



Ministry of **JUSTICE**

Claims Management Services Regulation

Risk Framework Version 2

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Ministry of **JUSTICE**

Risk Framework

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Risk Framework

Introduction

1. The objective in regulating claims management activities is to curb malpractice that has led to consumers being disadvantaged, either by paying excessively in order to receive compensation or by being persuaded to make a claim which will be of little benefit to them. Four main types of malpractice have been identified –
 - (a) Aggressive selling.
 - (b) Inappropriate acquisition of leads.
 - (c) Misleading marketing activity.
 - (d) Misleading and unfair contracts.
2. The Regulator needs to construct a framework to identify the factors associated with these malpractices. The framework must serve three purposes –
 - (a) To influence the design of the application form.
 - (b) To shape the authorisation process.
 - (c) To guide monitoring, compliance and enforcement work.
3. The first version of this framework was published on 30 November and was mainly concerned with (a) and (b) above. This version builds on the experience with the authorisation process and also covers (c) above.

Underlying assumptions

4. There are three underlying assumptions that have guided the development of this framework –
 - (a) There is little hard data to construct a quantitative model; rather the risk framework is a qualitative assessment based on a careful analysis of the market.
 - (b) Individuals are responsible for malpractice. Corporate bodies are merely a vehicle.
 - (c) The nature of the malpractice is different in the different sectors. In particular, in the personal injury sector the malpractice is concentrated in the process used to attract business.

Risk factors

5. The following have been identified as significant risk factors (involvement here means having a management or controlling function, not simply employment) –
 - (a) A history in respect of illegal activity, prosecutions, regulatory action etc.
 - (b) Involvement in a large number of different businesses undertaking similar activity, particularly where some of the companies have ceased trading.
 - (c) Involvement in businesses that have misleading marketing material or misleading contracts.
 - (d) Involvement in high pressure selling and the improper generation of leads.
 - (e) Involvement in businesses about which there have been a significant number of complaints.
 - (f) Lack of transparency and competence.
 - (g) Statements and/or actions that indicate that activities are being or will be carried out that would be in breach of the conduct rules.
 - (h) Involvement in an unsatisfactory application for authorisation

6. These factors apply both to the individuals and the companies concerned. That is –
 - (a) Businesses that score significantly on these factors will be regarded as high risk as will the individuals involved in them, even if the individuals do not score on the indicators.
 - (b) Individuals that score significantly on these factors will be regarded as high risk as will the businesses they are involved in, even if the businesses themselves do not score on the indicators.

Using the risk framework in designing the application form

7. The risk factors have been used in the design of the application form. In particular the form asks for –
 - (a) Details of directors, partners and anyone else capable of having a significant influence on the policy or management of the business.
 - (b) Details of regulatory action against both the business and the individuals involved in it.
 - (c) Details of all claims management businesses in which those involved with an applicant have been involved in the previous five years.

- (d) Self-certification that the business complies with the rules of conduct.

Using the risk framework to make decisions on authorisation

8. To enable the risk factors to be used in the authorisation process a database has been constructed of all known claims management businesses and the individuals involved in them. The database includes evidence of the risk factors identified in paragraph 5. The database has been constructed from –
- (a) Complaints made to MOJ and the Regulator.
 - (b) Press reports.
 - (c) Intelligence provided by interested parties (the nature of the activity being regulated means that there is no shortage of intelligence).
 - (d) A request for relevant information from trading standards services and other sources.
 - (e) Some mystery shopping.
 - (f) An analysis of websites.
 - (g) An analysis of local advertising (there is little unsatisfactory national advertising).
 - (h) Issues raised in the application process.
9. All of the individuals identified on the application form, businesses they have previously been associated with and the applicant itself are checked against –
- (a) The database.
 - (b) Companies House records.
 - (c) The applicant's websites.
 - (d) Any other relevant information.
10. In determining whether to grant authorisation the Regulator considers –
- (a) Whether there are grounds to refuse authorisation because of information about the applicant.
 - (b) Whether there are grounds to refuse authorisation because of information about the directors, partners or other people involved with the applicant.
 - (c) Whether there are grounds to refuse authorisation because incorrect information was given on the application form. Where this has been done deliberately or recklessly, and the incorrect information related to the risk factors, there are strong grounds for refusing authorisation. In such cases the applicant and everyone associated with it are automatically regarded as high or medium risk in respect of future

applications for authorisation or ongoing monitoring and compliance work. They are also identified as businesses and individuals who may intend to supply regulated claims management services without authorisation.

Using the risk framework in monitoring and compliance work

11. All authorised businesses will carry a risk assessment. Provisionally, there will be a simple categorisation –

- (a) Low risk – no adverse information.
- (b) Medium risk – some adverse information.
- (c) High risk – significant adverse information.

No business is being authorised and given a high risk assessment. Most will be categorised as low risk. Those categorised as medium risk will have exhibited some of the risk factors identified in paragraph 7, e.g. one director involved in a large number of businesses or several complaints about the applicant, or as a result of the application process.

12. Once a business has been authorised the risk categorisation may change as a result of factors such as the involvement of a person who is considered high risk, action taken by another regulator or the Police against someone involved in the business, complaints made to the Regulator or the results of monitoring exercises. Any business that is considered to be high risk will automatically be subject to regulatory action such as requesting information or a full-scale inspection.

13. The Regulator will use his powers to request information relevant to the risk factors. Such a request may be made to all authorised businesses, all businesses considered medium risk or all businesses undertaking a particular activity or working in a particular sector. A request could be for information such as –

- (a) All marketing material and contracts (most relevant for endowment and criminal injuries compensation cases).
- (b) All local advertising.
- (c) Complaints procedures and details of complaints.
- (d) Details of arrangements for client accounts.
- (e) Details of exempt introducers and the volume of business introduced by them.
- (f) Call centre scripts.
- (g) Annual accounts – in the case of companies.
- (h) Arrangements for ensuring that staff are competent and suitably trained.

14. Where there are significant grounds for concern about a business then either it can be asked to attend an interview with the MCU or an inspection of the business can be ordered.

Using the risk framework to enforce the prohibition of operating without authorisation

15. The risk factors identified in paragraph 4 are relevant to people and businesses that may contravene the prohibition on operating without authorisation. There are two significant additional factors that are relevant here, that is businesses that began the application process but did not complete it and businesses known to have been providing claims management services but which have not begun the application process. These people and businesses have been identified and informed of the need to seek authorisation if they continue to provide regulated services after 23 April.
16. The Regulator has a programme to monitor both the businesses and people that have been identified and also activity that contravenes the prohibition. The strategy for identifying and dealing with businesses that operate without authorisation has four prongs –
- (a) Monitoring market activity, including seeking reports from other market participants.
 - (b) Encouraging those who receive claims not to deal with unauthorised businesses, and to pass details of such businesses on to the MCU.
 - (c) Discouraging solicitors from accepting cases from unauthorised businesses. Partly this needs to be done through the Law Society/SRA. The Law Society issued a Practice Statement on 20 February 2007 which included the following: “You should check that, where appropriate, any introducer is authorised or exempt under the new regulatory regime. If you don’t, you may be aiding and abetting an offence – and such conduct could involve disciplinary sanctions against you.” The Regulator will collect hard evidence on solicitors accepting cases from businesses that are operating without authorisation, and present this to the SRA in a way that the SRA can use.
 - (d) Prosecution of those acting without authorisation. The maximum impact will be obtained the sooner the prosecution is after the offence date. The cases need to be carefully chosen on the basis of –
 - Likelihood of success.
 - The implication of one or more solicitor practices.
 - The extent to which other businesses trading illegally would be impacted.

Review

17. This framework will be reviewed for a second time when there is sufficient experience of both monitoring and compliance work and enforcement work. This review will begin in July 2007.