

'Putting Consumers First'



Code of Practice

Under review pending FCA regulation and rule changes

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Introduction

The members of the Professional Financial Claims Association (PFCA) wish to set professional standards for member firms and represent the interests of the members. We expect members to act with the utmost honesty, integrity and professionalism. This code sets out the minimum standards that we require from our members who are involved in the financial claims management market.

Meanings

“Advertising” means the use of all media in order to market the service to potential Clients (including websites, sales scripts, written literature and television advertisements)

“ASA” means the Advertising Standards Authority

“CAP” means the Committee of Advertising Practice

“Client” means any person who has a written agreement with a member or any person in contact with a member before a written agreement is entered into

“Complainant” means that as prescribed from time to time under Chapter 2 of the Legal Ombudsman’s Scheme Rules – the plural has the same meaning

“Consumer” means a living individual person who comes into contact with a Member (including those individuals the Member contracts with as Clients)

“CMC” means Claims Management Company – the plural has the same meaning

“CMR” means the Claims Management Regulator (a unit in the Ministry of Justice)

“Code” means this Code of Practice

“DMA” means the Direct Marketing Association

“DPA” means Data Protection Act

“ICO” means the Information Commissioner’s Office

“Independent Chairman” means a person, who is not an employee of a Financial Claims Management Company and is appointed by the Board of the PFCA.

“Member” means a member firm of the PFCA – the plural has the same meaning

“MPS” means the Mailing Preference Service

“OFCOM” means the Office of Communications

“OFT” means the Office of Fair Trading or any successor body

“PFCA” means the Professional Financial Claims Association

“PECR” means Privacy and Electronic Communications Regulations

“Sector” means the claims management market

“TPS” means the Telephone Preference Service

1. Members Compliance with the Code

Members undertake to comply with the requirements and instructions of the Independent Chairman who will be responsible for ensuring that auditing of its members compliance with the Code is instructed to an independent Company.

2. Principles

- 2.1 Members must comply with legislation governing claims management companies (currently the Compensation Act 2006 and the CMR Conduct of Authorised Persons Rules 2014 as amended), all other relevant legislation and regulator guidance.
- 2.2 Members agree to abide by the spirit as well as requirements of the Code.
- 2.3 Members' actions must not risk bringing other members or the sector into disrepute.
- 2.4 Members must act with honesty, integrity and professionalism.
- 2.5 Members must always consider the information needs of Consumers and Clients and treat them fairly.
- 2.6 Members must ensure that their services are accessible for all and have in place a suitable policy for dealing with vulnerable groups.
- 2.7 Members must ensure that all individuals and/or business entities working on their behalf have the necessary training and competence in order to carry out their duties.
- 2.8 Members must make the Code available on their websites and to all Consumers in whatever form it is requested and without charge.
- 2.9 Members must retain sufficient records and evidence in order to demonstrate their compliance with the Code.
- 2.10 Members must carry out regular audits to ensure that their systems and controls are robust and fit for purpose.

3. Staff Training & Monitoring

- 3.1 Members must provide specific and ongoing training to their staff in relation to claims management and the various types of complaints and products for which the Member manages claims.
- 3.2 Members must ensure that all staff and business entities working on their behalf have a sound knowledge of their responsibilities under the data protection legislation (currently the Data Protection Act 1998 as amended (see section 8 for further information)).
- 3.3 Members must monitor their staff on an ongoing basis and ensure compliance with the Code and CMR conduct rules.
- 3.4 Members must record and retain all inbound and outbound telecommunications with Consumers.

4. Advertising, Marketing and Soliciting Business

Adherence to the Conduct of Authorised Persons Rules is required, including:

- 4.1 Members must ensure that all advertising materials used in the course of their marketing activities comply with requirements of the CAP Codes of Practice (including the broadcasting code commonly known as BCAP).
- 4.2 All marketing activities should comply with the requirements of the DMA Code of Practice.
- 4.3 Members are responsible for the conduct of any individual and/or business entity carrying out marketing activities on their behalf where the conduct relates to any aspect of the Code.
- 4.4 All advertising and information provided to Consumers must be clear, fair and not misleading.
- 4.5 Members must not engage in high pressure selling.
- 4.6 Members must not imply in advertising (or other communications) that Consumers will have an increased chance of success through using the services of a CMC.
- 4.7 Members must not imply in advertising that the Consumer is entering into a formal agreement prior to signing a written agreement. A contract between a business and a Client must be signed by the Client and the business may not take any payment from the Client until the contract is signed.
- 4.8 Members must not imply that they are approved or work in conjunction with any Government body, regulator and/or enforcement body.
- 4.9 Where business is introduced to a solicitor, Members must not act in a way that puts the solicitor in breach of the rules governing solicitors' conduct.
- 4.10 Business must not be solicited in any way, including leaflets and advertising, in medical facilities or public buildings without the approval of the management of the facility or building.

In addition:

- 4.11 Where a Member chooses to use the services of a third party to carry out its telemarketing activities, they must engage only with providers that comply with UK law and regulation. The Member must satisfy itself that the third party either has a CMR licence, is exempt or is acting as an agent for the Member. The Member must also ensure a sufficient monitoring and compliance auditing programme is in place to ensure the third party's compliance with the Code.
- 4.12 Members must ensure that their marketing activities comply with the CMR's Guidance Note on Marketing & Advertising Claims Management Services (current edition April 2018).
- 4.13 Members must ensure that their marketing activities comply with the regulations on the use of unsolicited means to market services to Consumers (currently the Privacy and Electronic Communications Regulations 2003 as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2004, 2011, 2015 and 2016 ("PECR regulations")).
- 4.14 Where Members are the subject of a complaint to the ASA, they must adhere to all requests for information from the ASA and any decision notice issued by it.
- 4.15 Members must display their full terms and conditions of business and details of their fees on their websites without the requirement for Consumers to provide their personal data in order to obtain those terms and conditions and/or details of fees.
- 4.16 Members must not lead Consumers to believe that their case can be "fast-tracked" through using their service.
- 4.17 Further information must be provided to Consumers verbally when making initial contact by telephone¹:

¹ Where distinctions are made between "potential Clients" and "Consumers" – Members should consider how their sales processes are designed. Any information which is required to be disclosed to "Consumers" means

- 4.17.1 Members must make clear to all Consumers at the point of contact that they are regulated by the Claims Management Regulator in respect of regulated claims management activities and have signed up to the Code.
- 4.17.2 Members must make clear the fees that will be payable by the potential Client, how they are applied and to what they are applied.
- 4.17.3 Members must ensure that the potential Client understands that they will be responsible for the payment of any fees.
- 4.17.4 Members must inform potential Clients of any significant information relating to the services being offered which may cause the potential Client to reconsider their acceptance of the service (e.g. where compensation may not be paid in cash).
- 4.17.5 Members must inform Consumers of their right to make a claim independently of a CMC.
- 4.17.6 Members must inform potential Clients of their right to a 14 day cooling off period from the date of the Member receiving the signed Client agreement.
- 4.17.7 Members must make clear to potential Clients any risks associated with making a claim for compensation.
- 4.18 Further information must be provided to potential Clients in writing prior to entering into a written contract:
- 4.18.1 Clear and objective written information (which could take the form of a Frequently Asked Questions leaflet) about the services to be provided and any significant information which the potential Client may need to assist them in making an informed decision about whether or not to use the services of the CMC. Key information that must be included are:
- 4.18.1.1 Details of how compensation is likely to be paid.
- 4.18.1.2 Details of the fees that will be payable.
- 4.18.1.3 Members must comply with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. In particular, Members must give (or make available) a cancellation form and inform potential Clients of their right to a 14 day cooling off period from the date of the Member receiving the signed Client agreement and details of any fees chargeable after this time has expired.
- 4.18.1.4 Details of how the claim will be managed and how long the process is likely to take.
- 4.18.1.5 Confirmation of the fact that the potential Client can choose to make a claim for compensation independently of a CMC.
- 4.18.1.6 Where applicable, a warning that an ongoing insurance policy may be cancelled in the event of a successful claim for compensation.
- 4.18.1.7 Details of the Member's complaints handling procedure (see Section 9 for further information).
- 4.18.1.8 Details of how to obtain or view a copy of the Code.

that this information should be disclosed on all occasions. Any information which is required to be disclosed to "potential Clients" should be disclosed where there is a belief that the individual is likely to contract with the Member.

4.18.2 Where a Member receives fees by way of a percentage of an award, a table detailing the fees payable and how they are applied must be supplied. Key information to be included are:

4.18.2.1 A table showing three separate representative compensation awards, the net fees payable, the VAT payable, the total fees payable and the remaining benefit to the Client.

4.18.2.2 Confirmation that the potential Client is responsible for the payment of such fees (if applicable).

4.18.2.3 Where Members offer a conditional fee service (or No Win, No Fee) and a fee may be payable in circumstances other than a successful claim (e.g. termination fees, data subject access fees), Members must make clear that such other fees may be payable.

4.18.3 The Member's terms and conditions of business.

4.19 Marketing Data:

4.19.1 Where a data supplier collects marketing data in such a way that the activity causes it to be a regulated claims management activity, Members must ensure that the supplier is suitably authorised by the CMR.

4.19.2 Members must carry out robust due diligence checks on data suppliers prior to the purchase of such data and on an ongoing basis. These checks must ensure that Members satisfy PECR and DPA requirements. Members must document their due diligence checks and retain an audit trail of any due diligence undertaken.

4.19.3 Members must operate a Do Not Call list against which all new data purchases must be screened.

4.19.4 Any data purchased must be screened (by the Member) against the relevant preference service file (e.g. TPS, MPS) prior to use and at least every 28 days thereafter unless the necessary prior consent has been obtained from the individual Consumer.

4.19.5 Members must ensure that they have collected such permissions in the correct way (i.e. opt in and opt out). Members must comply with the ICO guidance on consent time limits.

4.19.6 Members must use any data purchased within 30 days of purchasing it to ensure that:

4.19.6.1 It is not being used unfairly.

4.19.6.2 The opt in previously obtained is still likely to be remembered.

4.20 Telemarketing:

4.20.1 Where Members make use of automated dialing systems, they must ensure that they comply with the rules concerning the use of such systems (currently OFCOM's Revised statement of policy on the persistent misuse of an electronic communications network or service as amended). In particular:

4.20.1.1 Members' abandoned call rates must not exceed 3% per campaign or per call centre in any 24 hour period.

4.20.1.2 Where Members use Answering Machine Detection (AMD) software, they must, when calculating their abandoned call ratio, make provision for any

false positives preferably using the calculations issued by the Direct Marketing Association.

- 4.20.1.3 Where a call is abandoned (excluding silent calls) a message should be played which identifies the Member and provides either a free phone telephone number, a basic rate 0845 number or an 01, 02 or 03 number on which Consumers can call back. The message should not be used as an opportunity to market. Such a message should be played within 2 seconds of either the call connecting or a live individual responding.
- 4.20.1.4 Where a call has been abandoned, a further call must not be made to the same telephone number within a 72 hour period unless the presence of an operator is guaranteed.
- 4.20.1.5 Where AMD is used and the dialing system identifies an answering machine, a call must not be made back to that number within 24 hours unless it is guaranteed an operator will be available to take the call.

- 4.20.2 When dialing out Members must make use of a presentation number which is either a free phone telephone number, a basic rate 0845 number or an 01, 02 or 03 number.
- 4.20.3 Members must have in place and comply with a suitable Harassment Policy.
- 4.20.4 Members must ensure that marketing calls are made at reasonable times of the day and not on Sundays or UK Public Holidays. For the avoidance of doubt "reasonable times of the day" are defined as between 9am and 9pm Monday to Friday and 10am to 4pm on Saturdays.
- 4.20.5 Members must declare the name of their company, contact details and CRM number on request from a Consumer. Where Members use a third party to carry out their marketing activities, that third party must declare their own business details as described above and those of the CMC on whose behalf they are working.

4.21 Email Marketing:

- 4.21.1 Members must make it easy for Consumers to opt out of receiving email marketing communications with a simple link contained within the email.

4.22 SMS Marketing:

- 4.22.1 Members are not permitted to use SMS to market their services or purchase marketing data from a third party who obtains it via SMS marketing.

4.23 Doorstep Marketing

- 4.23.1 Members are not permitted to use doorstep selling to market their services.
- 4.23.2 The only occasion where Members are permitted to visit a Consumer's home for marketing purposes is when the Consumer has previously invited them to do so (i.e. appointment making).

4.24 Marketing in Person

- 4.24.1 Cold calling in person is prohibited. Members must not approach or initiate contact with members of the public when marketing services in shopping centres or at events.

4.25 Direct Mail Marketing

- 4.25.1 Members must make it easy for Consumers to opt out of marketing communications via direct mail with simple instructions contained within the mailing or a return slip.

5. Investigating, Submitting & Managing Claims for Compensation

Adherence to the Conduct of Authorised Persons Rules is required, including:

- 5.1 Members must advise potential Clients to pursue a claim for compensation only if the service being offered meets their needs and it is in their interests to do so.
- 5.2 Members must not advise potential Clients without valid grounds for complaint to pursue a claim for compensation.
- 5.3 Members must handle all communications, including the final outcome, from the defendant party without delay and inform the Client of any key matters affecting the claim.
- 5.4 Members must pass on all information provided by the Client to the defendant party without delay if instructed to do so or where it is relevant to the claim.
- 5.5 Members must assist Clients throughout the claims process and in particular assist them, if asked to do so, in filling in any forms or questionnaires. Members should take care to ensure that they do not encourage the Client to give incorrect or misleading information so as to maximise the chance of, or amount of, compensation.
- 5.6 Members must take all reasonable steps to investigate the existence and merits of each element of a potential claim before presenting it to a third party. Claims must not be made on a pro-forma basis and must take account of individual circumstances.

In addition:

- 5.7 Members must carry out an assessment with potential Clients as to the cause of their complaint prior to entering into an agreement.
- 5.8 Members who have specialist teams, trained to advise Consumers in financial hardship and are licensed by the FCA to provide Debt Counselling, may accept claims from Consumers where the individual has previously been the subject of a bankruptcy order, Debt Relief Order (DRO) or Individual Voluntary Arrangement (IVA)/Protected Trust Deed (PTD), provided the consumer has been provided with details of a not-for-profit organisation which may be more suitable for their circumstances and provided the Member has appropriate provisions in place to write off any fees or charges should any refund, in full or part, be claimed by the Official Receiver (OR) or Insolvency Practitioner (IP). Members should also make clear to Consumers that their financial circumstances do not affect the merits of their claim. Members must not accept claims from Consumers where the individual is currently the subject of a bankruptcy order, Debt Relief Order (DRO) or Individual Voluntary Arrangement (IVA)/Protected Trust Deed (PTD) or where the Finance was taken out prior to the Insolvency Solution being put in place.
- 5.9 Members are permitted to submit claims for compensation during the 14 day cooling off period, with a Clients express consent, provided that they do not attempt to make any charge to the Client should the Client terminate the agreement within this period, even if compensation has been awarded.

- 5.10 Members must keep appropriate records and audit trails on individual claims and keep these for a minimum of six years and in compliance with the data protection legislation (currently the Data Protection Act 1998 as amended).

6. Conducting Professional Relationships with Financial Businesses and the Financial Ombudsman Service

- 6.1 Members must act professionally in their dealings with defendant parties and any recognised dispute resolution service such as the Financial Ombudsman Service.
- 6.2 Where claims are submitted to any recognised Ombudsman, dispute resolution scheme or compensation scheme Members must comply with those organisations' procedures, including specific, appropriate and relevant information on individual claims and taking account relevant past decisions.
- 6.3 Members must treat employees and agents of defendant parties and any recognised dispute resolution service courteously and with respect.
- 6.4 Members must take care not to make derogatory remarks to Consumers about defendant parties and/or alternative dispute resolution services.

7. Fees & Charges

Adherence to the Conduct of Authorised Persons Rules is required, including:

- 7.1 Members are required to notify Clients immediately of any unforeseen costs that may arise during the claim for compensation that they are expected to meet (e.g. data subject access request fee).

In addition:

- 7.2 When deciding what level of fees to apply to their service, Members must ensure that the fees are transparent and reasonable in light of the service being offered.
- 7.3 Members are permitted to make an hourly charge should the Client decide to terminate their agreement after the 14 day cooling off period. However, these fees should reflect the actual costs incurred by the Member and not include work carried out during the 14 day cooling off period. Members are required to keep a record and evidence to justify the calculation of their termination fees (see section 8 for further information).
- 7.4 Members are generally permitted to charge for services in advance of them being provided but only if the Member can unequivocally demonstrate that it could not reasonably provide the service without such a fee being paid in advance. However, Members **are not permitted** in any instance to charge a fee in advance of the services where the claim is in respect of PPI or packaged bank account mis-selling claims (sometimes known as bulk claims).
- 7.5 Members' collection procedures for unpaid fees should be fair and reasonable. Members should make attempts to keep any distress and/or inconvenience to a minimum.
- 7.6 Where Members are informed that the Client is experiencing financial difficulties, Members should try to accommodate the individual's circumstances so far as is reasonable and practicable in the circumstances.

8. Contracts & Termination

Adherence to the Conduct of Authorised Persons Rules is required, including:

- 8.1 Members must ensure that their contracts comply with legislation on unfair terms in contracts (including the Unfair Terms in Consumer Contracts Regulations 1999 and Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013).
- 8.2 Members must allow Clients to withdraw from a contract at any time.
- 8.3 Members' contracts must contain details about the charges that will be made in the event of a successful claim and in the event of termination and in which circumstances such termination fees will be charged (if applicable).

In addition:

- 8.4 Members must have contracts that are written in a manner that is easy for Consumers to understand.
- 8.5 Members' contracts should be set out in a way that is easy for Consumers to navigate.
- 8.6 Subject to the 14 day cooling off period, where Members wish to charge a termination fee, they must provide a breakdown to the Client of how the termination fee has been calculated.
- 8.7 Members must not charge a termination fee where the Client or the Member is terminating the contract because the Client has been adjudicated bankrupt or entered into an IVA.

9. Data Protection

- 9.1 Members must comply with the data protection legislation (currently the Data Protection Act 1998 as amended).
- 9.2 Members must instil a culture of data protection within their organisation at all levels.
- 9.3 Members must ensure that they have a robust data protection policy which is available to all relevant members of staff.
- 9.4 Members must ensure that they inform all Clients of how their data will be used through a privacy policy which should be readily available to all Clients. Members should also display it on their websites.

10. Complaints & Redress

- 10.1 Members must comply with the CMR's rules on complaint handling (currently the Complaint Handling Rules 2015). Members should also comply with the Legal Ombudsman's Scheme Rules.
- 10.2 Members must operate a robust complaints handling procedure which must be readily available to all Consumers and make provision for:
 - 10.2.1 The submission of complaints by whatever means.
 - 10.2.2 The procedure by which the complaint will be investigated.
 - 10.2.3 What Complainants can do if they remain dissatisfied once receiving the Member's response.
- 10.3 Members must ensure that any employee or agent handling complaints has the necessary ability and resources in order to handle such complaints in an effective, unbiased and timely manner.

- 10.4 On receipt of a complaint, Members must acknowledge it within 5 business days naming the person and position of the individual who will be handling their complaint as well as providing their contact details.
- 10.5 If Members are unable to issue a final response within 20 business days of receiving the complaint, then they should write to the Complainant explaining the delay and when they can expect to receive a response from them. Members are required to advise the PFCA Chairman of any complaints where a final response is not issued within 20 business days.
- 10.6 If after 40 days of receiving the complaint Members are still unable to provide a response to the Complainant, they should write to the Complainant explaining what is causing the delay and when they can expect to receive a final response. This communication should also inform the Complainant of their right to refer their complaint to the independent assessor (the Legal Ombudsman's Scheme) if they are dissatisfied with the handling of their complaint.
- 10.7 Once Members are in a position to provide a final response, they should write to the Complainant, titling the letter "Final Response", providing full and frank answers to the complaint(s) raised. The letter must also inform the Complainant of their right to refer their complaint to the independent assessor (the Legal Ombudsman's Scheme) should they remain dissatisfied with the Member's response. If the Member intends to:
- 10.7.1 Reject the complaint, they must make this clear in their response but remain professional at all times and provide sufficient evidence to the Complainant to back up their response.
 - 10.7.2 Uphold the complaint, they must make this clear in their response and offer to settle matters in an appropriate manner for the Complainant.
- 10.8 If Members choose to uphold a complaint, monetary redress is not necessarily required on all occasions; a simple apology may suffice. But where redress is appropriate, a business must make good any loss incurred by the Complainant caused directly by the actions or inaction of the Members.
- 10.9 Where an offer of redress is accepted by the Complainant, Members are bound by this acceptance and must make a payment or, in the case of a Client, make an alteration to the Client's account within 5 business days.
- 10.10 Members may approach the Complainant for further information to assist in their investigations but must not use this as a tool to delay the investigation or intimidate the Complainant.
- 10.11 Members must take into account the Complainant's perspective and must not rely solely on compliance with the rules in place at the time or the provision of certain information in writing or verbally.
- 10.12 Members must use the time limits set down by the Legal Ombudsman Scheme Rules when considering whether or not to investigate a complaint.
- 10.13 Members are required to report in writing in respect of complaints against the Member's business, on a monthly basis, to the PFCA Chairman giving details of complaint uphold rates and the number of unresolved complaints.