



HM Treasury

# Claims Management Regulation:

Code of Practice for the provision of regulated claims management services by trade unions

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November 2018



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# Chapter 1

## Introduction

**1.1** This draft Code of Practice (“Code”) sets out the key principles that govern the activities of Trade Unions where they provide regulated claims management services to their members.

**1.2** Members have the right to expect openness and transparency from their Union about the handling of their claim; and they need to have somewhere to go when things go wrong.

**1.3** The Financial Guidance and Claims Act 2018 requires those providing regulated claims management services to be authorised. The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 exempts Trade Unions certified as independent by the Certification Officer from this requirement in respect of services provided to their own members (or retired or student members, and members of the family of the member). This exemption is granted by HM Treasury on condition that independent Trade Unions undertake to act in accordance with this draft Code in the provision of regulated services.

**1.4** Breaches of the Code could lead HM Treasury to remove the exemption for individual unions, who would then be required to either seek authorisation or cease providing claims management services in any regulated areas.

**1.5** HM Treasury is seeking to engage with the Trades Union Congress (TUC) and Scottish Trades Union Congress (STUC) in the development of the Code and to monitor trade unions’ adherence. This draft Code sets a benchmark to judge objectively the standard of service that Unions provide. It compliments the requirements of existing general consumer and trade union law.

**1.6** However this draft Code is not intended to cover advice and assistance from trade unions to their members in resolving problems in the workplace. Such advice and assistance is not intended to be a regulated claims management service but to the extent that it is, unions will be deemed to have complied with the Code in any event.

**1.7** HM Treasury welcomes comments on the draft Code by 28<sup>th</sup> February 2019.

# Chapter 2

## Providing regulated claims management services

**2.1** This draft Code of Practice consists of six key principles shown in bold below. The additional detail provided under each principle is intended to add clarity, but is not intended to limit the application of the principle.

### Initiating claims

**2.2** A Trade Union should give honest, impartial advice to a member about whether to pursue a claim and if so the most appropriate method of doing so. This does not preclude Trade Unions giving collective or individual advice based upon an assessment of the best interests of groups of members or the membership as a whole.

- (a) Trade Unions should base advice to members on the merits of a successful claim, including an assessment of the likelihood of a successful claim.
- (b) Trade Unions should advise members not to pursue a claim if doing so would not be in the member's best interests.
- (c) For the avoidance of doubt nothing in this Code should be taken to oblige a Trade Union to pursue a claim on behalf of a member.

### Funding claims

**2.3** A Trade Union should give a member relevant information about the funding of their claim, including details of any fees payable by the member and any fees being received by the Trade Union in respect of the claim.

- (a) If fees are payable by the member in respect of the claim, a Trade Union should disclose to the member how these are to be spent.
- (b) Any referral fees received by the Trade Union in respect of the member's claim should be disclosed to the member.
- (c) Any deductions to be made from a member's compensation payment for the benefit of the Trade Union should be agreed by the member in advance.

- (d) In advising a member in any case where fees are payable by the member in respect of the claim, a Trade Union should ensure alternative methods of funding a claim are considered.

## Arrangements with third parties

**2.4** A Trade Union should inform a member of any relationship between the Trade Union and any third party (including a solicitor, claims management company or any other agency) where such a relationship has a direct bearing on the handling of a claim on behalf of member.

- (a) The involvement of any subsidiary companies in handling a member's claims (whether owned wholly or partly by the Trade Union) should be disclosed.
- (b) The information given by a Trade Union to a member about arrangements with third parties should be clear and appropriate to the member's needs. Trade Unions do not need to disclose commercially sensitive information. Commercially sensitive information does not include a referral fee received by a Trade Union. Principle 2.3(a) above requires the disclosure of a referral fee to a member.

## Competent employees and workplace representatives

**2.5** A Trade Union should take reasonable steps to ensure that any advice given to a member in relation to pursuing a claim is provided by a competent employee or workplace representative who has appropriate training and experience, as defined by the Trade Union's rules. Such advisers should conduct themselves with honesty and integrity in dealing with a member's claim.

- (a) A Trade Union should ensure that regular training is made available to employees, or workplace representatives who offer advice to members on pursuing a claim.
- (b) A Trade Union should take reasonable steps to ensure that such persons operate within its rules.
- (c) A Trade Union should take reasonable steps to monitor the quality of advice given to members.

## Complaints and redress

**2.6** A Trade Union should have in place an effective means for members to pursue a complaint about the service in relation to a claim received directly from the Trade Union. This should include the ability to complain to the Union itself about any fees or charges to members or deductions from a member's damages and if the matter cannot be resolved to the satisfaction of both parties, to a third party. Where unjustifiable fees have been charged, these should be repaid.

- (a) A Trade Union should take reasonable steps to inform members who it gives advice to about pursuing a claim, about its internal complaints



procedure. This applies to advice direct from the union, not advice provided by union appointed solicitors in respect of whom a separate complaints procedure applies.

- (b) Where a complaint cannot be resolved to the satisfaction of the member within a reasonable time, it should be referred to a third party for determination.
- (c) A Trade Union which fails to fulfil its obligations to the member should refund any fees or charges (if any) pre-paid by the member in respect of the claim promptly and in full.
- (d) A Trade Union should not be obliged to consider a complaint about its refusal to pursue a claim (further or at all) on behalf of a member.

## **Record keeping**

**2.7** A Trade Union should give a member access to the records it keeps in respect of a claim.

- (a) Subject to the requirements of the Data Protection Act 2018 and any relevant provision in a Data Sharing Code of Practice issued by the Information Commissioner, a Trade Union should retain its documentary records of claim after the conclusion of the claim.
- (b) Nothing in this Code shall require a Trade Union to disclose information where not required under the Data Protection Act 2018.

# Chapter 3

## Definitions and scope

### Regulated Claims Management Services

3.1 The Financial Guidance and Claims Act 2018 defines “claims management services” as “advice or other services in relation to the making or a claim”.

3.2 Services are regulated only if they are of a type specified in the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

### Members

3.3 For the purposes of this Code a “union member” has the same definition as in the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018. For the avoidance of doubt this includes retired members but not associate members.

### Amendments to this Code

3.4 HM Treasury welcomes any views on this draft Code by 28<sup>th</sup> February 2019.

3.5 HM Treasury has the power to alter this draft Code after consultation and may do so from time to time in the light of experience gained by the working of the Code in practice.

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