



## **THE CLAIMS MANAGEMENT CODE (“the Code”)**

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### **1 INTRODUCTION**

The Association of Professional Claims Managers is a trade association representing claims management firms dealing with financial mis-selling claims and aims to increase the professionalism and levels of service provided by regulated claims management companies.

Its objectives are:

1. To promote the highest standards of professionalism within the claims management industry.
2. To assess new applicants' fitness for membership and monitor and assess all members' compliance with the Association's Claims Management Code, on an on-going basis.
3. To provide compliance support and guidance to member firms and in doing so assist them to comply with relevant legislative and regulatory requirements.
4. To represent the views of members to regulatory bodies, government departments, consumer groups and other interested parties.
5. To provide an independent arbitration service to deal with complaints from consumers and other parties about Members.

The Claims Management Code aims to protect consumer interests over and above the protections offered within the law. At the heart of the Code is the requirement to be “honest, fair and transparent” in all dealings with customers.

All Members must comply with the Code and all other relevant regulations, legislations and guidance notes.

Firms wishing to join the Association must demonstrate that they are compliant before being granted membership. This is assessed through external compliance arrangements on behalf of the Association, the results of which are reported to the Membership Committee. Firms will be granted membership if they can demonstrate that they are compliant with the Code and are appropriately authorised by the Ministry of Justice.

Once granted membership of the Association member firms are subject to on-going monitoring to ensure that they are adhering to the Code. This includes an annual compliance audit, mystery shopping and other routine verification checks.

Breaches of the Code will be dealt with by the Disciplinary Committee. Wherever possible, member firms will be given a specified period of time in which to resolve any breaches. However, the Disciplinary Committee ultimately has the power to terminate the membership where a member has failed to adhere to the Code or address breaches in a timely manner.

Consumers have the right to refer any complaints or any concerns about the practices adopted by Members to the Association and the issues will be investigated thoroughly.

The Association can be contacted as follows:

Association of Professional Claims Managers  
Dallam Court  
Dallam Lane  
Warrington  
WA2 7LT

0845 519 1309

[www.apcm.org.uk](http://www.apcm.org.uk)

## **2      PRINCIPLES**

- 2.1. Members must treat their customers fairly and act responsibly.
- 2.2. Members must conduct their business with honesty, fairness and transparency.
- 2.3. Members must implement appropriate systems and controls to ensure that their business operations are conducted in compliance with the Code and relevant regulations and law.
- 2.4. Members must ensure that staff have the appropriate knowledge and skills to perform their roles and their competence is assessed on an on-going basis.

- 2.5. Members must be responsive to complaints, undertaking a fair investigation and taking action to resolve customer concerns.
- 2.6. Members must act responsibly and use their reasonable endeavours to promote the Association and its Code.

### **3 PUBLISHING THE CODE**

- 3.1. All Members must make the Code available to consumers on request and no charge can be made for providing a copy of the Code. Members must make reference to the Code on their website and in their terms of business or pre-contract information.
- 3.2. The Code can be obtained from the APCM website and consumers can also request a printed copy of the Code, free of charge, from the APCM.

### **4 TRAINING AND COMPETENCE**

- 4.1. Members must ensure that appropriate training is provided to staff to equip them with the knowledge and skills to perform their duties effectively. Staff training must include awareness of the Code and the duty to comply with it.
- 4.2. Staff competence should be assessed on a regular basis.
- 4.3. Appropriate records must be retained to evidence staff training and assessment.
- 4.4. Members must ensure that appropriate disciplinary procedures are implemented to deal with significant and deliberate breaches of the Code.

### **5 ADVERTISING, MARKETING AND PROMOTIONAL ACTIVITIES**

- 5.1. Member firms must comply with all relevant legal and regulatory requirements and guidance notes in relation to advertising, marketing and promotions. This includes the Advertising Standards Authority, the Consumer

Protection from Unfair Trading Regulations, Ministry of Justice Guidance Notes, Privacy and Electronic Communications (EC Directive) Regulations and the Data Protection Act.

- 5.2. All promotional material, regardless of the medium used, must be clear, fair and not misleading and specifically identify the Member as the advertiser. It must not omit or distort key information.
- 5.3. Members must not engage in high pressure selling practices or offer an incentive for making a claim.
- 5.4. Members must not undertake any cold calling in person.
- 5.5. Members must ensure that prior approval is obtained prior to promoting their services in public buildings.
- 5.6. Members must ensure that their MoJ regulatory status disclosure is displayed on websites, brochures, leaflets and other printed material.
- 5.7. Members must not undertake marketing activities which could cause itself or a third party to breach its regulatory obligations. This includes solicitors to which the Member refers business.
- 5.8. Members must ensure that all advertising clearly explains the charges that will apply for a successful claim together with the fee charged if the customer withdraws from the agreement as well as any qualifications against the “no win no fee” offer.
- 5.9. Members must ensure that bonus and incentives schemes are monitored to ensure that they do not give rise to inappropriate sales.
- 5.10. Members must publicise their Membership of the Association and the Code by including the APCM logo in their advertising.
- 5.11. Members must ensure that all lead generations activities (whether performed by themselves or a third party) are in compliance with all relevant regulations. This includes controls to ensure that customers have given prior, informed consent to allow their details to be used or passed to a third party as well as consent to receive electronic marketing.

- 5.12. Where Members utilise introducers they must ensure that there is a written contractual agreement in place between the parties. The agreement must make adequate provision for the following:
- the introducer's responsibility to comply with the Member's procedures and this Code;
  - the requirement for the introducer to be authorised, unless he is exempt;
  - the requirement for the introducer to co-operate with the Member in the investigation of any complaints; and
  - the Member's responsibilities for the compliance of the introducer.

## **6 CHARGES**

- 6.1. Member Firms must operate on the basis of a "no win no fee" agreement.
- 6.2. Member Firms must not charge upfront fees for the purpose of assessing a claim, investigating a claim or deciding whether to take on a case.
- 6.3. Members may charge a token commitment fee, as long as it is fully refundable and less than £20. The fee will be deemed to be refundable if it is returned to the customer if the customer cancels, the claim is unsuccessful or if it is deducted from the final fee due as a result of a successful claim.
- 6.4. Members may charge disbursements. These are genuine costs incurred on behalf of the customer, e.g. £10 cost of a subject access request.
- 6.5. Members are not permitted to charge a fee higher than 29% (excluding VAT) of the redress obtained for the Client.

- 6.6. Member firms are permitted to apply a fee where the customer cancels the contract after the 14 day cancellation period. A fixed cancellation fee cannot be charged but must be limited to the Member's actual and reasonable costs incurred to the date of cancellation as a result of progressing the Client's claim.
- 6.7. The cancellation fee cannot be greater than £300.
- 6.8. Members are permitted to charge the full fee where at the time of cancellation, or within the notice period, a reasonable offer has been received from the financial institution.
- 6.9. If at the time of cancellation the Member has not submitted the claim on the Client's behalf no cancellation costs should be charged.
- 6.10. Member firms must not charge additional fees in order to represent the Client to the Financial Ombudsman Service or the Financial Services Compensation Scheme. For example, it is not acceptable to charge a "no win no fee" rate of 20% and then increase this to 25% if it is necessary to refer the claim to the FOS or the FSCS.

## **7 INFORMATION TO BE PROVIDED TO CUSTOMERS**

- 7.1. Members must provide customers with adequate pre-contract information and a copy of their terms of business, in writing, to enable the customer to make a balanced and informed decision about the services being offered.
- 7.2. Pre-contract information and terms of business should be written in a way that is clear, fair and not misleading and does not omit or distort key information.
- 7.3. Pre-contract information and terms and conditions should be made available in alternative formats, upon request, to cater for specific customer needs, for example, Braille, audio format, large print and other languages.

- 7.4. Significant features or terms of the agreement must be brought to the customer's attention prior to entering into the agreement. Such features should not be detailed in the terms of business alone but must be included within the pre-contract information. A significant feature or term would be one which is likely to impact the customer's decision to enter into the agreement, for example, the fee charged following cancellation or the ability to use debit or credit card details to take payment of fees.
- 7.5. Members must take adequate steps to confirm that the customer understands the service being offered prior to entering into an agreement. This includes providing an adequate explanation of the main methods by which redress may be paid.
- 7.6. Members must make reasonable enquiries to determine whether there is a likelihood of the fee exceeding the cash benefits so the customer can make an informed decision about whether to proceed with the claim.
- 7.7. Members must provide further explanation of any areas of which the customer is unsure prior, to proceeding with the agreement.
- 7.8. Members must ensure that customers are provided with a 14 day cooling off period.
- 7.9. Members' terms of business must not require the customer to provide any more than 1 month's notice to cancel the contract after the initial 14 day cancellation period.
- 7.10. The following information must be included within the pre-contract information:
  - The fee that will be charged upon conclusion of a successful claim together with a representative example.
  - The fee that will be charged if the customer withdraws from the agreement after the cancellation period
  - The cancellation period
  - How the customer can exercise the right to cancel



- Complaints Process including the ability to refer a complaint to the Claims Management Regulator
  - An explanation of what services will be provided under the agreement including how far the Member will represent the customer in the claims process
  - The process that will be followed to manage the claim including any documentation that the customer must provide
  - The MoJ regulatory status disclosure
  - An indication of the likely timescales involved in the handling of the claim
  - The customers ability to represent himself or seek other sources of assistance
  - Details of any third party associates involved in the process and any benefit (including non-monetary) paid to them
  - Existence of the APCM Code and the firm's Membership of the Association.
- 7.11. Members must be alert to instances where customers may have specific difficulties, for example, if English is not their first language, if there are reading difficulties, or the customer has a mental capacity difficulty. Members must deal with such cases appropriately and sympathetically and make reasonable adjustments to deliver a service which is accessible for the customer.

## 8. **HANDLING THE CLAIM**

- 8.1. Members must ensure that an explanation of the claims process is provided to customers including the need to read all and retain all claims documentation.
- 8.2. Members must tell customers of the need to provide true and accurate information and provide all documentation that is held in support of the claim.
- 8.3. Members must not encourage customers to provide false, incomplete or misleading information in support of their claim.

- 8.4. Members must take all reasonable steps to investigate whether the customer has a genuine claim. This includes verifying whether a policy is or has been held by the customer prior to submitting a claim to a financial institution. It is not acceptable for Members to submit a claim without first establishing the particulars of the claim. Members are specifically prevented from submitting “enquiry-style” claims which are aimed at circumventing its responsibilities to establish the veracity of a claim.
- 8.5. Members representing a customer must specifically state the particulars of claim to the financial institution and must not issue blanket or template letters which are not based on the individual customer’s circumstances.
- 8.6. Members must take account of the customer’s interests in deciding whether to take a claim to the Financial Ombudsman Service. This includes taking a proportionate approach and not misleading a customer as to the possible success of his claim.
- 8.7. For example, if a complaint has been rejected but there is clear evidence that the complaint has been investigated properly and fully in accordance with the Financial Services Authority’s rules and in line with the principles of the Financial Ombudsman Service then it may be appropriate not to refer the case further to the Financial Ombudsman Service where there is no real prospect of success.
- 8.8. Members must not put their own interests above the interests of their customers and must not put one customer’s interest in conflict with another.
- 8.9. Members must ensure that customers are kept up to date regarding the progress of their claim. This includes notifying a customer of the following matters:

- When a decision has been received by the financial institution (or the FOS)
  - When a claim has been referred to the FOS
  - When redress has been received
  - When there is an unusual or significant delay in the processing of the customer's claim.
  - Where the financial institution requires any additional information in support of the claim.
- 8.10. Members must ensure that correspondence and information requests in connection with the claim are dealt with promptly.
- 8.11. Members firms must check, as far as is reasonably possible, that the redress offered complies with the principles of the Financial Ombudsman Services, Financial Services Authority or Financial Services Compensation Scheme and challenge any discrepancies with the financial institution concerned before recommending an offer to the customer.
- 8.12. Members must ensure that redress offers are passed to the customer in a timely manner and should not be accepted without the prior consent of the customer.

## **9. HANDLING CLIENT MONEY**

- 9.1. Members wishing to hold client money must hold a specially designated client account which is separate to its business account.
- 9.2. Client Money must be handled in accordance with the MoJ Client Account Rules.
- 9.3. Members should ensure that redress to customers is paid in a timely manner and no later than 5 business days following receipt of cleared funds.
- 9.4. Any other monies owing to a customer, for example, a refund, must be made promptly and within 5 business days of becoming due.

- 9.5. Members must make reasonable enquiries to locate and trace a customer where a redress payment is received on his behalf. During this process Members must ensure that the customer's money is segregated and accrues interest until the funds can be transferred to the customer. In the event that the customer cannot be located Members will be permitted to treat the funds as business money after a period of 6 years has elapsed.
- 9.6. Members must notify any breaches of the Account handling rules to the Association within 3 business days of becoming aware of the issue. Notification must be made by email to: [notify@apcm.org.uk](mailto:notify@apcm.org.uk). Members firms must also comply with their obligations under the Client Account Rules to notify the MoJ of a discrepancy in their client accounts without delay.

## **10. CUSTOMER SERVICE AND COMPLAINTS**

- 10.1. Members must comply with the MoJ Complaint Handling rules.
- 10.2. Members must operate complaints procedures which must make adequate provision for the following:
- Identification, receipt and acknowledgement of complaints
  - Full and fair investigation of complaints by a competent person, unconnected with the complaint (wherever possible)
  - Dealing with representatives of the customer.
  - Provision of redress
  - Timescale requirements
  - Referral rights to the Claims Management Regulator
  - Independent arbitration offered by the Association
  - Record-keeping
- 10.3. Members must publish their complaints process on any websites owned or operated by them and make reference to them within their pre-contract information or terms of business.

- 10.4. Members must accept a complaint regardless of the method by which it is made (e.g. letter, telephone, email, fax, in person, by a third party representative) and provide a copy of its complaints process to the customer.
- 10.5. Members must ensure that their staff receive adequate training to enable them to recognise a complaint and refer it to the nominated person with the business.
- 10.6. Members must consider and take account of oral evidence provided by the customer in the investigation of a complaint.
- 10.7. Members must not limit their investigation of a complaint to a purely strict legal interpretation of its responsibilities. Consideration must be given to the fair treatment of the customer and the customer's reasonable expectations of the service he has or should have received.
- 10.8. Where the Member firm offers redress to a customer it must ensure that the offer is appropriate to compensate for any errors, acts or omissions. Payment of redress must be made within 5 business days of receiving confirmation that the customer has accepted the offer.
- 10.9. Members must take account of the causes of complaints and take timely action to address any recurring issues or common problems in order to prevent further customers being at risk.
- 10.10. Members must provide complaints data to the Association on at least an annual basis.

## **11 COLLECTIONS**

- 11.1. Member firms are entitled and expected to recover the fees due to them for work undertaken on the customer's behalf.
- 11.2. Only fees and charges which are included within the Member's terms of business may be applied.

- 11.3. Member firms should give consideration to alternative payment arrangements where the customer cannot pay the fee. This includes taking account of any financial difficulties experienced by the customer and considering a reasonable offer to pay by instalments.
- 11.4. Legal action should only be taken when other options have been considered.
- 11.5. A customer's debit or credit card details must not be used to collect fees without the informed prior consent of the customer.
- 11.6. Prior notice should be provided to the customer before attempting to use the card for payment or partial payment of fees.
- 11.7. Where a Member decides to transfer debts to a Debt Collection Agency it must ensure that the firm holds a Consumer Credit Licence which includes the debt collection category.

## **12 MONITORING AND ENFORCEMENT OF THE CODE**

- 12.1. All Members are required to comply with the Code.
- 12.2. Members must co-operate with any reasonable request from the Association to enable it to monitor and implement this Code.
- 12.3. Members must notify the Association of any material breach of the Code. A breach will be material if it affects a large number of customers or a significant process, has considerable financial implications for the firm or is likely to attract adverse attention, publicity or reputational damage to the Member or the Association.
- 12.4. The Disciplinary Committee will investigate breaches of the Code and determine what appropriate remedial action is required. This may include warning letters, directed action subject to specified timescales and ultimately termination of Membership.
- 12.5. Members must comply with the decisions of the Disciplinary Committee, subject to the right of appeal using the Association's Grievance Process.

- 12.6. The Disciplinary Committee will deal with all consumer complaints referred to it and undertake a thorough and independent investigation of the matters raised. Where the Committee deals with 5 or more complaints for a single Member in a calendar year it reserves the right to charge the Member a fee of £150 for the handling of each subsequent complaint. This is to ensure that the cost of complaints adjudication is not passed onto the majority of Members.
- 12.7. Members must notify the Association within 5 business days of becoming aware of the likelihood of any disciplinary, licensing, authorisation or enforcement being taken by the Ministry of Justice, the Office of Fair Trading, the Information Commissioner or any other regulatory body.
- 12.8. Members must keep the Association informed about the progress and outcome of any such action.
- 12.9. The Association will monitor Members' compliance with the Code. The results of the monitoring will be reported to the Membership Committee.
- 12.10. The Code is supervised and administered by the Code Administrator who is the General Secretary of APCM and is appointed by the Board.
- 12.11. The Code Administrator will:
- Obtain satisfaction that applications for membership are approved only where there is evidence to confirm that applicants comply with the Code.
  - Obtain satisfaction that Members continue to comply with the Code on an on-going basis.
  - Escalate any breaches or non-compliance with the Code to the Disciplinary Committee.
  - Handle any queries or concerns about the Code ensuring that relevant parties are consulted, as appropriate.
  - Review the content of the Code on an annual basis and suggest appropriate amendments in response to legal, regulatory and best practice developments.

- Prepare an Annual Report on the operation of the Code and make this available to the Ministry of Justice, Financial Ombudsman Service, Financial Services Authority, Financial Services Compensation Scheme, Citizens Advice and other interested parties.

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