



Ministry of **JUSTICE**

Claims Management Services Regulation

Marketing and Advertising Claims Management Services

Guidance Note 2007

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Marketing and Advertising Claims Management Services Guidance Note

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Claims Management Services Regulation

Marketing and Advertising Claims Management Services Guidance Note

Introduction

1. This Guidance Note provides information to help claims management businesses comply with the Rules of Conduct on advertising and marketing and general legal requirements. It does not seek to extend the rules, to introduce new rules or to define best practice.

Executive summary

2.
 - Use of the expression “no win no fee” must in accordance with the CAP Help Note.
 - Websites are deemed to be advertising and must not include inaccurate or misleading statements.
 - Websites must comply with the Electronic Commerce Regulations and therefore must include the name of the business and its geographic address.
 - Once authorised a business must include on its website the statement that it is “regulated by the Ministry of Justice in respect of regulated claims management activities” and it must indicate that its registration is recorded on the website www.claimsregulation.gov.uk.
 - Claims management businesses that are also companies must include on their websites their name, registered office address and registration number.
 - Cold calling in person, which is prohibited, includes any face to face contact initiated by the claims management business.
 - Any business passed on to solicitors must be acquired in accordance with the rules governing solicitors’ conduct which, among other things, prohibit cold calling members of the public either in person or by telephone and require a referral fee to be disclosed by the referrer. The referrer must do nothing which compromises the solicitor’s duty to act independently in the client’s best interests.
 - The rules on advertising and marketing are monitored through intelligence information, website surveillance and mystery shopping.

The requirements in the Rules of Conduct

3. The relevant Rules of Conduct are set out below:

2. All advertising, marketing and other soliciting of business must conform to the relevant code –

The British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code)

The BCAP Television Advertising Standards Code

The BCAP Radio Advertising Standards code

The BCAP Code for Text Services.

These codes are accessible at www.cap.org.uk/cap/codes/.

For the purposes of this rule a business's website shall be deemed to constitute advertising, and must comply with the CAP Code.

3. A business must not engage in high pressure selling.

4. Cold calling in person is prohibited. Any other cold calling (by telephone, e-mail, fax or text) shall be in accordance with the Direct Marketing Association's Direct Marketing Code of Practice.

5. Business must not be solicited in any way, including leaflets and advertising, in medical facilities or public buildings without the approval of the management of the facility or building.

6. In soliciting business through advertising, marketing and other means a business must –

a) Clearly identify the name of the advertiser.

b) Not offer an immediate cash payment or a similar benefit as an inducement for making a claim.

c) Not promote the idea that it is appropriate that compensation may be used in a way that is not consistent with the cause of the claim.

d) Not imply that the business is approved by the Government or is connected with any government agency or any regulator. (If a business wishes to mention in advertising and marketing material that it is authorised it may use only the following words which must be used in their entirety: "Regulated by the Ministry of Justice in respect of regulated claims management activities".) [The original wording in the Rules referred to the Department for Constitutional Affairs; this has been amended.]

7. Use of the expression "no win no fee" must be in accordance with the CAP HelpNote on "No Win No Fee claims".

8. Where business is introduced to a solicitor, the business must not act in a way that puts the solicitor in breach of the rules governing solicitors' conduct.

9. A business must seek to ensure that any publicity for its services issued by a third party and which is intended to solicit business for it complies with these rules.

Use of the expression “no win no fee”

4. The expression “no win no fee” must not be used in ways that do not meet the requirements of the CAP Help Note on “no win no fee” claims. The full text of the Help Note is available at <http://www.cap.org.uk/cap/search/search.htm?xsearch=no%20win%20no%20fee>, A copy is appended to this Guidance Note. In brief, it is considered that “no win, no fee” is potentially misleading because consumers may infer it to mean “no win, no cost”. The term is not outlawed, but must be qualified if consumers may be liable to pay costs in some circumstances. The Help Note sets out some examples of what sort of qualifying statements could be made in different circumstances. Where there is no liability to pay additional costs under any circumstances, no qualification is needed.

Websites are subject to rules on advertising

5. Under paragraph 2 of the Rules of Conduct, websites are deemed to be advertising and must comply with the CAP Code. This is different from the position applying to businesses generally. Websites are reviewed as part of the application process and will be regularly monitored. Many websites, in particular those of companies dealing with endowment mis-selling, have breached the CAP Code by making statements which were untrue. Problems have included –
 - a) Exaggerating the complexity of claiming compensation directly.
 - b) Exaggerating the proportion of cases that fail when people claim directly. The ABI, in a press release dated 11 December 2006, said: “71% of complaints made direct so far in 2006 were upheld, compared to only 51% received through a CMC.” Any company that makes statements that imply a higher failure rate of claims made directly has to be able to justify them.
 - c) Claiming that the business is regulated by the Claims Standards Council (it is of course in order to state that a company is a member of the Council).
 - d) Exaggerating the qualifications of staff.
 - e) Exaggerating the size of the business in absolute terms or in relation to others.
 - f) Misleading comparisons with other claims management companies in respect of charges.

Rules governing websites generally

6. The Electronic Commerce (EC Directive) Regulations 2002 provide that the websites of businesses offering a service must include -
 - a) The name of the business.
 - b) The geographic address at which the business is established (PO box numbers are permitted only in conjunction with an actual address).

- c) The details of the business including an electronic address.
7. The Regulations have specific requirements in respect of regulated businesses –
- (a) Where the service provider is registered in a trade or similar register available to the public, details of the register in which the service provider is entered and his registration number, or equivalent means of identification in that register.
- (b) Where the provision of the service is subject to an authorisation scheme, the particulars of the relevant supervisory authority.
8. The Rules of Conduct provide that a business must: “Not imply that the business is approved by the Government or is connected with any government agency or any regulator. (If a business wishes to mention in advertising and marketing material that it is authorised it may use only the following words which must be used in their entirety: “Regulated by the Ministry of Justice in respect of regulated claims management activities”).” The original rules referred to the Department for Constitutional Affairs. This Ministry of Justice took over the responsibilities of the Department for Constitutional Affairs on 9 May 2007. Where businesses have used the original wording they are asked to change it as soon as possible but not at the expense, for example, of reprinting documents. It will be in order to refer to Department for Constitutional Affairs until 30 September 2007.
9. Businesses can be identified on the public register that is now on the claims management regulation website so it is not necessary to give a registration number as well.
10. The requirements of para 7 and 8 together can best be met by the following statement on a website –
- ABC is regulated by the Ministry of Justice in respect of regulated claims management activities; its registration is recorded on the website www.claimsregulation.gov.uk.

Additional provisions for companies

11. There are additional requirements for organisations that are limited companies under Regulations made under the Companies Act 2006 which came into effect on 1 January 2007. Companies must also record on their websites and on business letters –
- The company’s full corporate name.
 - The company’s registered office address.
 - The company registration number and country of registration.

Meaning of cold calling in person

12. Client specific rule 4 states that “cold calling in person is prohibited”. There have been a number of questions on what is meant by cold calling in person. The term should need little explanation. Any face to face contact initiated by the claims management businesses is cold calling in person. This includes knocking on doors and approaching people in the street or shopping centres, including what is known as “clipboarding”. It is permissible to have a booth or stand in a shopping centre or exhibition as long as the people manning it do not attempt to make the first contact.

Meaning of high pressure selling

13. Client specific rule 3 states that “A business must not engage in high pressure selling.” Again, the Regulator has been asked to explain what this means, and again the term should be self-explanatory. The following are examples of high pressure selling –
- Persistent attempts to persuade a person who initiated a contact with a claims management business to claim compensation when the person has decided that they do not want to do so.
 - Contacting people at unreasonable hours or in unreasonable circumstances in attempt to pressurise them into agreeing to do something.
 - A threat that cannot be implemented to take legal action.
 - The use of threatening or abusive behaviour.

Compliance with the rules governing solicitors’ conduct

[This section has been drafted in conjunction with the Solicitors Regulation Authority which has confirmed that the wording is in accordance with the rules governing solicitors’ conduct.]

14. Client Specific Rule 8 states that: “Where business is introduced to a solicitor, the business must not act in a way that puts the solicitor in breach of the rules governing solicitors’ conduct.” This means that the referrer must do nothing which compromises the solicitor’s duty to act independently in a client’s best interests. A key provision (Section 2(A) of the Solicitors’ Introduction and Referral Code) is set out below –
- (1) A solicitor must not make any payment to a third party in relation to the introduction of clients to the solicitor, except as permitted below.
 - (2) Solicitors may enter into agreements under this section for referrals of clients with introducers who undertake in such agreements to comply with the terms of this code.
 - (3) A solicitor may make a payment to a third party introducer only where immediately upon receiving the referral and before accepting instructions to act the solicitor provides the client with all relevant information concerning the referral and, in particular, the amount of any payment.
 - (4) The solicitor must also be satisfied that the introducer:
 - (a) has provided the client with all information relevant to the client concerning the referral before the referral took place and, in particular, the amount of any payment;
 - (b) has not acquired the client as a consequence of marketing or publicity or other activities which, if done by a solicitor, would be in breach of any of the Solicitors’ Practice Rules and in particular by “cold calling”; and
 - (c) does not, under the arrangement, influence or constrain the solicitor’s professional judgement in relation to the advice given to the client.
 - (5) If the solicitor has reason to believe that the introducer is breaching terms of the agreement required by this section the solicitor must take all reasonable steps to procure that the breach is remedied. If the introducer persists in breaches the solicitor must terminate the agreement in respect of future referrals.

On 1 July 2007 the current provisions governing solicitors’ conduct will be replaced by the Solicitors’ Code of Conduct. This is issued by the Solicitors Regulation Authority (the independent regulatory arm of the Law Society) and is available at www.sra.org.uk (see in particular Rule 9: Referrals of business). However, the

substance of the key provisions which currently govern solicitors accepting referrals will not be changed.

15. The Solicitors Regulation Authority has issued a warning card to solicitors stating that it is “cracking down on solicitors whose referral arrangements compromise their clients’ interests, and who undermine public confidence in solicitor”. The warning card asks solicitors to ask themselves -
- Do I always explain the nature of any referral arrangements, and disclose any referral fees, to my client at the outset?
 - Am I being up-front with my clients about the nature of these payments? Am I trying to disguise the payments as something they are not e.g. administration or marketing fees?
 - Am I sure that the introducer has also disclosed this information to my client?
 - Do I know how the introducer obtained the client?
 - Is the agreement between the introducer and the client fair and in the client’s best interests, and if it isn’t, am I able to advise my client accordingly?
 - Am I sure that there is nothing in my agreement with the introducer which compromises my independence and/or my ability to act in my client’s best interests, for example:
 - restrictions on my client’s choice of advocate or expert;
 - the introducer, rather than the client, telling me how to deal with my client’s money?
16. More information is available on the following website www.referrals.sra.org.uk.
17. In summary, the provisions governing solicitors’ conduct mean that where business is being referred to a solicitor, directly or through an intermediary, an authorised claims management business must, among other things –
- Not seek to impose conditions on the way the solicitor handles the case that would compromise his independence or his ability to act in his client’s best interests.
 - Not engage in cold calling of any form (eg no unsolicited telephone calls). It is not legitimate to telephone a prospective client simply because they have ticked a box on a general consumer survey.
 - Disclose to the client any referral fee.

Compliance and enforcement

18. With the exception of the requirements in paragraphs 7 – 10 (which clearly are not relevant in the case of a business applying for authorisation) and paragraph 11 (which is a new and as yet little known requirement) the other requirements on advertising have been enforced through the application process; that is businesses have not been authorised unless they are compliant.
19. The Monitoring and Compliance Unit has now begun a programme to check the websites of all authorised businesses for compliance with all legal requirements, including those in paragraphs 7 – 11.
20. Compliance with the rules on cold calling will be enforced through intelligence information, surveillance and mystery shopping.

Appendix - CAP Help Note on “No Win No Fee” Claims

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, contact the BACC www.bacc.org.uk for TV ads or the RACC www.racc.co.uk for radio ads.

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing as far as they relate to the subject discussed. They are based on previous ASA cases and neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

In July 1995 a change to the law allowed lawyers to enter into conditional fee agreements with their clients for the first time. These schemes are commonly referred to as "No Win, No Fee". The description "No Win, No Fee", however, is potentially misleading because consumers may infer it to mean "No Win, No Cost". Under such schemes, the client is usually required to pay disbursements and either take out indemnity insurance or risk having to pay the other side's legal costs in the event of a lost case. The ASA Council has upheld complaints against firms claiming "No Win, No Fee" on the grounds that this implies the client will be liable for no costs whatsoever.

The Council has not ruled that the description cannot be used but that it should be qualified to make clear the client's liability for certain costs. The Copy Advice team has drawn up a list of suitable qualifying statements. Different statements are suggested according to the conditions imposed by the solicitors' firm. An appropriate qualifying statement should be included in any marketing communication claiming "No Win, No Fee", though it can appear as a footnote provided it is asterisked to the "No Win, No Fee" claim.

The qualifying statements below are suggestions only; marketers may wish to use alternative wording or give fuller details of the client's obligations. For example, marketers may specify the cost of the insurance policy or describe disbursements in detail.

Solicitors' Conditions

The firm always absolves the client from the need to pay disbursements and pays for indemnity insurance on the client's behalf

The firm pays for the indemnity insurance on the client's behalf

The firm absolves the client from the need to pay the cost of disbursements but the client has to pay for indemnity insurance

The client is required to pay for indemnity insurance and the cost of disbursements

Indemnity insurance is not compulsory

The firm offers a variety of the above

Suggested qualification

No qualification needed

“Other costs may be payable”

“Subject to insurance cost”

“Subject to insurance. Other costs may be payable”

“Other costs may be payable”

“Other costs may be payable” dependent on circumstances.