

4 June 2019

Dear temporary permission holder

What we expect of claims management companies when they act for customers

I am writing to remind you of our expectations of claims management companies (CMCs) when they carry out financial promotions and/or act for their customers. This is because we have recently seen an increase in problem cases, and want to ensure customers' interests are protected.

The problems we have found

There has recently been an increase in the volume of cases where:

- CMCs are acting for their customers without getting their appropriate consent or completed letters of authority
- CMCs are submitting letters of authority and claims in fictitious customer names
- there is no relationship between the customer and the financial service provider receiving the claim, and
- CMCs' financial promotions do not comply with our rules

What you need to do now

You should consider the points in this letter, and how you can demonstrate that you comply with our rules. The [FCA Handbook](#) contains our rules.

As these are important areas of concern, we expect you to share this letter with your board, or equivalent. We will take the matters in this letter into account when we assess your application for authorisation and when we supervise your firm.

This letter is not meant to be a complete list of our concerns about from CMCs acting for customers.

Claims management activities that come under our regulation

We remind you that regulated claims management activities include seeking out, referrals and identification of claims or potential claims and advice, investigation or representation in relation to a financial services or financial product claim. For information, these provisions are set out in articles 89G and 89I of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (those provisions can also be found in [Article 7](#) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018).

Our [Policy Statement](#) 18/23 (*Claims management: how we will regulate claims management companies*) clearly explains that carrying out a free PPI check is a regulated claims management activity. When you carry out this activity, we expect you to comply with the rules set out in the Claims Management: Conduct of Business sourcebook (CMCOB) including the rules on financial promotions in CMCOB 3.

Getting letters of authority before acting for customers

Data Protection legislation requires that you must not act for your customers unless you have your customer's consent, which should be documented by a signed letter of authority.

You must comply with all relevant data protection legislation. You must also act honestly, fairly and professionally (CMCOB 2.1.1.) in the best interests of your customer. You must also conduct your business with integrity (Principle 1 of our Principles for Businesses) and with due skill, care and diligence (Principle 2).

Claims must have a good base and you should investigate the existence and merits of each element of a potential claim

You must ensure that you can comply with our requirements on the steps you take before you act for a customer or submit a claim.

You must not make or pursue a claim if you know or have reasonable grounds to suspect the claim does not have a good arguable base or is fraudulent, frivolous or vexatious (CMCOB 2.1.7 R). You should take all reasonable steps to investigate the existence and merits of each element of a potential claim before making or pursuing a claim (CMCOB 2.1.8 G). To meet Principle 1 (Integrity) and Principle 2 (Skill, care and diligence), your firm's investigations should enable it to make representations when presenting a claim 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, misleading or an exaggeration

Your systems and controls

We expect you to have adequate staffing, expertise, systems and controls to cope with any increases in your customer numbers. Your firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems (Principle 3). You must also set up and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable consumers (CMCOB 2.1.2 R). Where relevant, we will consider these factors when we assess if your firm meets our Threshold Conditions (including the conditions about appropriate resources and suitability) for authorisation. For example, firms must have appropriate non-financial resources, including systems, controls, plans and policies, for the nature and scale of their business (COND 2.4).

Ensuring financial promotions are fair, clear and not misleading

Financial promotions or adverts are likely to be the first contact consumers have with firms like CMCs. Financial promotions can include a website, Facebook post, tweet, press ad, poster, TV or radio advert, among other media. They can play a significant part in a customer's decision to choose a product. So it is very important that these promotions are fair, clear and not misleading so that consumers can make informed decisions (Chapter 3 of CMCOB and, particularly, CMCOB 3.2.1R). See more information about how FCA regulates firms' [financial promotions](#).

Some CMCs are not meeting our rules on firms' financial promotions. In particular, we have seen that some websites or other financial promotions that:

- state that the CMC offers their service on a 'No win no fee basis', but fail to set out the fees that the firm charges (CMCOB 3.2.9R(2));
- fail to identify the firm offering the service and that it is a claims management company (CMCOB 3.2.4.R(1));
- appear to give consumers the impression that they would get a better outcome if the customer uses the services of the firm, where a statutory ombudsman or statutory compensation scheme is available (contrary to CMCOB 3.2.6R(1));
- fail to state, in relevant cases to which this applies, that the customer could make a claim to a statutory ombudsman or statutory compensation scheme, such as the Financial Ombudsman Service, without using the services of the firm, and without paying a fee (CMCOB 3.2.7(R));
- incorrectly state that the CMC is regulated by the Claims Management Regulator, not the Financial Conduct Authority.

We have the legal power (under section 137S of the Financial Services and Markets Act 2000) to [ban](#) financial promotions or adverts - including websites - that do not meet our requirements. We can also publish and make public any action that we take using this power.

Keeping proper records

You must be able to evidence that you are complying with our requirements to keep orderly records of your business (including all services and transactions), as set out in CMCOB 2.4.1(G).

Do not ignore this letter

If you do not comply with our rules we can use our powers to impose requirements on your firm. We also review whether you are meeting the Threshold Conditions and failure to comply with our rules could mean we remove your firm's temporary permission or refuse to authorise it. We will look at a range of evidence when we make these assessments. For example, high levels of Financial Ombudsman Service uphold rates for complaints against your firm or low levels of uphold rates for complaints you have submitted for your customers may indicate your firm is not complying with our rules.

If you have any questions about anything in this letter, please contact myself or Garry Hunter on 020 7066 2518.

Yours faithfully

Jonathan Davidson
Director of Supervision – Retail and Authorisations