



Ministry
of Justice

Claims Management Regulation

Guidance Note on the Conduct of Authorised Persons Rules 2018

March 2018



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Introduction

This guidance explains changes to the Conduct of Authorised Persons Rules that will be implemented in April and how authorised persons can comply with the new requirements. The changes to the Rules come into force on 1 April 2018 and the complete document can be found here: **Conduct of Authorised Persons Rules 2018**. They replace the previous version, Conduct of Authorised Persons Rules 2014. The rule changes were announced in November 2017 in the **Claims Management Regulation special bulletin: new fee cap measures**.

The amended rules

The text of the rules announced in November has been redrafted in places to improve the clarity of the provisions. The purpose and effect is unchanged.

Ban on charges where it is identified that the client does not have a relationship or relevant policy

Client Specific Rule 16: If there is no relationship or relevant PPI policy between a client and a financial services firm identified, a business must not charge the client any fees.

Where you have investigated the merits of a potential PPI claim and you have identified that there is no relationship between the client and the financial services firm, or that the client has not had any PPI product, you must not charge any fees to your client.

Ban on upfront fees

Client Specific Rule 15: Fees must not be charged to a client prior to the conclusion of a PPI claim. Fees for any other financial products and services claims must not be charged prior to the provision of any regulated claims management services (excluding advertising for, or otherwise seeking out) to the client.

This rule prohibits any fees being charged to your clients before a Payment Protection Insurance (PPI) claim has been concluded. For all other types of financial products and services claims you may charge fees **after** you have provided regulated claims management services to your client. This includes advising, referring, investigating or representing your client in respect of their claim but does **not** include advertising or direct marketing to your clients.

It is likely that you will be in breach of this rule if you receive any payment from your clients prior to completing any work on their behalf. For the avoidance of doubt, we would expect any advice given to your clients to be tailored to their specific circumstances based on information that you have obtained and investigated. If you use telemarketing to obtain clients, you will not be able to charge a client during the initial sales and fact find call.

Requirement for reasonable cancellation charges and itemised bills

Amended Client Specific Rule 18 (previously Client Specific Rule 16): A business, unless subject to regulation 8 of the Damages-Based Agreements Regulations 2013, must permit the client to withdraw from a contract at any time. Any charge to the client must be limited to what is reasonable and must reflect work undertaken by the business. If a contract relating to a financial products and services claim is cancelled, by either the client or business, no fees may be charged unless regulated claims management services (excluding advertising for, or otherwise seeking out) have been provided to the client.

Where a contract has been cancelled and no regulated claims management services have been provided to the client, you will be unable to charge any fees to that client in respect of a financial product and services claim. For all claim types you will need to ensure that the cancellation charges are reasonable in the circumstances and that they accurately reflect the work that you have carried out for your clients.

Client Specific Rule 19: If a contract relating to a financial products and services claim is cancelled, the business must provide an itemised bill for any cancellation fees that sets out the charges to the client before obtaining payment details and before any payment can be taken. The itemised bill must evidence the regulated claims management services provided and how the fees have been calculated.

This rule has been amended to ensure that you are clear about the requirement to supply an itemised bill to clients that cancel their contract. Where you have provided regulated claims management services (advising, investigating, representation, referring) you must supply an itemised bill to your client that sets out your charges. You will not be able to obtain payment details from your clients at any point until you have provided them with your itemised bill.

When producing an itemised bill, you will need to evidence the work that you have completed. You will need to include sufficient information for your clients to be able to identify the work you have carried out, its purpose and when it occurred. You will also need to clearly show to your client how you have calculated your fees.

Amendment to Client Specific Rule 11

Client Specific Rule 11: A contract between a business and a client must be signed by the client. For claims other than financial products and services claims, the business may not take any payment from the client until the contract is signed (Client Specific Rules 15 and 16 make provision for charges relating to financial products and services claims). The standard terms and conditions of any contract must be clear and also published prominently on the business's website (where a business operates a website). The business must provide the client with the following information in writing or electronically before a contract is agreed:

Due to the new rule banning upfront fees for PPI claims, and the restriction on charging fees until after the provision of regulated claims management services for financial products and services claims, we also need to amend the existing Client Specific Rule 11. The amendment seeks to make clear that you will not be able to take payment before providing regulated claims management services for most financial products and services claims (PPI is dealt with separately at Client Specific Rule 15). For all other claims you will not be able to take any payment from your clients until a contract has been signed. No other changes have been made to the rule.

Technical changes to the rules

Due to changes being made to other legislation, or where previous changes have been made, we have updated the rules to ensure that they are correct and up to date.

Amendment to General Rule 14

General Rule 14: Where a business arranges loan finance it must, where required, be licensed under the Consumer Credit Act 1974 and comply with relevant rules or guidance issued by the Financial Conduct Authority or other government department or agency.

This technical amendment has been made to reflect that the Financial Conduct Authority are now responsible for licencing businesses under the Consumer Credit Act 1974.

Amendment to General Rule 15

General Rule 15: If required to do so the business must be registered with the Information Commissioner's Office and comply with all relevant data protection legislation.

The General Data Protection Regulations (GDPR) will come into effect on 25 May 2018. Currently the Data Protection bill is being considered by Parliament and, if it receives Royal Assent, will repeal the Data Protection Act 1998. The technical amendment to this rule ensures that the rules remain current and reference the correct legislation.



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