

Chapter 4

Pre-contractual requirements

4.1 Application and purpose

- 4.1.1 **R** This chapter applies to a *firm* in relation to *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*.
- 4.1.2 **G** This chapter sets out *rules and guidance* on the information that *firms* should provide to *customers* before entering into an agreement that relates to *regulated claims management activity*.

4.2 Pre-contract information and advice

Summary document

4.2.1 **R** A *firm* must provide summary information (see ■ CMCOB 4.2.2R) to a *customer* in accordance with this section before entering into an agreement with the *customer* that relates to *regulated claims management activity*.

4.2.2 **R** The *firm* must provide the summary information:

- (a) in a single page document, which contains only the summary information;
- (b) in a *durable medium*; and
- (c) in plain and intelligible language.

The summary information is:

- (a) a brief description of the services that the *firm* will provide under the agreement (see ■ CMCOB 4.2.8R);
- (b) a brief description of the steps that the *customer* will need to take in respect of the *claim*;
- (c) a brief description of how the *firm* will keep the *customer* updated on the progress of the *claim*;
- (d) a fee illustration or estimate, and explanation (see ■ CMCOB 4.2.5R);
- (e) a brief description of the *customer's* right to cancel the agreement (see ■ CMCOB 2.1.12R(2)(a)); and
- (f) a brief description of:
 - (i) the *customer's* right to terminate the agreement; and
 - (ii) any fees that may be payable by the *customer* to the *firm* if the *customer* terminates the agreement (see ■ CMCOB 2.1.12R(2)(b) and ■ CMCOB 2.1.12R(4));
- (g) if the *claim* is of a sort which may be made by the *customer* to a statutory ombudsman or a statutory compensation scheme, without using the services of the *firm* and without incurring a fee, a statement to the effect that:
 - the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
 - it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they

wish to complain or to the statutory ombudsman or the statutory compensation scheme; and

- (h) if the *firm* is aware that the *person* against whom the *claim* is to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (g)), a statement to the effect that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme.

4.2.3 **G** The *guidance* at ■ CMCOB 3.2.8G also applies in respect of ■ CMCOB 4.2.2R(2)(g).

4.2.4 **G** The requirement at ■ CMCOB 4.2.2R(2)(b) to describe the steps a *customer* will need to take in respect of a *claim* will generally include, but are not limited to, providing documentation relevant to the *claim* (such as background information) and completing the necessary paperwork.

4.2.5 **R**

- (1) The *firm* must explain the basis on which it would calculate its fee, and provide an illustration or estimate of that fee.
- (2) Where the fee would be payable by reference to the amount recovered for the *customer*, the *firm* must provide an illustration of what its fee would be by reference to each of the following amounts recovered for the *customer*:
 - (a) £1,000;
 - (b) £3,000; and
 - (c) £10,000.
- (3) For the purposes of (2), the “amount recovered for the *customer*” means the amount paid or payable by the *person* against or about whom the *claim* would be made, ignoring any set-off or netting against any sum owed or payable by the *customer* to that *person*.
- (4) Where the *firm’s* fee is not ascertainable as in (2), but is instead dependent on factors which cannot be known in advance (for example, where the *firm* charges an hourly rate), the *firm* must provide an estimate calculated by reference to:
 - the fact and circumstances of the *claim*, to the extent that the *firm* has knowledge of them; and
 - the typical number of hours the *firm* would expect to spend on a *claim* of that type.
- (5) The illustration or estimate must be accompanied:
 - where (2) applies, by a statement that the fee illustration is not to be taken as an estimate of the amount likely to be recovered for the *customer*;
 - where (4) applies, an explanation of how the estimate has been calculated; and
 - a statement to the effect that the fee that the *customer* will have to pay may be more than or less than the illustration or estimate.

- 4.2.6 **G**
- (6) Where the fee is a fixed amount, the *firm* may indicate that the fee is a fixed amount and not an estimate.
 - (1) If the *firm* is unable to provide a precise figure under ■ CMCOB 4.2.5R(4), it may provide an estimate in the form of a range. *Firms* should be able to demonstrate the basis for their calculations under ■ CMCOB 4.2.5R(4), and should ensure that their estimates are accurate.
 - (2) Estimates and illustrations should be shown inclusive of VAT. VAT-exclusive fees should only be shown if the *customer* pays no VAT or can recover VAT, or the *firm* is not subject to VAT.

Provision of information and advice

- 4.2.7 **R**
- (1) Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must give the *customer* objective information, in a *durable medium*, to assist the *customer* to reach a decision as to whether to pursue the *claim*.
 - (2) The information given under (1) must include information on:
 - (a) the risks and costs involved in making the *claim*, in particular (where relevant) the possibility of not recovering any money but becoming liable for costs; and
 - (b) the possibility, in the case of legal action, of attending Court and giving evidence.

[Note: CAPR CSR 11a]

- 4.2.8 **R**
- Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must also give the *customer* information, in a *durable medium*, on:
- (1) the services that will be provided under the agreement, including but not limited to:
 - (a) the actions the *firm* will take to ascertain the basis and merits of the *claim*, including (where relevant):
 - (i) the nature of inquiries that the *firm* will make of the *person* about whom the *claim* is to be made and of third parties; and
 - (ii) the procurement of legal, specialist or expert advice;
 - (b) the nature of any advice to be provided by the *firm* including:
 - (i) advice on the merits of the *claim*; and
 - (ii) advice on any particular steps that the *customer* may need to take;
 - (c) the actions the *firm* will take to present and pursue the *claim*;
 - (d) the actions the *firm* will take and the advice it will give when the *claim* is completed (that is, when it is either rejected or successful, whether in whole or in part);
 - (2) the person who will provide those services;

- (3) the terms under which and the conditions on which those services will be provided;
- (4) any charge the *firm* makes;
- (5) whether the *firm's* fees are:
 - (a) calculated on the gross or net amount of the *customer's* damages, compensation or monies in settlement of a *claim*; and
 - (b) a clear explanation of how this will affect the damages, compensation or settlement monies that the *customer* will actually receive;
- (6) any referral fee paid by the *firm* to, or other financial arrangement with, any other *person* in respect of the introduction of the *customer* to the *firm*;
- (7) any steps that the *customer* is likely to have to take in respect of the *claim*;
- (8) any costs that the *customer* may have to pay, in relation to repayments of a loan taken out for the purchase of a legal expenses insurance policy, or any similar purpose, and whether the *customer* may be liable to pay any shortfall in recoverable costs or premiums from the *person* against whom the *claim* is to be made;
- (9) the documentation likely to be needed to pursue the *claim*;
- (10) any relationship between the *firm* and any solicitor or panel of solicitors to whom the *firm* might refer the *customer* or from whom the *firm* might commission services in relation to the *customer*;
- (11) the procedures to follow if the *customer* wishes to make a complaint about the *firm*;
- (12) how the *customer* may cancel or terminate the contract and what the consequences of cancellation and termination are, including the reimbursement of any costs paid during the cancellation period and any charges for work completed after that cancellation period (see ■ CMCOB 2.1.12R);
- (13) the nature and frequency of updates that the *firm* will give the *customer* on the progress of the *claim*; and
- (14) the *Financial Ombudsman Scheme* or any other Ombudsman scheme to which the *firm* is subject.

[Note: in part, CAPR CSR 11(b)–(k)]

4.2.9

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In addition to the matters in ■ CMCOB 4.2.7R and ■ 4.2.8R, the *firm* must also inform the *customer*, in a *durable medium*, that:

- (1) if the *customer* has outstanding liabilities with the *person* against whom the *claim* is to be made:

- (a) any damages, compensation or settlement monies might, in certain circumstances, be off-set against those outstanding liabilities; and
 - (b) the *customer* will, where necessary, need to pay the *firm's* fees from their own funds.
 - (2) in the case of pension related *claims*:
 - (a) it is possible that the *firm's* fee may become payable before the *customer* has access to their pension; and
 - (b) the *customer* will, where necessary need to pay the *firm's* fees from their own funds.
 - (3) if the *customer* is subject to or proposing any of the processes or arrangements listed at ■ CMCOB 4.3.1R(6)(a) to (f) that:
 - (a) any damages, compensation or settlement monies might, in certain circumstances, be off-set against the *customer's* outstanding debts; and
 - (b) the *customer* will, where necessary need to pay the *firm's* fees from funds which are not subject to the processes or arrangements listed at ■ CMCOB 4.3.1R(6)(a) to (f).
- 4.2.10 G (1) Examples of outstanding liabilities in ■ CMCOB 4.2.9R(1) include:
 - late repayments due under a *credit agreement* for financial services claims; or
 - the training costs paid by an employer for the employee which become repayable by the employee in accordance with the conditions of a contract.
 (2) Outstanding liabilities would not include arranged debts such as a mortgage account.
- 4.2.11 R When a *firm* gives information to a *customer* as required by ■ CMCOB 4.2.1R, ■ CMCOB 4.2.7R, ■ CMCOB 4.2.8R and ■ CMCOB 4.2.9R, the *firm* must accompany the information with:
 - (1) the name, postal address and other contact details of the *firm*; and
 - (2) the reference number under which the *firm* appears in the *Financial Services Register*.

[Note: in part, CAPR CSR 11(l)]
- 4.2.12 G (1) The information required by ■ CMCOB 4.2.7R, ■ CMCOB 4.2.8R and ■ CMCOB 4.2.9R cannot be given in the same document as the information required by ■ CMCOB 4.2.2R. However, it is permissible for all of this information to be provided in attachments to the same email or enclosures to the same letter.
 (2) When giving the information referred to in ■ CMCOB 4.2.11R, *firms* are reminded of their obligations under ■ GEN 4.3.1R.

4.2.13

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Firms are reminded that ■ SYSC 10.1.7R requires them to maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest (as defined in ■ SYSC 10.1.3R) from adversely affecting the interests of their *customers*. If those arrangements are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *customer* will be prevented, ■ SYSC 10.1.8R requires the *firm* to disclose the general nature or sources of conflicts of interest, or both, and the steps taken to mitigate those risks, before undertaking business for the *customer*. The *FCA* would expect *firms* to do so at the same time as they provide the information required by ■ CMCOB 4.2.

4.3 Pre-contract requirements

4.3.1

R Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must:

- (1) take reasonable steps to:
 - (a) ascertain whether the *customer* has other methods for pursuing the *claim*, and if so:
 - (i) ensure that the *customer* understands that those methods are available to them;
 - (ii) seek confirmation in writing from the *customer* that the *customer* does not wish to use those methods, and the *customer's* reasons for not wishing to do so;
 - (iii) record the *customer's* confirmation and reasons; and
 - (b) draw the *customer's* attention to the information provided under **CMCOB 4.2.2R(2)(g) and (h)**, if that information is relevant to the *claim*;

[Note: in part, *CAPR CSR 10*]

- (2) make it clear to the *customer* that the *customer* may seek further advice or look for another *person* to assist the *customer* with the *claim*, subject to any time limits within which a *claim* must be made; and

[Note: *CAPR CSR 13*]

- (3) take reasonable steps to ensure that the *customer* understands the agreement;

[Note: in part, *CAPR CSR 14*]

- (4) ask the *customer* whether they have outstanding liabilities with the *person* against whom the *claim* is to be made and explain that if they do:
 - (a) that any damages, compensation or settlement monies might, in certain circumstances, be off-set against those outstanding liabilities; and
 - (b) the *customer* will, where necessary, need to pay the *firm's* fees from their own funds;

- (5) in the case of pension related *claims* explain:

- (a) that the *firm's* fee may become payable before the *customer* has access to their pension; and
 - (b) that the *customer* will, where necessary, need to pay the *firm's* fees from their own funds;
- (6) ask the *customer* if they, whether in *Great Britain* or in another jurisdiction:
- (a) have been declared bankrupt;
 - (b) are subject to a bankruptcy petition;
 - (c) are subject to an individual voluntary arrangement;
 - (d) have proposed an individual voluntary arrangement which is yet to be approved or rejected by creditors;
 - (e) are subject to a debt relief order; or
 - (f) have any other similar process or arrangement to those listed in (a) to (e) including but not limited to sequestration; and
- if so, explain that any damages, compensation or settlement monies might, in certain circumstances be off-set against the *customer's* outstanding debts; and that the *customer* will, where necessary, need to pay the *firm's* fees from funds that are not subject to the processes or arrangements listed above at (a) to (f).
- (7) record the *customer's* response to questions (4) and (6) and where the customer does not know the answer, advise them to check.

4.3.2

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- (1) For the purposes of ■ CMCOB 4.3.1R(1)(a) a *firm* will have complied with its obligations if it has provided relevant examples of potential alternative methods of pursuing the *claim* and has asked the *customer* whether any such methods are available to them.
- (2) A *customer* should be treated as having other methods for pursuing a *claim* for the purposes of ■ CMCOB 4.3.1R(1) if, for example:
- (a) the *claim* is for personal injury and the *customer* has legal expenses cover under a contract of insurance relating to their car or home and that cover includes legal advice, assistance and representation; or
 - (b) the *customer* is entitled to legal advice, assistance and representation by virtue of their membership of a trade union.
- (3) Where the *customer* does have other methods for pursuing a *claim*, the *firm* should explore whether the *customer* has investigated whether they might pursue the *claim* through those methods (for instance, by using any advice, assistance and representation available under a contract of insurance or through their trade union membership).
- (4) Where a *customer* is unable to confirm whether they have other methods for pursuing the claim or is unaware of whether they have suitable cover in place, the *firm* should advise the *customer* to check whether they have such cover in place and inform the *customer* that it is possible to pursue a claim through such alternative arrangements if they are in place.

4.3.3

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- (5) *Firms* are reminded that ■ DISP 1.2.1R(4) requires *firms* to provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service* (including the *Financial Ombudsman Service's* website address):
- (a) on the *firm's* website, where one exists; and
 - (b) if applicable, in the general conditions of the *firm's* contract with the *eligible complainant*.
- (1) The *firm* may need to take additional steps under ■ CMCOB 4.3.1R(3) to ensure that the *customer* understands the agreement where the *customer* is one whom the *firm* understands or reasonably suspects to be vulnerable.
- (2) *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.

