



Ministry of
JUSTICE

Claims Management Services Regulation

Marketing and Advertising Claims Management Services

Guidance Note

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1. Introduction

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

A Marketing Checklist is included at Appendix 4 which businesses may find useful in checking their current practices against the rules on advertising and marketing.

2. The requirements of the Rules of Conduct

The rules regarding advertising and marketing by authorised claims management businesses are contained in the Client Specific Rules, which are included in the [Conduct of Authorised Persons Rules 2007](#). The Rules can be found on our website under 'Publications', then 'Rules', or can be obtained from the Monitoring and Compliance Unit on **0845 450 6858** or **01283 233309**.

The relevant rules are reproduced below, along with guidance on each rule.

Client Specific Rules, Rule 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.'

The Monitoring and Compliance Unit encounters a number of claims which are commonly made by claims management businesses which may breach the CAP Code. Examples have included –

- a) Businesses exaggerating the complexity of claiming compensation directly.
- b) Businesses exaggerating the proportion of cases that fail when people claim directly. Any business that makes statements that imply a higher failure rate of claims made directly has to be able to justify them.
- c) Falsely claiming that the business is a member of a trade association such as the Claims Standards Council ('CSC') or that it has FSA authorisation.
- d) Exaggerating the qualifications and/ or experience of staff.
- e) Exaggerating the size of the business, or how long it has been trading.
- f) Misleading comparisons with other claims management businesses, for example in respect of charges.
- g) Exaggerating how quickly a client can expect to receive compensation.

Marketing which does not comply with the CAP Code of Practice, or which is misleading to consumers, may breach the requirements of the Consumer Protection from Unfair Trading Regulations 2008 (see Appendix 2).

Note that the Advertising Standards Authority does not consider websites to be advertising that falls under its remit and will not adjudicate on complaints about website content. However, the CAP Copy Advice Team will try to help marketers by giving guidance on websites – for information on the copy advice service see www.cap.org.uk/cap/copy_advice/.

Client Specific Rules, Rule 3

‘A business must not engage in high pressure selling.’

The following are examples of high pressure selling –

- a) Persistent attempts to persuade consumers to claim compensation when they have said that they do not want to.
- b) The use of threatening or abusive behaviour.
- c) Failing to leave a consumer’s home when asked to do so.

High pressure selling may also breach provisions on unfair marketing (see Appendix 2 and Appendix 3).

Client Specific Rules, Rule 4

‘Cold calling in person is prohibited. Any other cold calling (by telephone, email, fax or text) shall be in accordance with the Direct Marketing Association’s Direct Marketing Code of Practice.’

Cold calling in person covers any face to face contact initiated by the claims management business, including knocking on doors or approaching people in the street or shopping centres, for example, the practice known as “clipboarding”. It is permissible to have a booth or stand in a shopping centre or exhibition as long as the people staffing it do not approach members of the public.

Authorised businesses should note that whilst Rule 4 prohibits cold calling in person only, cold calling by telephone is prohibited by Rule 8 where the client will be referred to a solicitor. For example, cold calling by telephone is prohibited for personal injury claims referred to solicitors.

The DMA’s Direct Marketing Code of Practice can be viewed on the DMA website at <http://www.dma.org.uk/content/pro-code.asp>. The following sections are of particular relevance to Rule 4:

- Section 6 Content of Commercial Communications – General Rules
- Section 14 Email Marketing
- Section 15 Fax Marketing
- Section 20 SMS Marketing
- Section 21 Telemarketing

Full compliance with the DMA’s Direct Marketing Code of Practice will ensure that businesses also meet the legal requirements of the Privacy and Electronic Communications (EC Directive) Regulations 2003. Brief notes on these regulations can be found at Appendix 3 to this guidance.

Client Specific Rules, Rule 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.'

Client Specific Rules, Rule 6

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

a) Clearly identify the name of the advertiser.'

The name of your business must be disclosed in all forms of advertising and marketing, including, for example, leaflets and telephone calls.

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

For example, statements such as '£150 immediate cash payment' are prohibited.

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.'

For example, statements such as 'Treat yourself to a holiday' are prohibited.

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")'

For example, you must not say that your business is approved or that your systems are approved, and you must not use the Ministry of Justice logo in any marketing or advertising, including on your website.

NOTE: Claims management businesses that have websites must declare certain details of their authorisation, including their authorisation number, on their websites (see section 3 below). The legal requirements can best be met by using the following statement in full:

'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.'

Client Specific Rules, Rule 7

‘Use of the expression “no win no fee” must be in accordance with the CAP Help Note on “No Win No Fee claims”.’

The term “no win, no fee” is potentially misleading because consumers may infer it to mean “no win, no cost”. The term is not prohibited, but it must be qualified if consumers may be liable to pay costs in some circumstances.

The expression “no win no fee” may only be used in accordance with the requirements of the Committee of Advertising Practice (CAP) ‘Help Note on “No Win No Fee” Claims’ which is available on the CAP website at http://www.cap.org.uk/NR/rdonlyres/712555F5-7744-400B-9D43-CF3AAEB54547/0/No_Win_No_Fee.pdf or by contacting the Monitoring and Compliance Unit on **0845 450 6858** or **01283 233309**.

Where ‘No Win No Fee’ claims are used in a way which is misleading to consumers, they may breach the requirements of the Consumer Protection from Unfair Trading Regulations 2008 (see Appendix 2).

Client Specific Rules, Rule 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.’

The provisions governing solicitors’ conduct are contained in the Solicitors’ Code of Conduct, which is issued by the Solicitors Regulation Authority (the independent regulatory arm of the Law Society). The Code of Conduct is available at <http://www.sra.org.uk/solicitors/code-of-conduct.page>. The following sections are of particular relevance to this rule:

- Rule 7: Publicity, in particular:
 - 7.01** which states that publicity must not be misleading or inaccurate; and,
 - 7.03** which prohibits unsolicited visits or telephone calls to a “member of the public” [(note that “visits” is interpreted widely and includes any approach in person)]
- Rule 9: Referrals of business, in particular:
 - 9.01** which states that solicitors receiving referrals must do nothing which compromises their independence or their ability to act and advise in a client’s best interests;
 - 9.02(c)** which requires solicitors to be satisfied that an introducer has not acquired a client through marketing or publicity which would have breached Rule 7 if conducted by the solicitor; and,
 - 9.02(e)** which requires solicitors to ensure that introducers disclose certain financial information to clients they are referring.

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 face-to-face or telephone cold calling. This means, for example, that if a member of the public has indicated in a general consumer survey that they may have a claim, you can only contact them in person or by telephone if:
 - their response to the questionnaire was not obtained as a result of an unsolicited approach, in person or by telephone, by any party; and,
 - they have explicitly agreed to be contacted about making a claim.
- Disclose to the client any “financial arrangement” between you and the solicitor

Client Specific Rules, Rule 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.’

3. Legal Requirements for Marketing and Advertising

Whilst the particular rules governing advertising and marketing by authorised claims management businesses are contained in the Client Specific Rules, businesses must also comply with all relevant legal requirements. This requirement is reinforced by Rule 5 of the General Rules which are included in the [Conduct of Authorised Persons Rules 2007](#).

Any breach of legal requirements will therefore mean that a business automatically breaches its conditions of authorisation.

The Rules can be found on our website under ‘Publications’, then ‘Rules’, or can be obtained from the Monitoring and Compliance Unit on **0845 450 6858** or **01283 233309**.

General Rules, Rule 5

‘A business shall observe all laws and regulations relevant to its business.’

This rule requires compliance with all relevant legislation. Brief guidance is provided in the appendices on the following legislation which is of particular relevance to marketing and advertising activities:

- The Electronic Commerce (EC Directive) Regulations 2002 (*see Appendix 1*)
- The Companies Act 2006 (*see Appendix 1*)
- The Consumer Protection from Unfair Trading Regulations 2008 (*see Appendix 2*)
- The Privacy and Electronic Communications (EC Directive) Regulations 2003 (*see Appendix 3*)

4. Examples of Common Breaches of the Rules

	Example of Practice	Claims Management Regulation Rules	Other Legal Requirements
1	Cold calling in town centres	Breach of CSR ¹ Rule 4, which prohibits any cold calling in person.	
2	Offering upfront cash payments to prospective clients	Potential breach of CSR Rule 6b, which prohibits immediate cash payments or similar benefits as an inducement for making a claim.	
3	Telemarketing to members of the public to acquire personal injury cases	Breach of CSR Rule 8, which prohibits any practice which puts a solicitor in breach of their professional rules.	
4	Telemarketing to members of the public who have registered with the Telephone Preference Service	Breach of CSR Rule 4, which requires marketing to comply with the DMA Direct Marketing Code of Practice.	Potential breach of Privacy and Electronic Communications Regulations 2003
5	Unqualified use of 'No Win No Fee' claims	Potential breach of CSR Rule 7, which requires this claim to be used in accordance with the CAP Help Note.	
6	Use of testimonials, contrary to CAP guidelines	Breach of CSR Rule 2 which requires all marketing and advertising to comply with the relevant CAP Code.	
7	Exaggeration of financial information in advertising, for example misleading information about the size of settlements obtained for clients	Breach of CSR Rule 2 which requires all marketing and advertising to comply with the relevant CAP Code.	Potential breach of the Consumer Protection from Unfair Trading Regulations 2008
8	Use of the Ministry of Justice logo in marketing, including on websites	Breach of CSR Rule 6, which prohibits a business from implying that it is approved by the Government or is connected with any government agency.	Breach of the Trade Marks Act 1994

¹ CAPR: Claims Management Regulation Conduct of Authorised Persons Rules 2007, Client Specific Rules

	Example of Practice	Claims Management Regulation Rules	Other Legal Requirements
9	Website does not include a geographic address		Breach of the Electronic Commerce (EC Directive) Regulations 2002
10	Website does not include a complaints procedure for the business	Breach of CHR ² Rule 14, which requires businesses to publish details of their internal complaints handling procedures on their website, if they have one.	
11	Website does not include the statement “ <i>regulated by the Ministry of Justice in respect of regulated claims management activities</i> ” and an indication that its registration is recorded on the website www.claimsregulation.gov.uk		Breach of the Electronic Commerce (EC Directive) Regulations 2002
12	Failure by a limited company to disclose the name of the limited company, its registered office address and registration number, on business letters and/ or websites		Breach of regulations under the Companies Act 2006
13	Failure by a sole trader to disclose their identity on websites and/ or business documents, for example, just using a trading name.		Breach of the Business Names Act 1985. (Note that these requirements will be replaced by similar requirements under the Companies Act 2006 in October 2008).

² CHR: Claims Management Regulation Complaints Handling Rules 2007

Appendix 1. Legal Requirements for Websites

The Electronic Commerce (EC Directive) Regulations 2002

Under these regulations, websites 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.
- d. 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.
- e. Where the provision of the service is subject to an authorisation scheme, the particulars of the relevant supervisory authority

The requirements of paragraphs (d) and (e) above 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'.

Limited companies

Regulations made under the Companies Act 2006 require limited companies to disclose certain information on their websites, and on business letters –

- a. The company's full corporate name.
- b. The company's registered office address.
- c. The company registration number and country of registration.

Appendix 2. Misleading Advertising

The Consumer Protection from Unfair Trading Regulations 2008 have replaced previous legislation with new provisions. The effect of the new Regulations is to widen the application of the law from previously tightly defined practices, by introducing a **general duty not to trade unfairly**.

The Regulations cover actions by a trader before, during and after any contract is formed with the consumer. They prohibit the following practices where these have an effect on the decisions that a consumer makes:

- **Misleading actions** (for example, saying your claim service is suitable for a customer when it is not, or overstating the likely claim value)
- **Misleading omissions** (for example, claiming a “success rate” without making it clear that you restrict your clients to those with a good chance of a successful claim)
- **Aggressive practices** (for example, exploiting any misfortune or circumstance which of such gravity that it would impair your client’s judgment, or threatening to sue when you could not legally do so.)

The Regulations also create an outright ban on 31 specific unfair practices. These outlawed practices include, for example:

- Claiming a trader or his service has been approved, endorsed or authorised by a public body (such as the MoJ) when it has not. You should never make such claims about yourself or your service.
- Describing a service as “free” or “without charge” or similar if the consumer has to pay anything other than the unavoidable cost of responding.
- Making persistent and unwanted contact by telephone, fax, e-mail or other remote media.

Further guidance, which includes the list of banned practices, is available on the Office of Fair Trading website at www.offt.gov.uk by searching for “unfair commercial practices”. Then click on the link to [Consumer Protection from Unfair Trading Regulations 2008](#) and download the basic advice to businesses.

You can contact the Monitoring and Compliance Unit or your own local trading standards service for advice on specific practices.

Appendix 3. Guidance on Electronic Marketing

Consumers frequently complain about unsolicited marketing calls and e-mails, finding them intrusive and disturbing. There are controls to protect consumers from such marketing and, if your business uses direct marketing, it is important that you understand these controls.

The Privacy and Electronic Communications (EC Directive) Regulations 2003 set out the rules that govern electronic marketing, whilst the Data Protection Act 1998 governs marketing by post.

In brief, the requirements for electronic marketing are:

- **Telesales calls ie. 'live' marketing calls and automated calls:**

You must not make unsolicited direct marketing calls to:

- Anyone who has already asked you not to call them; **or**
- Anyone registered on the Telephone Preference Service (TPS), unless they have notified you that, for the time being, they do not object to receiving such calls.

You, or a subcontractor acting on your behalf, must identify your business when making a telesales call and, if asked, you must provide a valid business address or Freephone telephone number at which you can be contacted.

- **Marketing faxes**

You must not send unsolicited direct marketing faxes to people who have already asked you not to fax, or to anyone registered on the Fax Preference Service (FPS)

- **Electronic marketing such as emails or SMS (text messages)**

You must not contact individuals by email or text unless:

- You have their prior consent; **or**
- You have obtained their details in the course of a sale or negotiations of a sale, you only contact them about your own similar products or services and you give them the opportunity to opt out of receiving further marketing messages each time.

Information Commissioner's Office

The Information Commissioner's Office ('ICO') is responsible for the regulations and is also responsible for the Data Protection Act 1998, which you will need to comply with if you are processing personal data for marketing purposes, eg. if you know the name of the person who will receive your message.

Detailed information on the relevant requirements is available on the ICO website at www.ico.gov.uk/for_organisations.aspx and businesses using electronic direct marketing to market claims management services are strongly advised to ensure that they understand these requirements and that they, and their staff, comply with them.

Appendix 4. Marketing Checklist

May I do the following?

• Use the MoJ logo	✘	You must not use the logo in any marketing material, including websites
• Offer immediate cash payment or gift to a potential client	✘	You must not offer immediate cash payments or benefits as an inducement for making a claim
• Use “No Win No Fee”	✓	Only where the client will never incur charges after beginning a claim
• State I am “regulated by the MoJ”	✓	You must only use the phrase “ <i>Regulated by the Ministry of Justice in respect of regulated claims management activities</i> ”
• State I am “approved by the MoJ” or “authorised by the MoJ”	✘	You must not imply you are approved by, or connected to, a government agency or regulator or use the MoJ logo
• State I am a member of the Claims Standards Council	✓	Only if you are a member
Advertise:		
• Our success rate	✓	Only where you are able to justify these claims
• Experience of our staff	✓	
• Total settlements		You must not make exaggerated claims

Websites must have the following compulsory information:

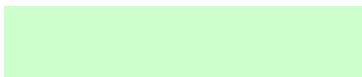
• Legal name		The name should be as it appears on your certificate
• Geographical address		
• Email address	✓	
• That registration is recorded on the Claims Regulation website	✓	
• Business is regulated		Using the “ <i>Regulated by ...</i> ” phrase detailed above
• Complaints Handling Procedure	✓	
<hr/>		
And for companies only		Additional website requirements for limited companies only
• Registered office address	✓	
• Registration number	✓	
• Country of registration		

Cold Calling

• in person	✘	Prohibited by the Rules
• telephone	✔	<u>Only</u> if claims are not referred to a solicitor. Calls must comply with DMA Code of Practice
• If the person has stated they do not want to receive calls	✘	
• TPS Registered	✘	Unless they have opted in
• by fax, email & SMS text	✔	With the same restrictions as telephone marketing above

For more detailed guidance, please refer to the ‘Advertising and Marketing Claims Management Services Guidance’ available on the website www.claimsregulation.gov.uk or contact the Monitoring and Compliance Unit on 0845 450 6858 or 01283 233309 or by email at info@claimsregulation.gov.uk.

Key:



Permitted or required in claims management marketing



Prohibited in claims management marketing



Permissible in claims management marketing only in specific circumstances