



Ministry of **JUSTICE**

Claims Management Services Regulation

Completing the Application Form Guidance Note

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CONTENTS

Introduction	3
Do you need to be authorised?	3
Information you need to complete the application form	4
Timing	5
Name of Applicant	5
2.1 and 2.2 Business name and trading names	5
2.6 Website addresses	5
2.7 Contact person	5
2.13 Principal activity of the business	5
2.14 Is the business authorised by the Financial Services Authority?	6
2.19 Significant influence	6
2.21 Previous involvement in claims management activities	6
2.22 Sectors the business intends to operate in	6
2.24 Exempt introducers	7
Section 3 Self certification statement	7
3.4 Complaints procedures	7
3.5 Client accounts	7
3.9 and 3.12 Advertising	8
4.1 Application Fee	8



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Introduction

These notes are designed to help you complete the application form. They do not add any additional requirements and are not a statement of the law. Notes have been included only for a small number of questions where some applicants may need additional information.

If, after reading these notes, you are still unclear about what is required please telephone the MoJ's Monitoring and Compliance Unit on 01283 233 309 or 0845 450 6858.

Do you need to be authorised?

You need to be authorised if you provide any of the following services –

- (a) advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action;
- (b) advising persons on the merits or handling of causes of action;
- (c) making representations on behalf of claimants;
- (d) referring details of potential claims or potential claimants to other persons, including persons having the right to conduct litigation;
- (e) investigating, or commissioning the investigation of, the circumstances of, the merits of, or the foundations for, potential claims, with a view to the use of the results in pursuing the claim.

For the following types of claim –

- (a) personal injuries;
- (b) criminal injuries compensation;
- (c) Industrial Injuries Disablement Benefit;
- (d) employment;
- (e) housing disrepair;
- (f) financial products and services.

Precise definitions of these activities and types of claim are set out in the Compensation (Regulated Claims Management Services) Order 2006.

Some types of organisation are exempted –

- (a) legal practitioners;
- (b) independent trade unions;
- (c) insurance companies, insurance brokers and IFAs providing services regulated under the Financial Services and Markets Act 2000;
- (d) charities;
- (e) advice agencies providing a service free of charge.

Small scale introducers are exempt from the need to be authorised, although they need to comply with the rules on advertising, marketing and soliciting business. To be exempt all the following tests must be met –

- (a) 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 no more than 25 cases per calendar quarter for which he receives a payment or other financial benefit;
- (e) 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 on advertising, marketing and soliciting business or the equivalent rules in the case of a legal practitioner or firm of legal practitioners.

Precise definitions of these exemptions are set out in the Compensation (Exemptions) Order 2007. Further guidance is also available in the Guidance Note "Who needs to be authorised under the Compensation Act 2006".

Information you need to complete the application form

You need to have certain information in order to complete the application form. If you wish to complete the application form on-line you will first have to create a username and password. You will then have the option of printing a blank form which you may find will assist you in completing the on-line application process, as you will be aware of the information requirements. These include –

- (a) contact details for you and the business;
- (b) details of the directors, partners and other people able to exert an influence over the policy or management of the business;
- (c) details of all other claims management businesses in which these people have been involved for the past five years;
- (d) the turnover of your business in the regulated sectors in the year to 30 September 2007.

The application form also asks you to complete a detailed statement certifying that you comply with the rules of conduct. You should therefore ensure that you do so before you attempt to complete the form.

Timing

It is an offence to provide the regulated services without authorisation. You must apply for authorisation as soon as you know that you need to be authorised. Once your application has been submitted, you will receive an acknowledgement letter confirming receipt of your application, if you have not received an acknowledgement you should contact the Monitoring and Compliance Unit. The processing time for each application varies depending on the complexity of the application and the organisation. The legislation provides that an application for authorisation must be decided within three months, Internal targets are to process within 20 working days. The Regulator may require further information or clarification in relation to certain applications. It is important that the requested information is provided as soon as possible to avoid any delays in the processing of the application. The period between a request for further information and its provision does not count.

Name of applicant

This refers to the legal name of the business seeking authorisation. In the case of a sole proprietor this must be the full name of the individual, not the trading name he uses; in the case of a corporate body it must be the name of that body. In the case of a partnership it may be the partnership name or the names of the partners.

2.1 and 2.2 Business name and trading names

An application covers an individual or a single company or partnership. It does not cover groups of companies. Separate applications must be made for each separate corporate body.

Where trading names are used in addition to the name of the applicant they must be trading names of the business making the application, not those of a separate legal entity.

Authorisation to provide regulated claims management services under a certain business or trading name does not imply acceptance of the same name for other registration purposes, for example, Companies House (registration of company name - www.companieshouse.gov.uk), the Office of Fair Trading (use on consumer credit licences - www.of.gov.uk), and the Intellectual Property Office (trade marks registration - www.ip.gov.uk). You must ensure that you have consulted the relevant guidance before applying for authorisation.

Business names that include certain words or expressions require the approval of the Secretary of State, or their use is covered by other legislation and is therefore prohibited. You should refer to the guidance provided by Companies House (<http://www.companieshouse.gov.uk/about/pdf/gbf3.pdf>) regarding your business name and seek further advice where necessary before applying for authorisation under the Compensation Act 2006.

2.6 Website addresses

The names of all websites used, or planned to be used, by the applicant including any for other trading names must be recorded.

2.7 Contact person

The person named here must be the chief executive of the business. If it is the same person as the one completing the form on-line, these fields will be automatically populated.

2.13 Principal activity of the business

This question is to enable the Regulator to know the primary purpose of the business, that is whether it a specialist claims management business, an insurance broker, a bodyshop or any other type of business. The question relates to the business seeking authorisation, not to a wider group of which it may be part.

The expression “accident management” means those businesses whose primary business is the management of motor accident claims of which personal injury claims are a part.

If the business does not fit any of the categories listed please tick the “other” box and indicate the nature of the business.

2.14 Is the business authorised by the Financial Services Authority?

This relates to the business seeking authorisation not to a related company.

Section 2.21 Spent convictions

This section requires you to declare any relevant convictions on your application, including perjury, fraud, theft, false accounting or other dishonesty or an offence relating to companies, financial services, consumer credit or consumer protection. The Regulator does not take spent convictions into account when considering applications for authorisation and you do not need to declare these. If you are in doubt about whether your conviction is spent or not, provide the details (offence, date of conviction and sentence) when completing the form. The Regulator will then determine if the conviction is spent or not, and will not take any spent convictions into consideration.

2.19 Significant influence

This question relates to a person who has a significant influence over the business but is not the proprietor or a director or partner. This might apply to a situation where a company had just one director but in practice key decisions were influenced by another person, such as the wife or husband or another close relation of the director, a business associate of the director or somebody who has helped to finance the business.

2.21 Previous involvement in claims management activities

This question requires details of the involvement of the sole proprietor, the partners (in the case of a partnership), the directors (in the case of a company) and any other person able to have a significant influence over the policy or management of the business in any other claims management activity in the past five years. This should include for each such person the name of the business, the nature of the involvement and whether the business was placed into receivership or liquidation or ceased trading.

2.22 Sectors the business intends to operate in

This question has two different purposes.

In order to operate in the listed sectors the appropriate “yes” box must be ticked. Please do not tick the box unless you have a current intention to operate in the sector. If you subsequently decide that you want to operate in sectors other than those you have ticked then you simply need to notify MoJ.

The total turnover figure you give will be used to calculate your fee for the period to 28 February 2009. If you operate in more than one of the sectors then an approximate breakdown of the total turnover figure is all that is needed.

The form asks for figures for the year to 30 September 2007 so that all authorisation fees are calculated on the same basis.

If your business was not operating for the whole of the 12 months to 30 September 2007 then give your forecast of your total turnover in the year to 30 September 2008. Your fee will be based on this figure, but subject to an upwards or downwards adjustment at the end of the year.

The way in which turnover is calculated is laid down in the **Fees Determination 2008**. The relevant extract is reproduced below.

‘Turnover’ means the sum of the amounts paid to, or received by, an authorised business in respect of regulated claims management services, including:

- a) charges, commission, the share of any compensation, fees and subscriptions, and*
- b) the monetary value of any services received by the authorised business where it makes no payment for those services or where the payment received is worth less than the monetary value of the services, and;*
- c) the monetary value of any advertising in respect of the authorised business that it has not paid for out of funds referred to in sub-paragraphs (a) and (b);*

‘Annual turnover’ means

- a) the applicant’s turnover for the 12 months to 30 September 2007 ; or
- b) if the authorised business did not trade for a full 12 months to 30 September 2007—

(i) where the application is made on or before 30 September 2008, the figure the applicant expects to be the turnover of the authorised business for the 12 months to 30 September 2008; or

(ii) if the application is made after 30 September 2008, the turnover for that period.

Reasonable estimates should be made where the nature of the business is such that exact figures are not available. For example, a garage may refer complete accident management cases to an accident management company; the referral fee may not separately identify payments in respect of personal injury. You should in these circumstance make the best estimate possible of the amount of referral fees that can be attributed to the personal injury element of the cases. Similarly, where services are provided that in practice are in exchange for referrals a reasonable estimate of the monetary value must be made.

In declaring income on its application form you certify that the information given is correct. The Regulator reserves the right to request confirmation of the figures from the applicant’s auditor. If the applicant does not have an auditor, the Regulator may require the applicant to produce a report prepared by a suitably qualified accountant on the accuracy of the figures.

2.24 Exempt introducers

The legislation provides for an exemption from the need to be authorised for small scale introducers. The definition of an exempt introducer is set out earlier in this paper.

If you intend to operate through exempt introducers please give a brief description of the number of introducers, the sort of business that they are and the nature of the relationship with your business. The description need be no more than something like: “The business obtains referrals from around 50 garages and 5 physiotherapists. It pays a referral fee for each introduction. It also offers an open “refer a friend” scheme for which a fee of £50 is paid.”

Section 3 Self certification statement

This section requires you to confirm that you intend to comply with the Rules of Conduct that apply to your business. If you answer “no” to any of the questions on conduct (as opposed to those asking if you undertake a particular activity) it will generally not be possible to authorise your business.

You must be able to demonstrate that you comply with each of the Rules relevant to you; the Regulator reserves the right to request evidence that you do so.

3.4 Complaints procedures

There are separate Complaints Handling Rules. These are available on the website.

3.5 Client accounts

There are separate Client Accounts Rules. These are available on the website.

3.9 and 3.12 Advertising

You should note that your business’s websites are deemed to be advertising. Many existing websites do not comply with the CAP code, in particular by not giving the name of the advertiser, improper use of the expression “no win no fee”, making false claims, for example about the ease of claiming or the chances of doing better than seeking compensation directly, and even implying a link with a government agency.

4.1 Application Fee

The application fee, based on your turnover, is non-refundable, whether your application is successful, unsuccessful or withdrawn. If your application is successful you will be invoiced for an annual fee which is also based on your turnover, and must be paid before a certificate of authorisation can be issued. The annual fee must be paid every year. The fee scale is set out in the Fees Determination 2008