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**Department for
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Justice, rights and democracy

Claims Management Services Regulation

**Who needs to be authorised under
the Compensation Act 2006**

Guidance Note

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Claims Management Services Regulation

Who needs to be authorised under the Compensation Act 2006 Guidance note

Introduction

Under the Compensation Act 2006, persons providing a regulated claims management service need to be authorised. The detail of the regulatory regime is set out in a number of orders and rules. This note summarises the key points as a guide for businesses and individuals on whether they need to be authorised and on the authorisation procedures.

The website www.claimsregulation.gov.uk provides comprehensive information on the requirements. Further information can also be obtained by telephoning 0845 450 6858.

Summary

The regulation applies to claims made for compensation in relation to personal injury, criminal injuries compensation, industrial injuries disablement benefit, employment matters, housing disrepair and financial products and services.

Almost any activity in relation to claims, from simply referring claims through to representing clients, is covered.

Some persons are exempted from the need to be authorised. This applies to persons who are already regulated and to certain other categories of persons or organisations including charities, not for profit advice agencies and some trade unions. Small scale introducers, where this is incidental to their main business, do not need to be individually authorised but are subject to the conduct rules.

It will be an offence to operate without authorisation, unless exempted, from 23 April 2007.

Sectors

The Act initially covers claims in six sectors –

- (a) Personal injury, including work-related injury, disease or disability.
- (b) Criminal injuries compensation.
- (c) Industrial injuries disablement benefit.

- (d) Employment.
- (e) Housing disrepair.
- (f) Financial products and services.

Services

Specifically, the following services are covered –

- (a) advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action;
- (b) advising a claimant or potential claimant in relation to his claim or cause of action;
- (c) referring details of a claim or claimant, or a cause of action or potential claimant, to another person, including a person having the right to conduct litigation (but not if it is not undertaken for or in expectation of a fee, gain or reward);
- (d) investigating, or commissioning the investigation of, the circumstances, merits or foundation of a claim, with a view to the use of the results in pursuing the claim;
- (e) representation of a claimant (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representation is made).

Volunteers

A person providing a service in the regulated sectors who is not paid in cash or does not receive any form of reward does not need to be authorised. This applies for example to volunteers or a friend giving advice.

Corporate structures

Each separate corporate body must be individually authorised. The application form asks for details of trading names, but this relates only to trading names of the corporate body for which authorisation is being sought, not to any other separate corporate body within a group or any other structure.

Location of business

The regulation applies to services provided in England and Wales. Businesses based elsewhere in the UK or in other countries will need to be authorised if any of the services listed above take place in England and Wales.

Exemptions

The following are exempt from the need for authorisation -

- (a) Legal practitioners acting in the normal course of practice in a way permitted by professional rules to which the legal practitioner is subject. Where however a legal practitioner has established a separate corporate body, for example to market its services, such a body is not exempt.

- (b) Persons providing services that are regulated activities under the Financial Services and Markets Act or who are exempt from the need to be authorised. This covers insurance companies in particular. The position in respect of brokers and IFAs is covered below.
- (c) Charities and not for profit advice agencies.
- (d) An individual acting otherwise than in the course of business. This includes networks of individuals, operating through a website for example, provided it is not done for reward.
- (e) Trades unions certified as independent subject to compliance with a code of practice.
- (f) Independent complaints reviewers.
- (g) Student unions.
- (h) The Motor Insurers Bureau, the Medical Protection Society and medical defence unions.
- (i) Certain categories of referrers (see below).
- (j) Persons who give or prepare to give evidence. This covers, for example, people retained by claimants, defendants, insurers and solicitors to provide evidence about the causes or nature of a claim. Medical practitioners come into this category.
- (k) Persons, typically loss adjusters, providing services to defendants and who in so doing may be involved in subrogated claims, that is counter claims against the claimant or claims against a third party.

Do insurance brokers and IFAs need to be authorised?

The exemption applies to regulated activities for the purposes of Section 19 of the Financial Services and Markets Act 2000.

In the case of insurance brokers this exemption covers a broker providing a service in respect of a policy that he has arranged. However, it does not cover a broker referring an uninsured personal injury loss to a solicitor or to a claims management company. Where brokers do this they will need to be authorised (unless they qualify to be exempt introducers).

The position is similar for IFAs. If an IFA is reviewing the finances of a client and, as result, makes a claim for compensation on behalf of the client in respect of misselling, then this is exempt as it is regulated under the Financial Services and Markets Act. However, if the IFA is acting as a claims management business itself or if it refers leads to a claims management company then this is not exempt.

Which introducers are exempt?

There are many businesses that refer a small number of cases either to solicitors or claims management businesses. It would be disproportionate for such businesses to be required to be individually authorised. However, it is important that all businesses comply with the rules

of conduct. To deal with this situation the “exempt introducer” status has been introduced. The requirements are set out below –

“Section 4(1) of the Act does not prevent the provision of the regulated claims management service of referring details of potential claims or potential claimants to another person if—

- (a) the person who refers those details (“the introducer”) provides no other regulated claims management service;
- (b) the provision of the service is incidental to the introducer’s main business;
- (c) the details are referred to authorised persons or legal practitioners or firms of legal practitioners;
- (d) the introducer refers such details only to persons of those kinds;
- (e) of the cases that the introducer refers to such persons, he is paid, in money or money’s worth, for no more than 25 cases per calendar quarter; and
- (f) subject to paragraph (3), the persons to which the details are referred take reasonable steps to ensure that the introducer obtains the business in a way consistent with the rules prescribed by the Regulator under paragraph 8 of the Schedule to the Act.

(3) Sub-paragraph (f) does not apply in the case of a referral to a legal practitioner or firm of legal practitioners.”

Where cases are introduced to authorised businesses then under the rules of conduct the authorised business must satisfy itself that the introducer is entitled to be exempt and must ensure that the introducer complies with the rules on advertising, marketing and soliciting business. Where cases are introduced to a solicitor then the Law Society Practice Rules apply.

The exemption is intended for small scale introducers. If a business finds the volume test a constraint then it should seek authorisation. It should be noted that the “25 cases” refers to introductions to all claims management businesses and solicitors. The exemption does not enable an introducer to refer up to 25 cases to each of a number of authorised businesses or solicitors. It may well be the case that some solicitors and claims management businesses will require their introducers to be authorised in their own right anyway.

Sub-category(b) above includes “refer a friend” schemes. However, if a person refers a significant number of “friends” such that it is a business, then the “incidental” test is unlikely to be met.

Authorisation requirements

In order to be authorised a claims management business must complete the application form available on the website www.claimsmanagement.gov.uk. The form can be printed off and completed manually or completed online.

The application form requires details of the applicant, people involved in the management or control of the applicant (directors, partners and other people who have no formal status but

can nevertheless influence the policy or management of the business), details of other claims management businesses in which these people have been involved and the turnover of the business.

The application form also requires self-certification that the applicant complies with the rules of conduct. These cover advertising, marketing and other soliciting of business, contracts with clients and representing clients. Among the requirements of the rules are –

- (a) Cold calling in person is prohibited; other cold calling must be in accordance with industry codes.
- (b) Referral fees paid must be disclosed.
- (c) Certain information must be given to clients before they sign a contract.
- (d) There is a 14 day cooling off period after a contract has been signed.
- (e) Where a contract is cancelled any cancellation fee must be reasonable in the circumstances and reflect work done.
- (f) There must be an internal complaints procedure.
- (g) Where client money is held it must be held in client accounts that meet stipulated standards.

Fees and authorisation procedure

Applications for authorisation must be accompanied by an application fee, which is £400 for a business with turnover under £0.5 million, £600 for a business with turnover of £0.5 - £1 million and £800 for a business with turnover of over £1 million.

The annual authorisation fee is 0.386% of turnover up to £1 million, plus 0.332% of turnover between £1 million and £5 million, plus 0.240% of turnover over £5 million.

There is a minimum fee of £400, and a maximum of £10,000 in the case of businesses that act only as introducers and £25,000 in other cases.

An invoice for the application fee will be sent to the applicant when the decision is made to authorise the applicant. Authorisation is not completed until the annual fee is paid and a Certificate of Authorisation is issued. The business will then be listed on the website.