



Ministry of **JUSTICE**

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, which are all available on the website, www.claimsregulation.gov.uk. This note summarises the key points as a guide for businesses and individuals to help determine whether they need to be authorised and on the authorisation procedures.

Summary

Regulation applies to claims made for compensation in relation to personal injury, criminal injuries compensation, Industrial Injuries Disablement Benefit, employment, housing disrepair and financial products and services.

- Almost any activity in relation to claims, from simply referring claims through to representing clients, is covered. The aim is to target those who provide the regulated services for commercial gain.
- Some persons are exempted from the need to be authorised. This applies to those who are already regulated and to certain other categories of persons or organisations including charities, not for profit advice agencies and trade unions certified as independent by the Certification Officer.
- Small scale 'exempt introducers' i.e. those who refer no more than 25 cases per calendar quarter, where this is incidental to their main business and do not carry out any other regulated claims management activity are exempt from the requirement to be authorised. .

It is an offence to provide the regulated services unless authorised or exempt.

Sectors

The Act 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; and
- (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 (for example, limited company, sole trader or limited liability partnership) 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.

Example: Jim Bloggs is a director of a limited company called Thames Claims (UK) Ltd in the personal injury sector, which has three trading names, Thames Claims, Thames Personal Injury Helpline and Kingston Claims For You. Jim also provides employment advice outside of the Thames Claims (UK) Ltd business as a sole trader under the name of Kingston Employment Services. Both Thames Claims (UK) Ltd and Jim Bloggs in his own right need to be authorised to provide claims management services.

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. For example, some authorised businesses providing services in England and Wales are based in Scotland, Poland and Spain.

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 claims management services that are already regulated activities under the Financial Services and Markets Act or who are exempt from the need to be authorised under that Act. This includes insurance companies.
- (c) Charities and not for profit advice agencies (for example, the Citizens Advice Bureau).
- (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) Trade unions certified as independent, subject to compliance with a code of practice (available on the website).
- (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, known as exempt introducers (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 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 need to be authorised (unless they qualify to be exempt introducers).

Which introducers/referrers 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 Conduct Rules. To deal with this situation, the “exempt introducer” status has been introduced. The requirements are set out in detail in the Compensation (Exemptions) Order 2007 but, in practice, applies as follows –

A business may refer claims and will not be required to seek authorisation where;

- they provide no other regulated claims management activity, including advertising or seeking out persons who may have a cause for a claim, or advising on a potential claim; and
- acquiring the case for referral is incidental¹ to the introducer’s main business; and
- the referral is **only** made to an authorised business or legal practitioner; and
- the business is paid for no more than 25 referrals per calendar quarter.

The business must meet each one of the above criteria to be deemed an exempt introducer. Additionally, the authorised business or legal practitioner receiving these referrals must take steps to ensure that the introducer has obtained the referrals in accordance with the Conduct of Authorised Persons Rules 2007.

It is important to note that **all of these tests must be met**. Examples where all the tests are not met include –

- (a) A person running a post office refers personal injury cases to a solicitor (referring personal injury cases is not incidental to running a post office; a separate claims management business is being run).
- (b) A person advertises for personal injury business and passes under 25 cases a quarter on to solicitors (advertising is a regulated claims management service and so referring cases is not the only service provided).
- (c) A person refers 50 cases a quarter to solicitors but no more than 25 to any one practice (the limit is on the **total** number of referrals not the number passed to any one solicitor or authorised business).

Where cases are introduced to authorised businesses, then under the Conduct Rules 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

¹ ‘Incidental’ means that the claim must arise as a result or consequence of the business being carried out by the introducer, not a separate feature of the business – see examples below.

business. Where cases are introduced to a solicitor then the rules set out by the Solicitors Regulation Authority apply.

The exemption is intended for small scale introducers. If a business finds the volume test a constraint then it should seek authorisation. 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.

Introducers acting as agents for a business

Where introducers are in effect agents of the business, then if there is a proper agency contract they are covered by the business's authorisation. For example, where a claims management business employs agents to market the business in obtaining work or representing the business in dealing with clients, then the agents will not require authorisation. In doing so, the agent would use the authorised business's name, branding etc. in their dealings and the client would be contracting with the authorised business.

Purchasing advertising space, for example, in a shop, does not necessarily mean that the shop has to obtain authorisation, because the advertisement should say who the consumer should contact. If the shop gathers the claim information and refers the details on, the owner will need to check if they fall under the exemptions or need to be authorised.

Authorisation requirements

To become authorised a person providing a regulated claims management service must complete the application form available on the website www.claimsregulation.gov.uk. The form can be completed by hand or online.

The application form requires details of the applicant, and people involved in the management or control of the applicant business. This will include directors, partners, the secretary in the case of a non-independent trade union, and any other people who have no formal status but can nevertheless influence the policy or management of the business. The form also requires details of other claims management businesses in which any of these people have been involved and the turnover of the business.

The application form also requires self-certification that the applicant will comply with the Conduct Rules (copies available on the website). 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) Where business is referred to a solicitor then the business must be acquired and **referred to the solicitor in accordance with the Solicitors' Practice Rules**.
- (c) **Referral fees** paid must be **disclosed**.
- (d) **Certain information must be given to clients** before they sign a contract.
- (e) There is a **14 day cooling off period** after a contract has been signed.

- (f) Where a contract is cancelled any **cancellation fee must be reasonable** in the circumstances and reflect work done.
- (g) There must be an **internal complaints procedure**.
- (h) Where **client money** is held it **must be held in client accounts** that meet stipulated standards.
- (i) Where a business **represents clients in the personal injury sector**, the business must hold **professional indemnity insurance**.

Fees and authorisation procedure

Applicants are required to send a one-off fee with the application. The minimum fee is currently £400. Businesses with turnovers in excess of £500,000 pay a higher fee.

Where an application is approved, an annual regulation fee is due. The level of this fee is also dependant upon turnover, and calculated on a pro-rata basis. An annual fee is due each for each regulation year.

For full details of the fees payable, applicants should refer to the Fees Determination 2008².

An invoice for the annual fee will be sent to the applicant when the decision is made to authorise the applicant, and then when it becomes due each year. The fee must be paid within one month of the invoice being issued. Authorisation is not completed until the annual fee is paid and a Certificate of Authorisation is issued. The business will then be added to the list of authorised persons on the website.

Further information

More information can be found by reading the Conduct Rules and legislation and guidance on the website, www.claimsregulation.gov.uk. If you require further assistance on who needs to be authorised, contact the Monitoring and Compliance Unit on 0845 450 6858 or 01283 233 309. You can also email on info@claimsregulation.gov.uk or fax 0845 450 6866 or 01283 233 335.

² <http://www.claimsregulation.gov.uk/userfiles/file/Fees%20determination%20-%20Final%2012%20Dec.pdf>