance-and-legislation](http://www.gov.uk/claims-management-company-regulations-guidance-and-legislation)

## 4.8 Variation, Suspension or Cancellation of Authorisation

- 4.8.1 The Regulator may vary the conditions of an authorised person's authorisation in order to prevent specific practices which may be the cause of regulatory breaches. The variation of authorisation can restrict an authorised person's ability to provide regulated services without removing them from the industry altogether and may reduce the chance of detriment to a business' clients that may potentially result from other regulatory action.
- 4.8.2 The Regulator may suspend an authorised person's authorisation in order to prevent the provision of any regulated claims management services at all by an authorised person, for a specified period. The Regulator may take this form of action where breaches of authorisation

conditions can not be remedied in a satisfactory manner, in the short term. Where an authorised person subsequently addresses the regulatory issues raised, the Regulator may lift the suspension as appropriate.

- 4.8.3 The Regulator may cancel the authorisation of an authorised person where breaches are deemed serious enough. It is likely that this course of action will be taken where previous regulatory interventions have been unsuccessful and have ultimately failed to bring a business into compliance. The cancellation of authorisation has very serious consequences for an authorised person as they will no longer be able to undertake regulated claims management activities. For this reason, the decision to cancel an authorisation will not be taken lightly.

#### **4.9 Notification of the right of Appeal**

- 4.9.1 When imposing formal enforcement action, the Regulator must notify the authorised person of their right to appeal to the First-Tier Tribunal (Claims Management Services). An authorised person may also appeal against decisions of the First-tier Tribunal and, with leave from the Tribunal, to the Court of Appeal.
- 4.9.2 Where a financial penalty has been imposed, the Regulator will not start collection proceedings until any relevant period in which an appeal can be lodged has expired.

# 5. Other Tools

## 5.1 Refusal of authorisation

- 5.1.1 Where the Regulator is not satisfied that an unauthorised person that has applied for authorisation is competent and suitable to provide regulated claims management services, the Regulator may refuse to grant authorisation.
- 5.1.2 Where an application for authorisation is refused, the Regulator must give a written notice to the applicant of the decision and the reasons for it, and must advise the applicant of the right to appeal.
- 5.1.3 A person whose application for authorisation is refused may appeal to the First-tier Tribunal (Claims Management Services).

## 5.2 Injunctions

- 5.2.1 Where an investigation confirms that an unauthorised person is providing regulated claims management services is not an authorised or exempt person, or subject to a waiver, an injunction may be sought, restraining that person from providing regulated services. This power could be used, for example, to stop an unauthorised person from providing services pending a prosecution.

## 5.3 Caution (adults only)

- 5.3.1 A simple caution (which is explained in the Ministry of Justice's guidance – Simple Cautions for Adult Offenders<sup>8</sup>) is a serious matter and will be kept on record, disclosure may be required for some job applications and it may be available to an employer as part of a criminal records check. This will influence future decisions as to whether or not to initiate proceedings if the unauthorised person re-offends. It may also be cited in any subsequent court proceedings.
- 5.3.2 In order to safeguard the offender's interests, the following conditions must be met before a caution can be administered: -
- there must be evidence of the offender's guilt sufficient to give a realistic prospect of conviction;
  - it must be in the public interest to offer a caution as an alternative to prosecution;
  - the offender must admit the offence;
  - the offender must understand the significance of a caution and give informed consent to being cautioned
  - the offender must have had the opportunity to seek legal advice and is entitled to seek disclosure of the evidence before accepting a simple caution

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<sup>8</sup> <http://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf>

5.3.3 Public interest considerations are described in the Code for Crown Prosecutors<sup>9</sup>.

## 5.4 Prosecution

5.4.1 Prosecution has potentially serious consequences: a criminal record, adverse publicity, an adverse effect upon a business's trading position and even imprisonment. For this reason the decision to prosecute is not taken lightly.

5.4.2 Prosecution will normally only be considered where one or more of the public interest criteria are satisfied and the evidential test is met. Both are described in the Code for Crown Prosecutors<sup>10</sup>.

5.4.3 It is also important that there should not be undue delay between the date of the alleged offence and the instigation of legal proceedings.

5.4.4 The decision on whether to prosecute lies with the Regulator. The Regulator must consider each factor of the case and then make an overall assessment. In particular, the following factors may influence this decision:

- whether the alleged offence was the result of a genuine mistake and, if so, has the matter been satisfactorily rectified
- whether there is a realistic prospect of conviction resulting in appropriate penalty
- whether a conviction is likely to result in a confiscation or any other order
- whether the prosecution is likely to have an adverse effect on the physical or mental health of any other person who may have been directly affected by the alleged offence
- any relevant information or intelligence held by the CMR Unit or partner organisations relating to the history or trading practices of the individual or organisation
- any extenuating circumstances, in particular where the business has demonstrated that all reasonable precautions were taken and all due diligence exercised to avoid the commission of the offence

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<sup>9</sup> [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

<sup>10</sup> [http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/)

## 6. Review of the policy

- 6.1 This policy will be subject to periodic review to ensure it takes account of experience of enforcing claims management regulation.
- 6.2 Any queries about the policy can be made to:

Claims Management Regulation HQ Team  
Ministry of Justice  
102 Petty France  
London  
SW1H 9AJ

**E-mail:** [claimsmanagementregulation@justice.gsi.gov.uk](mailto:claimsmanagementregulation@justice.gsi.gov.uk)

## 7. Availability of the Policy

- 7.1 A copy of this Policy, and relevant guidance or policies will be made available upon request and are also available on line at:

<https://www.gov.uk/claims-management-company-regulations-guidance-and-legislation>

- 7.2 Alternative formats are also available upon request and all enquiries should be made to:

Claims Management Regulation Unit  
57 – 60 High Street  
Burton-upon-Trent  
Staffordshire  
DE14 1JS

**Telephone:** 0333 2001 320

**Web:** [www.justice.gov.uk/claims-regulation](http://www.justice.gov.uk/claims-regulation)

**Email:** [business@claimsregulation.gov.uk](mailto:business@claimsregulation.gov.uk)





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