

## **CLAIMS MANAGEMENT INSTRUMENT 2018**

### **Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes and amends the scheme rules, makes and amends the Voluntary Jurisdiction rules, and fixes and varies the standard terms for Voluntary Jurisdiction participants, as set out in Annex A and Annex G to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
  - (2) paragraph 8 (Information, advice and guidance) of Schedule 17;
  - (3) paragraph 14 (Scheme operator’s rules) of Schedule 17;
  - (4) paragraph 18 (Terms of reference to the scheme) of Schedule 17;
  - (5) paragraph 20 (Voluntary jurisdiction rules: procedure); and
  - (6) paragraph 22 (Consultation) of Schedule 17.
- B. The Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 1.1 in Annex G to this instrument apply equally to the Voluntary Jurisdiction of the Financial Ombudsman Service and the Compulsory Jurisdiction.
- C. The making and variation of the scheme rules in Annex A and Annex G by the Financial Ombudsman Service Limited is subject to the consent of the Financial Conduct Authority, and the making and amendment of the Voluntary Jurisdiction rules and fixing and variation of the standard terms in Annex A and Annex G by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

### **Powers exercised by the Financial Conduct Authority**

- D. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the Act:
- (1) section 59 (approval for particular arrangements);
  - (2) section 137A (The FCA’s general rules);
  - (3) section 137B (FCA general rules: clients’ money, right to rescind etc);
  - (4) section 137R (Financial promotion rules);
  - (5) section 137T (General supplementary powers);
  - (6) section 138D (Actions for damages);
  - (7) section 139A (The FCA’s power to give guidance);
  - (8) section 226 (Compulsory jurisdiction);
  - (9) paragraph 13 (FCA’s rules) of Schedule 17; and
  - (10) article 1(2) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
- E. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

- F. The Financial Conduct Authority consents to the making and variation of the scheme rules in Annex A and Annex G by the Financial Ombudsman Service Limited, and approves the making and amendment of the Voluntary Jurisdiction rules and the fixing and variation of the standard terms in Annex A and Annex G by the Financial Ombudsman Service Limited.

### Commencement

- G. This instrument comes into force on 1 April 2019 except for Part 1 of Annex A, which comes into force on 1 January 2019.

### Amendments to the FCA Handbook

- H. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls (SYSC)	Annex C
General Provisions (GEN)	Annex D
Client Assets (CASS)	Annex E
Supervision manual (SUP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G
Consumer Credit sourcebook (CONC)	Annex H

### Making the Claims Management: Conduct of Business sourcebook (CMCOB)

- I. The Financial Conduct Authority makes the rules, gives the guidance in accordance with Annex I to this instrument.
- J. The Claims Management: Conduct of Business sourcebook (CMCOB) is added to the Business Standards block within the Handbook, immediately after the Banking: Conduct of Business sourcebook (BCOBS).

### Amendments to material outside the Handbook

- K. The Financial Crime guide (FC) is amended in accordance with Annex J to this instrument.
- L. The Perimeter Guidance manual (PERG) is amended in accordance with Annex K to this instrument.
- M. The Wind-down Planning Guide (WDPG) is amended in accordance with Annex L to this instrument.
- N. The Reader's Guide is amended in accordance with Annex M to this instrument.

- O. The Financial Conduct Authority confirms and remakes in the Glossary of definitions:
- (1) the defined expression “Regulated Activities Order”; and
  - (2) to the extent that they appear in the Glossary of definitions, the defined expressions relating to any other legislation amended by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

**Notes**

- P. In the Annexes, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- Q. This instrument may be cited as the Claims Management Instrument 2018.

By order of the Board of the Financial Ombudsman Service Limited  
7 December 2018

By order of the Board of the Financial Conduct Authority  
13 December 2018

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### Part 1: Comes into force 1 January 2019

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*advice, investigation or representation in relation to a claim for a specified benefit* the *regulated activity*, specified in article 89K of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a *claim for a specified benefit*.

*advice, investigation or representation in relation to a criminal injury claim* the *regulated activity*, specified in article 89L of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a *criminal injury claim*.

*advice, investigation or representation in relation to an employment-related claim* the *regulated activity*, specified in article 89M of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to an *employment-related claim*.

*advice, investigation or representation in relation to a financial services or financial product claim* the *regulated activity*, specified in article 89I of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a financial services or financial product *claim*.

*advice, investigation* the *regulated activity*, specified in article 89J of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a

<i>or representation in relation to a housing disrepair claim</i>	<i>claim and representing a claimant, in relation to a housing disrepair claim.</i>
<i>advice, investigation or representation in relation to a personal injury claim</i>	the <i>regulated activity</i> , specified in article 89H of the <i>Regulated Activities Order</i> , of each of advising a <i>claimant</i> or potential <i>claimant</i> , investigating a <i>claim</i> and representing a <i>claimant</i> , in relation to a <i>personal injury claim</i> .
<i>claimant</i>	(in <i>CMCOB</i> , and elsewhere in the <i>FCA Handbook</i> in relation to <i>regulated claims management activities</i> ) includes, for the purposes of civil proceedings in Scotland, a pursuer.
<i>claim for a specified benefit</i>	a claim of the description specified in article 89F(2)(f) of the <i>Regulated Activities Order</i> (that is, a claim for certain industrial injuries benefits).
<i>claims management company</i>	a <i>person</i> carrying on a <i>regulated claims management activity</i> in <i>Great Britain</i> .
<i>Claims Management Order</i>	the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
<i>claims management services</i>	(in accordance with section 419A of the <i>Act</i> ) advice or other services in relation to the making of a <i>claim</i> .
<i>claims management temporary permission</i>	a temporary <i>Part 4A permission</i> , or variation of <i>permission</i> to carry on <i>regulated claims management activity</i> pursuant to article 80 of the <i>Claims Management Order</i> .
<i>CMCOB</i>	the Claims Management: Conduct of Business sourcebook.
<i>controlled claims management activity</i>	(in accordance with Part 1A of the <i>Financial Promotion Order</i> ) one of the following activities, if carried on in <i>Great Britain</i> :  (a) seeking out <i>persons</i> who may have a <i>claim</i> , referring details of a <i>claim</i> or potential <i>claim</i> or a <i>claimant</i> or a potential <i>claimant</i> to another <i>person</i> (including a <i>person</i> having the right to conduct litigation), or identifying a <i>claim</i> or potential <i>claim</i> or a <i>claimant</i> or

potential *claimant* in respect of:

- (i) a *personal injury claim*;
  - (ii) a financial services or financial product *claim*;
  - (iii) a *housing disrepair claim*;
  - (iv) a *claim for a specified benefit*;
  - (v) a *criminal injury claim*; or
  - (vi) an *employment-related claim*.
- (b) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *personal injury claim*;
  - (c) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a financial services or financial product *claim*;
  - (d) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *housing disrepair claim*;
  - (e) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *claim for a specified benefit*;
  - (f) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *criminal injury claim*; or
  - (g) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of an *employment-related claim*.

*criminal injury claim* a claim of the description specified in article 89F(2)(g) of the *Regulated Activities Order*.

*employment-related claim* a claim of the description specified in article 89F(2)(h) of the *Regulated Activities Order*.

*Great Britain* England and Wales and Scotland (but not Northern Ireland, the Channel Islands or the Isle of Man).

*housing disrepair claim* a claim of the description specified in article 89F(2)(e) of the *Regulated Activities Order*.

*personal injury claim* a claim of the description specified in article 89F(2)(c) of the *Regulated Activities Order*.

*regulated claims management* each of:

*activity*

- (a) *seeking out, referrals and identification of claims or potential claims;*
- (b) *advice, investigation or representation in relation to a personal injury claim;*
- (c) *advice, investigation or representation in relation to a financial services or financial product claim;*
- (d) *advice, investigation or representation in relation to a housing disrepair claim;*
- (e) *advice, investigation or representation in relation to a claim for a specified benefit;*
- (f) *advice, investigation or representation in relation to a criminal injury claim; and*
- (g) *advice, investigation or representation in relation to an employment-related claim.*

*seeking out, referrals and identification of claims or potential claims*

the *regulated activity*, specified in article 89G of the *Regulated Activities Order*, which is any or all of:

- (a) seeking out *persons* who may have a *claim* (unless that activity constitutes *controlled claims management activity*),
- (b) referring details of a *claim* or a potential *claim* or a *claimant* or potential *claimant* to another *person*, and
- (c) identifying a *claim* or potential *claim* or a *claimant* or potential *claimant*,

when carried on in relation to a *personal injury claim*, a financial services or financial product *claim*, a *housing disrepair claim*, a *claim for a specified benefit*, a *criminal injury claim* or an *employment-related claim*.

Amend the following definitions as shown.

*agreeing to carry on a regulated activity*

the *regulated activity*, specified in article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II, ~~or~~ Part 3A, or Part 3B of that Order other than:

...

*claim*

...

(3) (in *CMCOB*, and elsewhere in the *FCA Handbook* where used in relation

to regulated claims management activity and ancillary activity) any claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made:

- (a) by way of legal proceedings;
- (b) in accordance with a scheme of regulation (whether voluntary or compulsory); or
- (c) in pursuance of a voluntary undertaking.

regulated  
activity

- (A) ...
- (B) in the *FCA Handbook*: (in accordance with section 22 of the *Act* (Regulated activities)) the activities specified in Part II (Specified activities), Part 3A (Specified activities in relation to information) and Part 3B (Claims management activities in Great Britain) of the *Regulated Activities Order*, ~~(Specified Activities)~~ which are, in summary:

...

- (to) *administering a benchmark* (article 63S);
- (tp) *seeking out, referrals and identification of claims or potential claims* (article 89G);
- (tq) *advice, investigation or representation in relation to a personal injury claim* (article 89H);
- (tr) *advice, investigation or representation in relation to a financial services or financial product claim* (article 89I);
- (ts) *advice, investigation or representation in relation to a housing disrepair claim* (article 89J);
- (tt) *advice, investigation or representation in relation to a claim for a specified benefit* (article 89K);
- (tu) *advice, investigation or representation in relation to a criminal injury claim* (article 89L); and
- (tv) *advice, investigation or representation in relation to an employment-related claim* (article 89M);

which is carried on by way of business and, except for (ta), (tb) and (to), relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing or, in the case of (tp),



(tq), (tr), (ts), (tt), (tu) and (tv), is or relates to *claims management services* and is carried on in *Great Britain*;

(u) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (na), (nb), (nc), (nd), (ne) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's financial standing* or, in the case of (tp), (tq), (tr), (ts), (tt), (tu) and (tv), is, or relates to, *claims management services* and is carried on in *Great Britain*.

## Part 2: Comes into force 1 April 2019

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>CAPR CSR</i>	the Client Specific Rules of the Claims Management Regulation Conduct of Authorised Persons Rules 2018 (effective on 1 April 2018).
<i>CAPR GR</i>	the General Rules of the Claims Management Regulation Conduct of Authorised Persons Rules 2018 (effective on 1 April 2018).
<i>CASS 13 claims management firm</i>	a <i>firm</i> that is subject to the <i>rules</i> and <i>guidance</i> in CASS 13.
<i>claims management client money distribution rules</i>	the <i>rules</i> and <i>guidance</i> in CASS 13.11.
<i>claims management client money rules</i>	the <i>rules</i> and <i>guidance</i> in CASS 13.
<i>claims management fee cap</i>	the provisions in sections 29 and 31 of the Financial Guidance and Claims Act 2018 (see <i>CMCOB</i> 5).
<i>engage in claims management activity</i>	(as defined in section 21(10A) of the <i>Act</i> ) (Restrictions on financial promotion)) enter or offer to enter into an agreement the making or performance of which by either party constitutes a <i>controlled claims management activity</i> .
<i>housing complaint service</i>	in England, the Housing Ombudsman Service; in Wales, the Public Services Ombudsman; and in Scotland, the Scottish Public Service Ombudsman, the Scottish Housing Regulator, and the Housing and Property Chamber of the First-tier Tribunal for Scotland.
<i>Legal Ombudsman</i>	the Legal Ombudsman scheme operated by the Office for Legal Complaints under Part 6 of the Legal Services Act 2007.
<i>relevant claims management complaint</i>	a <i>relevant existing claims management complaint</i> or a <i>relevant new claims management complaint</i> .
<i>relevant existing claims</i>	a <i>complaint</i> in respect of which the <i>Financial Ombudsman Service</i> has jurisdiction by operation of article 69(1) of the Financial Services and

<i>management complaint</i>	Markets Act 2000 (Claims Management Activity) Order 2018.
<i>relevant new claims management complaint</i>	a <i>complaint</i> in respect of which the <i>Financial Ombudsman Service</i> has jurisdiction by operation of article 70(1) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
<i>termination fee</i>	(in <i>CMCOB</i> ) any fee or charge which a <i>firm</i> charges in the event that the <i>customer</i> terminates an agreement in respect of services provided or to be provided by the <i>firm</i> .

Amend the following definitions as shown.

<i>acknowledgement letter fixed text</i>	...	(3) <u>(in CASS 13) the text in the client bank account acknowledgement letter that is not in square brackets.</u>
<i>acknowledgement letter variable text</i>	...	(3) <u>(in CASS 13) the text in the client bank account acknowledgement letter that is in square brackets.</u>
<i>client</i>	...	(10) <u>(in relation to regulated claims management activity and ancillary activity) a customer.</u>
<i>client bank account</i>	...	(3) (in CASS 11 <u>and CASS 13</u> ): (a) an account at an <i>approved bank</i> which: (i) holds the <i>money</i> of one or more <i>clients</i> ; (ii) is held in the name of the <i>firm</i> to which CASS 11.9 <u>or CASS 13.6</u> (segregation and the operation of client money accounts) applies; (iii) includes in its title the word “client” (or, if the system constraints of the <i>approved bank</i> or the <i>firm</i> that holds the account (or both) make this impracticable, an appropriate abbreviation of “client” that has the same meaning); and (iv) is a current or a deposit account.
<i>client bank</i>	...	

- account  
acknowledgement letter* (3) (in CASS 13) a letter in the form of the template in CASS 13 Annex 1R.
- client money* ...
- (2C) (in CASS 13) money which a firm receives or holds on behalf of a customer in the course of or in connection with providing claims management services.
- ...
- client's best interests rule* COBS 2.1.1R or, in relation to regulated claims management activity and ancillary activity, CMCOB 2.1.1R.
- consumer* ...
- (2) (as further defined in section 1G of the *Act*) (in relation to the discharge of the *FCA's* general functions (sections 1B to 1E of the *Act*), the application of the regulatory principles by the regulators in section 3B of the *Act* and references by scheme operators or regulated persons (section 234D of the *Act*)) a *person*:
- ...
- (d) (in relation to the *FCA's* power to make general *rules* (section 137A of the *Act* (The *FCA's* general rules)) a *person* within the extended definition of consumer in article 7 of the Financial Services Act 2012 (Transitional Provisions) Miscellaneous Provisions) Order 2013 (SI 442/2013 Definition of "consumer");
- (e) [deleted]
- (f) in respect of whom a *person* carries on the regulated activity of seeking out, referrals and identification of claims or potential claims whether that activity, as carried on by that *person*, is a regulated activity, or is, by reason of an exclusion provided for under the Regulated Activities Order or the *Act*, not a regulated activity;
- (2A) (as further defined in section 425A of the *Act*) (in relation to the issue of statements or codes under section 64 of the *Act*), general exemptions to consultation by the *FCA* (section 138L of the *Act*) in the publication of notices (section 391 of the *Act*) and the exercise of *Treaty rights* (Schedule 4 to the *Act*) a *person*:
- (a) who uses, has used, may have used, or has relevant rights or interests in relation to any services provided by:
- ~~(a)~~ (i) *authorised persons* in carrying on regulated activities;

- ~~(b)~~ (ii) *authorised persons* who are investment *firms*, or credit institutions, in providing relevant ancillary services; ~~or~~
- ~~(c)~~ (iii) *persons* acting as appointed representatives; or
- (b) in respect of whom a person carries on the regulated activity of seeking out, referrals and identification of claims or potential claims whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the Regulated Activities Order or the Act, not a regulated activity.

...

*complaint*

- (1) [deleted]
- (2) (in *DISP*, except *DISP* 1.1 and (in relation to *collective portfolio management*) in the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*, and in *CREDS* 9) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which:
  - (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
  - (b) relates to an activity of that *respondent*, or of any other *respondent* with whom that *respondent* has some connection in marketing or providing financial services or products or *claims management services*, which comes under the jurisdiction of the *Financial Ombudsman Service*.
- (3) (in *DISP* 1.1 and (in relation to *collective portfolio management*) in the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
- (4) (in *DISP*) reference to a *complaint* includes:
  - (a) under all jurisdictions, part of a *complaint*; and
  - (b) under the *Compulsory Jurisdiction*, all or part of a *relevant complaint*, a *relevant claims management complaint* or a *relevant credit-related complaint*.

*customer* ...

(B) in the *FCA Handbook*:

(1) (except in relation to SYSC 19F.2, ICOBS, a *credit-related regulated activity*, *regulated claims management activity*, MCOB 3A, an *MCD credit agreement*, CASS 5, PRIN in relation to *MiFID* or equivalent third country business DISP 1.1.10-BR, PROD 1.4 and PROD 4) a *client* who is not an *eligible counterparty* for the relevant purposes.

...

(7) (in relation to *regulated claims management activity* and *ancillary activity*) means a *person* who has, has had, or may have a *claim*:

(a) who uses, has used, or may use the services of a *person* who carries on a *regulated claims management activity* or an activity which would be a *regulated claims management activity* but for an exclusion in the *Regulated Activities Order*; or

(b) in respect of whom a *person* carries on the *regulated activity of seeking out, referrals and identification of claims or potential claims* or an activity which would be the *regulated activity of seeking out, referrals and identification of claims or potential claims* but for an exclusion in the *Regulated Activities Order*.

*external client money reconciliation*

(1) (in CASS 7) the *client money* reconciliation described in CASS 7.15.20R.

(2) (in CASS 13) the *client money* reconciliation described in CASS 13.10.17R.

*fair, clear and not misleading rule*

COBS 4.2.1R or, in relation to *regulated claims management activity* and *ancillary activity*, CMCOB 3.2.1R.

*financial promotion*

(1) an invitation or inducement to engage in investment activity or to *engage in claims management activity* that is communicated in the course of business;

...

*financial promotion rules*

...

	(6)	<u>(in relation to CMCOB) any or all of the rules in CMCOB 3, that impose requirements in relation to a financial promotion but only to the extent that they apply to a financial promotion.</u>
<i>firm</i>	...	
	(10)	<u>(in DISP 2 and 3) includes, in accordance with the Claims Management Order, unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant claims management complaints.</u>
<i>former scheme</i>	(1)	(except in relation to a <u>relevant transitional complaint</u> or a <u>relevant claims management complaint</u> ) any of the following:  ...;
	(2)	(in relation to a <u>relevant transitional complaint</u> )  (a) the <i>GISC facility</i> ; or  (b) the <i>MCAS scheme</i> ;
	(3)	<u>(in relation to a relevant claims management complaint) the Legal Ombudsman.</u>
<i>internal client money reconciliation</i>	(1)	<u>(in CASS 7) the client money reconciliation described in CASS 7.15.12R.</u>
	(2)	<u>(in CASS 13) the client money reconciliation described in CASS 13.10.5R to 13.10.14R.</u>
<i>lead generator</i>	(1)	a <i>person</i> that acquires the personal contact details of <i>customers</i> and passes the <i>customers'</i> details to a <i>firm</i> in return for a fee;
	(2)	<u>(in CMCOB, and elsewhere in the FCA Handbook where used in relation to regulated claims management activity) a person who carries on the regulated activity of seeking out, referrals and identification of claims or potential claims.</u>
<i>primary pooling event</i>	...	
	(5)	<u>(in CASS 13) an event that occurs in the circumstances described in CASS 13.11.3R.</u>
<i>relevant complaint</i>	(1)	(in DISP) a <u>relevant existing complaint</u> , a <u>relevant new complaint</u> , or a <u>relevant transitional complaint</u> , and (in DISP and FEES 5) a <u>relevant claims management complaint</u> .
	...	
<i>respondent</i>	...	

- (6) (in DISP 2 and 3 and FEES 5) includes, in accordance with the Claims Management Order, an unauthorised person subject to the Compulsory Jurisdiction in relation to relevant claims management complaints.
- retail client* ...
- (3) (in relation to *credit-related regulated activity* and regulated claims management activity) a customer.
- secondary pooling event* ...
- (5) (in CASS 13) an event that occurs in the circumstances described in CASS 13.11.11R.
- UK financial system* (as defined in section 1I of the Act (meaning of “the UK financial system”)) the financial system operating in the *United Kingdom* including:
- (a) financial markets and exchanges;
  - (b) *regulated activities* (including regulated claims management activities); and
  - (c) other activities connected with financial markets and exchanges.



## Annex B

### Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Introduction

...

#### 1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers. The approach that a firm (other than for credit-related regulated activities and regulated claims management activities in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, or other activities, as described in PRIN 1.2.3G.*

1.2.3 G ...

(1AB) Client categorisation under COBS 3 or PRIN 1 Annex 1R is not relevant to regulated claims management activities and therefore the guidance on client categorisation does not apply in relation to a regulated claims management activity.

...

...

#### 3 Rules about application

...

#### 3.2 What?

...

3.2.2A R *PRIN 1 Annex 1R, PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the carrying on of credit-related regulated activities or regulated claims management activities.*

...

### 3.3 Where?

#### Territorial application of the Principles

3.3.1

R	Principle	Territorial application
	<b>Principles 1, 2 and 3</b>	in a <i>prudential context</i> , apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> ) in the <i>United Kingdom</i> , <u>or in respect of regulated claims management activities</u> , apply with respect to <u>activity carried on in Great Britain</u> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see <i>PERG 2.4A</i> ), unless another applicable <i>rule</i> or <i>EU regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>EU regulation</i> .
	...	
	<b>Principle 5</b>	if the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the <i>UK financial system</i> , applies with respect to activities wherever they are carried on; otherwise, applies with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> ) in the <i>United Kingdom</i> , <u>or in respect of regulated claims management activities</u> , applies with respect to <u>activity carried on in Great Britain</u> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see <i>PERG 2.4A</i> ).
	<b>Principles 6, 7, 8, 9 and 10</b>	<i>Principle 8</i> , in a <i>prudential context</i> , applies with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> ) in the <i>United Kingdom</i> , <u>or in respect of regulated claims management activities</u> , apply with respect to <u>activity carried on in Great Britain</u> , even if the establishment from which it is carried on is not located in the <i>UK</i> (see <i>PERG 2.4A</i> ), unless another applicable <i>rule</i> or <i>EU regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>EU regulation</i> .
	...	

...

### 3.4 General

Clients and the Principles

...

3.4.3 G ...

(4) PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the carrying on of regulated claims management activities. Client categorisation does not apply in relation to carrying on a regulated claims management activity.

...

## Annex C

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 1 Application and purpose

...

#### 1 Annex Detailed application of SYSC

1

...

Part 2	Application of the common platform requirements	
	Who?	
...		
2.13A	R	<i>SYSC 6.3 only applies to a firm in relation to carrying on a credit-related regulated activity <u>or regulated claims management activity</u>, or operating an electronic system in relation to lending, to which the Money Laundering Regulations also apply.</i>
...		
	Where?	
2.15	R	The <i>common platform requirements</i> , except the <i>common platform record-keeping requirements</i> , apply to a firm in relation to activities <u>which</u> :
	(1)	<u>(except for regulated claims management activities and ancillary activities) are</u> carried on by it from an establishment in the <i>United Kingdom</i> ; <u>or</u>
	(2)	<u>are, or are ancillary to, regulated claims management activities.</u>
	...	
...		
2.17	R	The <i>common platform record-keeping requirements</i> apply to activities <u>which</u> :
	(1)	<u>(except for regulated claims management activities and ancillary activities) are</u> carried on by a firm from an establishment maintained in the <i>United Kingdom</i> ; <u>or</u>

		(2) are, or are ancillary to, <i>regulated claims management activities</i> .
		<del>, unless</del> If, however, another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, <del>in which case</del> the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> .
		[ <b>Note:</b> article 16(11) first paragraph of <i>MiFID</i> ]
2.17A	G	For an activity to amount to a <i>regulated claims management activity</i> it must be carried on in <i>Great Britain</i> (see <i>PERG 2.4A</i> ). Subject to the exception for <i>common platform record-keeping requirements</i> in paragraph 2.17R of this Annex, the application of the <i>common platform requirements</i> to firms which carry on <i>regulated claims management activities</i> (and ancillary activities) depends on whether the activity is carried on in <i>Great Britain</i> rather than whether it is carried on from an establishment maintained in the <i>United Kingdom</i> .
...		
Part 3		Tables summarising the application of the common platform requirements to different types of firm
...		

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				

SYSC 6.3.1R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated claims management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.2G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated claims</i></p>

				<p><i>management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.3R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated claims management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the</p>

				<p><i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.4G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> or <u><i>regulated claims management activity</i></u>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional</p>



				body listed in Schedule 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.5G	Guidance	Guidance	Guidance	Guidance  For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated claims management activity</i> , or <i>operating an electronic system in relation to lending</i> , applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i> . Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory

				authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.6G	Guidance	Guidance	Guidance	Guidance  For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated claims management activity</i> , or <i>operating an electronic system in relation to lending</i> , applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i> . Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)

SYSC 6.3.7G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated claims management activity</u>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.8R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated</u></p>

				<p><i>claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p>
SYSC 6.3.9R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated</u></p>

				<p><i>claims management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> with a <i>limited permission</i> for <i>entering into a regulated credit agreement as lender</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.10G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated</u></p>

				<p><i>claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p>
SYSC 6.3.11G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> or <i>regulated claims management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies</p>

				<p>only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
--	--	--	--	--

...

#### **4 General organisational requirements**

##### **4.1 General Requirements**

...

Mechanisms and procedures for a firm

- 4.1.4 R A *firm* (with the exception of a *common platform firm* and a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the *firm*, and the nature and range of the financial services, claims management services and other activities undertaken in the course of that business:

...

...

#### **5 Employees, agents and other relevant persons**

##### **5.1 Skills, knowledge and expertise**

...

General

- 5.1.13 R The systems, internal control mechanisms and arrangements established by a *firm* (other than a *common platform firm*) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, *claims management services* and other activities undertaken in the course of that business.

[**Note:** articles 4(1) final paragraph and 5(4) of the *UCITS implementing Directive*]



## Annex D

### Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 4 Statutory status disclosure

##### 4.1 Application

...

##### Where?

...

4.1.2 R *GEN 4.3* (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, subject to *GEN 4.3.4R* (Exception: insurers). In relation to regulated claims management activities, *GEN 4.3* applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG 2.4A*).

4.1.4 R *GEN 4.5* (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*. In relation to regulated claims management activities, *GEN 4.5* applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG 2.4A*).

##### 4.2 Purpose

...

4.2.2 G There are other pre contract information requirements outside this chapter including:

...

(7) ...; ~~and~~

(8) ... ; and

(9) for regulated claims management activities, the pre-contract

information and other requirements in CMC OB 4.2 and CMC OB 4.3.

...

#### 4.4 Business for retail clients from non-UK offices

...

##### Exception

4.4.3 R This section does not apply in relation to *regulated claims management activities* (but *firms carrying on such activities in Great Britain* will be subject to *GEN 4.3*: see *GEN 4.1.2R*).

...

#### 6 Insurance against financial difficulties

##### 6.1 Payment of financial penalties

###### Application

...

6.1.2 G For the purposes of *GEN 2.2.17R* (Activities covered by general rules), the chapter applies to *regulated* and *unregulated activities* carried on in the *United Kingdom* or overseas. In relation to *regulated claims management activities* and *ancillary activities*, this chapter applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG 2.4A*).

...

#### 7 Charging consumers for telephone calls

##### 7.1 Application

###### Who? Where?

7.1.1 R This chapter applies to a *firm* carrying on activities from an establishment in the *United Kingdom*. In relation to *regulated claims management activities*, this chapter applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG 2.4A*).

...

**Annex E**

**Amendments to the Client Assets sourcebook (CASS)**

**Part 1**

In this Part, underlining indicates new text.

**1A CASS firm classification and operational oversight**

...

**1A.2 CASS firm classification**

...

- 1A2.2 R (1) ...
- (2) For the purpose of determining its ‘CASS firm type’ in accordance with *CASS 1A.2.7R*, a *firm* must:
- ...
- (c) in either case, exclude from its calculation any *client money* held in accordance with *CASS 5* (Client money: insurance distribution activity) or *CASS 13* (Claims management: client money).

...

**TP 1 Transitional Provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
(15)	<u><i>CASS 13</i></u>	<u>R</u>	<u><i>CASS 13</i> applies in relation to <i>money</i> held by the <i>firm</i> on 1 April 2019 to the extent that such <i>money</i> was received or is held on behalf of an individual, in the course of or in connection with the</u>	<u>Indefinitely</u>	<u>1 April 2019</u>

			performance of activities which were:		
			(a) <u>carried on before 1 April 2019; and</u>		
			(b) <u>would, if carried on after that date, be regulated claims management activities.</u>		
(16)	<u>CASS 13</u>	<u>G</u>	The <u>rule in (15) applies to the firm irrespective of whether it has a claims management temporary permission or a Part 4A permission.</u>	<u>Indefinitely</u>	<u>1 April 2019</u>

**Schedule 1G Record keeping requirements**

...

1.3

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Content of record</b>	<b>When record must be made</b>	<b>Retention period</b>
...				
<u>CASS 13.2.3R</u>	<u>Allocation of oversight function in CASS 13.2.3R</u>	<u>The person to who the oversight function is allocated</u>	<u>Upon allocation</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 13.5.8R</u>	<u>Client bank account acknowledgement letters sent in accordance with CASS 13.5.2R</u>	<u>Each countersigned client bank account acknowledgement letter received</u>	<u>On receipt of each letter</u>	<u>5 years (following closure of the last client bank account to which the letter relates)</u>

<u>CASS 13.5.9R</u>	<u>Demonstration that the <i>firm</i> has complied with the requirements of CASS 13.5</u>	<u>Evidence of such compliance</u>	<u>On compliance with the relevant provision</u>	<u>None specified</u>
<u>CASS 13.6.5R</u>	<u>Money received from <i>customers</i> in the form of cash, cheques or other payable orders</u>	<u>Details of money received</u>	<u>On receipt</u>	<u>None specified</u>
<u>CASS 13.6.6R(2)</u>	<u>Unidentified <i>client money</i> under CASS 13.6.6R(2)</u>	<u>Details of unidentified <i>client money</i> held</u>	<u>Being unable to identify money as <i>client money</i> or its own money, and deciding it is reasonably prudent to so record</u>	<u>Until it performs the necessary steps to identify the money under CASS 13.6.6R(1)</u>
<u>CASS 13.10.1R(1)</u>	<u>Client money held for each <i>customer</i> and the <i>firm's</i> own money</u>	<u>All that is necessary to enable the <i>firm</i> to distinguish <i>client money</i> held for one <i>customer</i> from <i>client money</i> held for any other <i>customer</i> and from the <i>firm's</i> own money</u>	<u>Maintain up-to-date records</u>	<u>None specified</u>
<u>CASS 13.10.3R</u>	<u>Client money held for each <i>customer</i></u>	<u>Accurate records to ensure the correspondence between the records and accounts of the entitlement</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>

		<u>of each customer for whom the firm holds client money with the records and accounts of the client money the firm holds in client bank accounts</u>		
<u>CASS 13.10.4R</u>	<u>Payments made to, for or on behalf of customers by the firm</u>	<u>Details of payments made</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 13.11.13R</u>	<u>A record of each customer's shortfall in the event of a secondary pooling event</u>	<u>Details of the shortfall</u>	<u>On the secondary pooling event occurring</u>	<u>None is specified</u>

**Schedule 2G Notification and reporting requirements**

2.1

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger Event</b>	<b>Time allowed</b>
...				
<u>CASS 13.10.21R(1) to (5)</u>	<u>The firm's inability or failure to comply with CASS 13.10.1R to 13.10.4R, CASS 13.10.5R, CASS 13.10.15R, CASS 13.10.17R, or CASS</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>

	<u>13.10.19R.</u>			
<u>CASS</u> <u>13.10.21R(6)</u>	<u>Amount of money segregated in client bank accounts is materially different from total aggregate of client money required to be segregated</u>	<u>The fact that there is a material difference</u>	<u>Awareness of the difference</u>	<u>Without delay</u>

## Part 2

In this Part, all the text is new and is not underlined.

### 13 Claims management: client money

#### 13.1 Application

13.1.1 R This chapter applies to a *firm* that:

- (1) carries on a *regulated claims management activity*; and
- (2) receives or holds *client money*.

#### 13.2 Organisational requirements and responsibility for CASS operational oversight

13.2.1 R A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *customer's* rights and prevent the use of *client money* for its own account.

13.2.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.

13.2.3 R A *firm* must allocate to a *director* or *senior manager* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS 13;

- (2) reporting to the *firm's governing body* in respect of that oversight; and
  - (3) completing and submitting the *client money* parts of a CMC001 return in accordance with *SUP 16.25.3R* to *SUP 16.25.8R*.
- 13.2.4 R (1) A *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with *CASS 13.2.3R*.
- (2) But a *firm* must make and retain such a record only where:
- (a) there is a *person* in that *firm* who performs the *compliance oversight function*; and
  - (b) it allocates responsibility in accordance with *CASS 13.2.3R* to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
- (3) A *firm* must ensure that a record made under this *rule* is retained for a period of five years after it is made.

### 13.3 Statutory trust

- 13.3.1 R A *firm* receives and holds *client money* as trustee on the following terms:
- (1) for the purposes and on the terms of the *claims management client money rules* and the *claims management client money distribution rules*;
  - (2) subject to (3), for the *customers* for whom that *money* is held, according to their respective interests in it;
  - (3) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
  - (4) after all valid claims and costs under (2) and (3) have been met, for the *firm* itself.

### 13.4 Selecting an approved bank at which to hold client money

- 13.4.1 G A *firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.
- 13.4.2 R Before a *firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the



*firm* to hold *client money* at the *approved bank* concerned.

- 13.4.3 R A *firm* must consider the risks associated with holding all *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.
- 13.4.4 G In complying with CASS 13.4.3R, a *firm* should consider as appropriate, together with any other relevant matters:
- (1) the amount of *client money* held by the *firm*;
  - (2) the amount of *client money* the *firm* anticipates holding at the *approved bank*; and
  - (3) the creditworthiness of the *approved bank*.
- 13.4.5 G A *firm* can demonstrate compliance with CASS 13.4.2R by checking that the *person* it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm*'s attention to cause it to believe that such *person* is not an appropriate place at which to hold *client money*.

## 13.5 Client bank account acknowledgement letters

- 13.5.1 G The main purposes of a *client bank account acknowledgement letter* are:
- (1) to put the *approved bank* on notice of a *firm*'s *clients*' interests in *client money* that has been deposited with such *person*;
  - (2) to ensure that the *client bank account* has been opened in accordance with CASS 13.6.3R, and is distinguished from any account containing money that belongs to the *firm*; and
  - (3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to such *person* (or *person* connected to such *person*).

Requirement for and content of client bank account acknowledgement letters

- 13.5.2 R (1) For each *client bank account*, a *firm* must, in accordance with CASS 13.5.4R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the *approved bank* with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.
- (2) Subject to CASS 13.5.6R, a *firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the

*approved bank*. The letter must not have been inappropriately redrafted and should clearly identify the *client bank account*.

- 13.5.3 R In drafting *client bank account acknowledgement letters* under CASS 13.5.2R a *firm* is required to use the relevant template in CASS 13 Annex 1R.
- 13.5.4 R When completing a *client bank account acknowledgement letter* under CASS 13.5.2R(1) a *firm*:
- (1) must not amend any of the *acknowledgement letter fixed text*;
  - (2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and
  - (3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.
- 13.5.5 G CASS 13 Annex 2G contains *guidance* on using the template *client bank account acknowledgement letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.

#### Countersignature by the bank

- 13.5.6 R (1) If, on countersigning and returning the *client bank account acknowledgement letter* to a *firm*, the relevant *approved bank* has also:
- (a) made amendments to any of the *acknowledgement letter fixed text*; or
  - (b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;
- the *client bank account acknowledgement letter* will have been inappropriately redrafted for the purposes of CASS 13.5.2R(2).
- (2) Amendments made to the *acknowledgement letter variable text*, in the *client bank account acknowledgement letter* returned to a *firm* by the relevant *approved bank*, will not have the result that the letter has been inappropriately redrafted if those amendments:
- (a) do not affect the meaning of the *acknowledgement letter fixed text*;
  - (b) have been specifically agreed with the *firm*; and
  - (c) do not cause the *client bank account acknowledgement letter* to be inaccurate.

- 13.5.7 R A *firm* must use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

Retention of client bank account acknowledgement letters

- 13.5.8 R A *firm* must retain each countersigned *client bank account acknowledgement letter* it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last *client bank account* to which the acknowledgment letter relates is closed.
- 13.5.9 R A *firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*).

Review and replacement of client bank account acknowledgement letters

- 13.5.10 R A *firm* must, periodically (at least annually, and whenever it becomes aware that something referred to in a *client bank account acknowledgement letter* has changed) review each of its countersigned *client bank account acknowledgement letters* to ensure that they remain accurate.
- 13.5.11 R Whenever a *firm* finds a countersigned *client bank account acknowledgement letter* to contain an inaccuracy, the *firm* must promptly draw up a new replacement *client bank account acknowledgement letter* under CASS 13.5.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank*.
- 13.5.12 G Under CASS 13.5.10R, a *firm* should obtain a replacement *client bank account acknowledgement letter* whenever:
- (1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or
  - (2) it becomes aware of an error or misspelling in the letter.
- 13.5.13 R If a *firm's* *client bank account* is transferred to another *approved bank*, the *firm* must promptly draw up a new *client bank account acknowledgement letter* under CASS 13.5.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank* within 20 *business days* of the *firm* sending it to that *person*.

**13.6 Segregation and the operation of client money accounts**

Requirement to segregate

- 13.6.1 R A *firm* must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an *approved bank*, rather than being first received into the *firm's* own account and then segregated.
- 13.6.2 G A *firm* should arrange for clients and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's* *client bank accounts*.
- 13.6.3 R A *firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.
- 13.6.4 R Cheques received by a *firm*, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.
- 13.6.5 R Where a *firm* receives *client money* in the form of cash, a cheque or other payable order, it must:
- (1) pay the *money* into a *client bank account* in accordance with CASS 13.6.1R promptly and no later than the *business day* after the day on which it receives the *money*;
  - (2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle 10*; and
  - (3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of CASS 13.10 (Records, accounts and reconciliations).
- 13.6.6 R If a *firm* receives *money* (either in a *client bank account* or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:
- (1) take all necessary steps to identify the *money* as either *client money* or its own *money*; and
  - (2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as “unidentified client money” while it performs the necessary steps under (1).
- 13.6.7 G If a *firm* is unable to identify *money* that it has received as either *client money* or its own *money* under CASS 13.6.6R(1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A *firm* should have regard to its fiduciary duties when considering such matters.

- 13.6.8 G A *firm* must ensure that *client money* received by its agents is:
- (1) received directly into a *client bank account* of the *firm*; or
  - (2) if it is received in the form of a cheque or other payable order:
    - (a) paid into a *client bank account* of the *firm* promptly and, in any event, no later than the next *business day* after receipt; or
    - (b) forwarded to the *firm* promptly and, in any event, so that it is received by the *firm* no later than the close of the third *business day* following the receipt of the *money* from the *customer*; or
  - (3) if it is received in the form of cash, paid into a *client bank account* of the *firm* promptly and, in any event, no later than the next *business day* after receipt.

#### Mixed remittance

- 13.6.9 R If a *firm* receives a *mixed remittance* it must:
- (1) pay the full sum into a *client bank account* promptly and in accordance with CASS 13.6.1R to 13.6.5R; and
  - (2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the money that is not *client money* out of the *client bank account*.

#### Interest

- 13.6.10 R A *firm* must pay a *client* any interest earned on *client money* held for that *client*.

### 13.7 Money due and payable to the firm

- 13.7.1 R *Money* is not *client money* when it is or becomes properly due and payable to the *firm* for its own account.
- 13.7.2 G (1) The circumstances in which *money* may be or become due and payable to the *firm* for its own account could include:
- (a) when fees and/or third party disbursements have become due and payable to the *firm* for its own account under the agreement between the *customer* and the *firm*; and
  - (b) when *money* recovered for a *customer* or a sum in respect of damages, compensation or settlement of a *claim* is paid into a *client bank account* and the *firm* has agreed with the *client* that a proportion of the sum is to be paid to the *firm* for fees or in

respect of liabilities the *firm* has incurred on behalf of the *customer*.

- (2) The circumstances in which *money* is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

- 13.7.3 G *Firms* are reminded that when entering into or varying contractual arrangements with *customers* regarding circumstances in which *money* becomes properly due and payable to the *firm* for its own account, *firms* should comply with any relevant obligations to *customers* including the *client's best interests rule* and requirements under the *Unfair Terms Regulations* and the Consumer Rights Act 2015.

### 13.8 Money due to a client or third party.

- 13.8.1 R *Client money* in respect of *money* recovered for a *customer* or *money* in respect of damages, compensation or settlement of a *claim* received into a *client bank account* must be paid to the *customer*, or a duly authorised representative of the *customer*, as soon as reasonably practicable after receipt and, in any event, a *firm* must take steps within two *business days* of receipt to make such a payment.
- 13.8.2 R *Money* received from a *customer* in respect of third party disbursements which is due and payable to the third party in accordance with the terms of the contractual arrangements between the parties should be paid to the third party as soon as reasonably practicable after receipt.

### 13.9 Discharge of fiduciary duty

- 13.9.1 G CASS 13 provides important safeguards for the protection of *client money* held by *firms* that sit alongside the fiduciary duty owed by *firms* in relation to *client money*. CASS 13.9.2R to 13.9.3R provide for when *money* ceases to be *client money* for the purposes of CASS 13 and the fiduciary duty which *firms* owe to *clients* in relation to *client money*.
- 13.9.2 R *Money* ceases to be *client money* if:
- (1) it is paid to the *customer*, or a duly authorised representative of the *customer*; or
  - (2) it is:
    - (a) paid to a third party on the instruction of the *customer*, or with the specific consent of the *customer*; or
    - (b) paid to a third party further to an obligation on the *firm* under any applicable law; or

- (3) it is paid into an account of the *customer* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *customer*; or
- (4) it is due and payable to the *firm* for its own account (see CASS 13.7.1R to 13.7.2G); or
- (5) it is paid to the *firm* as an excess in the *client bank account* (see CASS 13.10.15R(3)).

13.9.3 R When a *firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid.

## 13.10 Records, accounts and reconciliations

### Records and accounts

- 13.10.1 R (1) A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *customer* from *client money* held for any other *customer*, and from its own *money*.
- (2) A *firm* must allocate in its books and records any *client money* it receives to an individual *customer* promptly and, in any case, no later than two *business days* following the receipt.
- (3) Pending a *firm*'s allocation of a receipt of *client money* to an individual *customer* under (2), it must record the received *client money* in its books and records as "unallocated client money".
- 13.10.2 G In accordance with CASS 13.10.1R, a *firm* must maintain internal records and accounts of the *client money* it holds (for example, a cash book and client ledger accounts). These internal records are separate to any external records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).
- 13.10.3 R A *firm* must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *customers*.
- 13.10.4 R A *firm* must maintain up-to-date records that detail all payments received for, or on behalf of, *customers* and all payments to, from, or made on behalf of, *customers*.

### Internal client money reconciliation

13.10.5 R A *firm* must carry out an *internal client money reconciliation* each *business day*.

- 13.10.6 R An *internal client money reconciliation* requires a *firm* to check whether its *client money* resource, as determined by CASS 13.10.8R, on the previous *business day*, was at least equal to the *client money* requirement, as determined by CASS 13.10.9R, as at the close of business on that day.
- 13.10.7 R In carrying out an *internal client money reconciliation*, a *firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

Calculating the client money resource

- 13.10.8 R The *client money* resource for *client money* held in accordance with CASS 13.10.6R is the aggregate of the balances on the *firm's client bank accounts*, as at the close of business on the previous *business day*.

Calculating the client money requirement

- 13.10.9 R (1) The *client money* requirement is the sum of:
- (a) the aggregate of all individual *customer* balances calculated in accordance with CASS 13.10.13R and CASS 13.10.14R;
  - (b) the amount of any unallocated *client money* under CASS 13.10.1R(3);
  - (c) the amount of any unidentified *client money* under CASS 13.6.6R(2)R; and
  - (d) any other amounts of *client money* included in the calculation under (2).
- (2) For the purposes of (1)(d), the *firm* must consider whether there are amounts of *client money*, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its *client money* requirement and, if so, adjust the calculation accordingly.
- 13.10.10 G The *client money* requirement calculated in accordance with CASS 13.10.9R should represent the total amount of *client money* a *firm* is required to have segregated in *client bank accounts* under CASS 13.
- 13.10.11 G *Firms* are reminded that, under CASS 13.9.3R, if a *firm* has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its *clients* (for example, to return *client money* to the *client*), the sum concerned must be included in the *firm's* calculation of its *client money* requirement until the cheque or order is presented and paid.
- 13.10.12 G (1) The following *guidance* applies where a *firm* receives *client money* in the form of cash, a cheque or other payable order.



- (2) In carrying out the calculation of the *client money* requirement, a *firm* may initially include the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with CASS 13.6.5R. If it does so, the *firm* should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the *firm's client money* requirement and *client money* resource.
- (3) In carrying out the calculation of the *client money* requirement, a *firm* may alternatively exclude the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with CASS 13.6.5R. If it does so, the *firm* is reminded that it must separately record the receipt of the *money* in the *firm's* books and records under CASS 13.6.5R(3).
- (4) A *firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* into a *client bank account* promptly and no later than on the *business day* after it receives the *money* (see CASS 13.6.5R).

13.10.13 R The individual *customer* balance for each *client* must be calculated as follows:

- (1) the amount received for or on behalf of the *customer* by the *firm*;  
plus
- (2) the amount of any interest, and any other sums, due from the *firm* to the *customer*; less:
- (3) the aggregate of the amount of *money*:
  - (a) paid to that *customer* by the *firm*; and
  - (b) due and payable by the *customer* to the *firm*; and
  - (c) due by the *customer* to a third party in accordance with the contractual arrangements in place between the *firm* and the *customer*.

13.10.14 R Where the individual *customer* balance calculated in respect of an individual *client* under CASS 13.10.13R is a negative figure (because the amounts received for or on behalf of, or due, to a *client* under CASS 13.10.13R(1) and CASS 13.10.13R(2) are less than the amounts paid by, or due and payable by, that *customer* under CASS 13.10.13R(3), that individual *customer* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in CASS 13.10.9R.

#### Reconciliation differences and discrepancies

13.10.15 R When an *internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a *firm* must:

- (1) identify the reason for the difference;
- (2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered; and
- (3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

#### External client money reconciliation

- 13.10.16 G The purpose of the reconciliation process required by CASS 13.10.17R is to ensure the accuracy of a *firm's* internal accounts and records against those of any third parties by whom *client money* is held.
- 13.10.17 R A *firm* must perform an *external client money reconciliation*:
- (1) each *business day*; and
  - (2) as soon as reasonably practicable after the relevant *internal client money reconciliation*;
- to ensure the accuracy of its internal accounts and records by comparing its internal accounts records against those of *approved banks* with whom *client money* is deposited.
- 13.10.18 G An *external client money reconciliation* requires a *firm* to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.
- 13.10.19 R When any discrepancy is revealed by an *external client money reconciliation*, a *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting system of the party providing the statement or confirmation and that of the *firm*.
- 13.10.20 R While a *firm* is unable to resolve a discrepancy arising from an *external client money reconciliation*, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant *client bank account*.

#### Notification requirements

- 13.10.21 R A *firm* must inform the *FCA* in writing without delay if:

- (1) its internal records and accounts of *client money* are materially out of date or materially inaccurate so that the firm is no longer able to comply with the requirements in CASS 13.10.1R to CASS 13.10.4R; or
- (2) it will be unable to or materially fails to conduct an *internal client money reconciliation* in compliance with CASS 13.10.5R; or
- (3) after having carried out an *internal client money reconciliation* in accordance with CASS 13.10.5R it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a *client bank account* so that the *firm* is unable to comply with CASS 13.10.15R; or
- (4) it will be unable to or materially fails to conduct an *external client money reconciliation* in compliance with CASS 13.10.17R; or
- (5) after having carried out an *external client money reconciliation* in accordance with CASS 13.10.17R it will be unable to, or materially fails to, identify the reason for any discrepancies and correct them in accordance with CASS 13.10.19R; or
- (6) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in CASS 13.6.

## 13.11 Client money distribution in the event of a failure of a firm or approved bank

### Application

- 13.11.1 R This section (the *claims management client money distribution rules*) applies to a *firm* that holds *client money* which is subject to the *claims management client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

### Purpose

- 13.11.2 G The *claims management client money distribution rules* seek, in the event of the *failure* of a *firm* or of an *approved bank* at which the *firm* holds *client money*, to protect *client money* and to facilitate the timely return of *client money* to clients.

### Failure of the authorised firm: primary pooling event

- 13.11.3 R A *primary pooling event* occurs:
- (1) on the *failure* of the *firm*;

- (2) on the vesting of assets in a *trustee* in accordance with an ‘assets requirement’ imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act*; or
- (3) on the coming into force of a *requirement* or *requirements* which, either separately or in combination:
  - (a) is or are for all *client money* held by the *firm*; and
  - (b) require the *firm* to take steps to cease holding all *client money*.

#### Pooling and distribution after a primary pooling event

13.11.4 R If a *primary pooling event* occurs, then:

- (1) all *client money*:
  - (a) held in the *firm’s client bank accounts*; and
  - (b) any *client money* identifiable in any other account held by the *firm* into which *client money* has been received;is treated as pooled together to form a notional pool; and
- (2) a *firm* must calculate the amount it should be holding on behalf of each individual *customer* as at the time of the *primary pooling event* using the method of calculating individual *customer* balance provided for by CASS 13.10.13R.

#### Distribution if client money not transferred to another firm

13.11.5 R Where a *primary pooling event* occurs and the *client money* pool is not transferred to another *firm* in accordance with CASS 13.11.6R, a *firm* must distribute *client money* comprising the notional pool so that each *client* receives a sum that is rateable to its entitlement to the notional pool calculated in accordance with CASS 13.11.4R(2).

#### Transfer of client money to another firm

13.11.6 R If, in the event of a *primary pooling event* occurring, the *regulated claims management activity* business undertaken by a *firm* (“the transferor”) is to be transferred to another *firm* (“the transferee”), then the transferor may move the *client money* pool to the transferee.

13.11.7 R If the transferor decides to move the *client money* pool to the transferee, the transferor must immediately on making the decision, and before the move takes place, notify the *FCA* in writing of:

- (1) the proposed move, including the date of the proposed move if known at the time of the notification; and

- (2) the proposed transferee.
- 13.11.8 R The *client money* pool may be transferred under CASS 13.11.6R only if it will be held by the transferee in accordance with CASS 13, including the statutory trust in CASS 13.3.1R.
- 13.11.9 R If there is a *shortfall* in the *client money* transferred under CASS 13.11.6R then the *client money* must be allocated to each of the *customers* for whom the *client money* was held so that each client is allocated a sum which is rateable to that *customer's client money* entitlement in accordance with CASS 13.11.4R(2). This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.
- 13.11.10 R The transferee must, within seven *days* after the transfer of *client money* under CASS 13.11.6R notify *customers* that:
- (1) their *money* has been transferred to the transferee; and
  - (2) they have the option of having *client money* returned to them or to their order by the transferee, otherwise the transferee will hold the *client money* for the *customers* and conduct *regulated claims management activities* for those *customers*.

Failure of an approved bank: secondary pooling event

- 13.11.11 R A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *firm* holds *client money* in a *client bank account*.
- 13.11.12 R (1) Subject to (2), if a *secondary pooling event* occurs as a result of the *failure* of an *approved bank* where one or more *client bank accounts* are held then in relation to every *client bank account* of the *firm*, the provisions of CASS 13.11.13R(1), CASS 13.11.13R(2) and CASS 13.11.13R(3) will apply.
- (2) CASS 13.11.13R does not apply if, on the *failure* of the *approved bank*, the *firm* pays to its *clients*, or pays into a *client bank account* at an unaffected *approved bank*, an amount equal to the amount of *client money* that would have been held if a *shortfall* had not occurred as a result of the *failure*.
- 13.11.13 R *Money* held in each *client bank account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *client bank accounts*, that has arisen as a result of the *failure* of the *approved bank*, must be borne by all *customers* whose *client money* is held in a *client bank account* of the *firm*, rateably in accordance with their entitlements to the pool;
  - (2) a new *client money* entitlement must be calculated for each *customer* by the *firm*, to reflect the requirements in (1), and the *firm's* records

must be amended to reflect the reduced *client money* entitlement;

- (3) the *firm* must make and retain a record of each *client*'s share of the *client money* shortfall at the *failed approved bank* until the *client* is repaid; and
- (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in CASS 13.10.9R.

- 13.11.14 R The term "which should have been held" is a reference to the failed *approved bank*'s failure to hold the *client money* at the time of the pooling event.
- 13.11.15 R Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with CASS 13.6.10R (Interest).

### 13 CASS client bank account acknowledgement letter template

Annex  
1R

[Letterhead of *firm* subject to CASS 13.5.3R, including full name and address of *firm*]

[Name and address of *approved bank*]

[Date]

#### **Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)**

We refer to the following [current/deposit account[s]] which [name of *firm*], regulated by the Financial Conduct Authority (Firm Reference Number [FRN]), ("us", "we" or "our") has opened or will open with [name of *approved bank*] ("you" or "your"):

[Insert the account title[s], the account unique identifier[s] (for example, as relevant, sort code and account number) and (if applicable) any abbreviated name of the account[s] as reflected in the *approved bank*'s systems]

([collectively,] the "Client Bank Account[s]").

In relation to [each of] the Client Bank Account[s] identified above you acknowledge that we have notified you that:

- (a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;

- (b) we have opened or will open the Client Bank Account for the purpose of depositing money with you on behalf of our clients; and
- (c) we hold all money standing to the credit of the Client Bank Account in our capacity as trustee under the laws applicable to us.

In relation to [each of] the Client Bank Account[s] identified above you agree that:

- (d) you do not have any recourse or right against money in the Client Bank Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Bank Account with any other account and any right of set-off or counterclaim against money in the Client Bank Account;
- (e) you will title, or have titled, the Client Bank Account as stated above and that such title is different to the title of any other account containing money that belongs to us or to any third party; and
- (f) you are required to release on demand all money standing to the credit of the Client Bank Account, upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy, (or similar procedure) in any relevant jurisdiction, except for any properly incurred charges or liabilities owed to you on, and arising from the operation of, the Client Bank Account, provided that you have a contractual right to retain such money and that this right is notwithstanding (a) to (c) above and without breach of your agreement to (d) above.

We acknowledge that:

- (g) you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Client Bank Account[s].

You and we agree that:

- (h) the terms of this letter will remain binding upon the parties, their successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;
- (i) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter;
- (j) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement will prevail;
- (k) no variation to the terms of this letter will be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;

- (l) this letter will be governed by the laws of [*insert appropriate jurisdiction*];  
and
- (m) the courts of [*insert same jurisdiction as previous*] will have jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [*name of firm*]

x\_\_\_\_\_

Authorised Signatory

Print Name:

Title:

ACKNOWLEDGED AND AGREED:

For and on behalf of [*name of approved bank*]

x\_\_\_\_\_

Authorised Signatory

Print Name:

Title:

Contact Information: [*insert signatory's phone number and email address*]

Date:



1. This annex contains *guidance* on the use of the template *client bank account acknowledgement letters* in CASS 13 Annex 1R.

#### General

2. Under CASS 13.5.2R(2), *firms* are required to have in place a duly signed and countersigned *client bank account acknowledgement letter* for a *client bank account* before they are allowed to hold or receive *client money* in or into the account.
3. For each *client bank account* a *firm* is required to complete, sign and send to the *approved bank* a *client bank account acknowledgement letter* identifying that account and in the form set out in CASS 13 Annex 1R (CASS claims management firm client bank account acknowledgment letter template).
4. When completing a *client bank account acknowledgement letter* using the appropriate template, a *firm* is reminded that it must not amend any of the text which is not in square brackets (acknowledgment letter fixed text). A *firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.

#### Clear identification of relevant accounts

5. A *firm* is reminded that for each *client bank account* it needs to have in place a *client bank account acknowledgement letter*. As a result, it is important that it is clear to which account or accounts each *client bank account acknowledgement letter* relates. As a result, the template in CASS 13 Annex 1R requires that the *client bank account acknowledgement letter* includes the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each *client bank account*.
6. The title and unique identifiers included in a *client bank account acknowledgement letter* for a *client bank account* should be the same as those reflected in both the records of the *firm* and the relevant *approved bank*, as appropriate, for that account. Where an *approved bank's* systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:
  - (a) the account may continue to be appropriately identified in line with the requirements of CASS 13 (for example, 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct' etc); and
  - (b) when completing a *client bank account acknowledgement letter*, such letter must include both the long and short versions of the account title.

7. A *firm* should ensure that all relevant account information is contained in the space provided in the body of the *client bank account acknowledgement letter*. Nothing should be appended to a *client bank account acknowledgement letter*.
8. In the space provided in the template letter for setting out the account title and unique identifiers for each relevant account/deposit, a *firm* may include the required information in the format of the following table:

Full account title	Unique identifier	Title reflected in [ <i>name of approved bank</i> ] systems
[ <i>Claims Management Firm Client Bank Account</i> ]	[00-00-00 12345678]	[ <i>CM FIRM CLIENT A/C</i> ]

9. Where a *client bank account acknowledgement letter* is intended to cover a range of *client bank accounts*, some of which may not exist as at the date the *client bank account acknowledgement letter* is countersigned by the *approved bank*, a *firm* should set out in the space provided in the body of the *client bank account acknowledgement letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (e.g. with the word ‘client’ in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (e.g. all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in CASS 13 Annex 1R which allows a *firm* to include the account title and a unique identifier for each relevant account, a *firm* should include a statement to the following effect:

**Any account open at present or to be opened in the future which contains the term [‘client’][insert appropriate abbreviation of the term ‘client’ as agreed and to be reflected in the Approved Bank’s systems] in its title and which may be identified with [the following [insert common unique identifier]][an account number from and including [XXXX1111] to and including [ZZZZ9999]][clearly identify range of unique identifiers].**

#### Signatures and countersignatures

10. A *firm* should ensure that each *client bank account acknowledgement letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or the *approved bank* may require more than one signatory).
11. A *client bank account acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in CASS 13.5. However, where electronic signatures are used, a *firm* should consider whether, taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the

electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.

#### Completing a client bank account acknowledgment letter

12. A *firm* should use at least the same level of care and diligence when completing a *client bank account acknowledgement letter* as it would in managing its own commercial agreements.
13. A *firm* should ensure that each *client bank account acknowledgement letter* is legible (e.g. any handwritten details should be easy to read), produced on the *firm's* own letter-headed paper, dated and addressed to the correct legal entity (e.g. where the *approved bank* belongs to a group of companies).
14. A *firm* should also ensure each *client bank account acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).
15. A *firm* should similarly ensure that no square brackets remain in the text of each *client bank account acknowledgement letter* (e.g. after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the template in CASS 13 Annex 1R) and that each page of the letter is numbered.
16. A *firm* should complete a *client bank account acknowledgement letter* so that no part of the letter can be easily altered (e.g. the letter should be signed in ink rather than pencil).
17. In respect of the *client bank account acknowledgement letter's* governing law and choice of competent jurisdiction (see paragraphs (11) and (12) of the template *client bank account acknowledgement letters*), a *firm* should agree with the approved bank and reflect in the letter that the laws of a particular jurisdiction will govern the *client bank account acknowledgement letter* and that the courts of that same jurisdiction will have jurisdiction to settle any disputes arising out of, or in connection with, the *client bank account acknowledgement letter*, its subject matter or formation.
18. If a *firm* does not, in any *client bank account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:
  - (a) the laws of the jurisdiction under which either the *firm* or the relevant *approved bank* are organised; or
  - (b) as is found in the underlying agreement/s (e.g. banking services

agreement) with the relevant *approved bank*;

then the *firm* should consider whether it is at risk of breaching CASS 13.5.4R(3) or CASS 13.4.2R.

#### Authorised signatories

19. A *firm* is required under CASS 13.5.7R to use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.
20. If an individual that has countersigned a *client bank account acknowledgement letter* does not provide the *firm* with sufficient evidence of their authority to do so then the *firm* is expected to make appropriate enquiries to satisfy itself of that individual's authority.
21. Evidence of an individual's authority to countersign a *client bank account acknowledgement letter* may include a copy of the *approved bank's* list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *client bank account acknowledgement letter*.
22. A *firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *client bank account acknowledgement letter* as the *firm* would seek when managing its own commercial arrangements.

#### Third party administrators

23. If a *firm* uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgement letter*, the text “[Signed by [**Name of Third Party Administrator**] on behalf of [*firm*]” should be inserted to confirm that the *client bank account acknowledgement letter* was signed by the TPA on behalf of the *firm*.
24. In these circumstances, the *firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgement letter* on the *firm's* behalf. A *firm* should also ensure that the *client bank account acknowledgement letter* continues to be drafted on letter-headed paper belonging to the *firm*.

#### Client bank accounts

25. A *firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that all *client bank accounts* include the term ‘client’ in their title or an appropriate abbreviation in circumstances where this is permitted by the

*Glossary definition.*

26. All references to the term “Client Bank Account[s]” in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.

## Annex F

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1A The FCA's approach to supervision

##### 1A.1 Application and purpose

...

Purpose

...

1A.1.3 G The design of these arrangements is shaped by the *FCA's statutory objectives* in relation to the conduct supervision of ~~financial services firms~~ *firms* as well as the prudential supervision of *firms* not supervised by the *PRA*. These objectives are set out in Chapter 1 of the *Act*. The *FCA* has one *strategic objective*: ensuring that the relevant markets function well. In discharging its general functions, the *FCA* must, so far as is reasonably possible, act in a way which is compatible with its *strategic objective* and which advances one or more of its three operational objectives:

...

1A.1.3A G (1) The meaning of "UK financial system" when used in Chapter 1 of the Act includes regulated claims management activities.

(2) The term "regulated financial services" when used in Chapter 1 of the Act includes services provided by an authorised person in carrying on any regulated activity. Accordingly, for the purposes of Chapter 1 of the Act: a regulated claims management activity is a "regulated financial service" and a customer of a firm carrying on a regulated claims management activity is a "consumer" for the purposes of the FCA's consumer protection and competition statutory objectives.

...

##### 1A.4 Tools of supervision

...

1A.4.4 G Some of these tools, for example the use of public statements to deliver messages to *firms* or *consumers* of ~~financial services~~, do not involve the *FCA* in direct oversight of the business of *firms*. In contrast, other tools do involve

a direct relationship with *firms*. The *FCA* also has powers to act on its own initiative to impose or vary individual *requirements* on a *firm* (see *SUP 7*) and to ban or impose requirements in relation to specific ~~financial promotions~~ *financial promotions*. The *FCA* may also use its general rule-making powers to ban or impose requirements in relation to specific products, types of products or practices associated with a particular product or type of product. The use of the *FCA*'s tools in its oversight of market practices, in ensuring the protection of client assets and for prudential supervision of *FCA*-only *firms*, will also contribute to the integrity and orderly operation of the financial markets.

...

## 2 Information gathering by the FCA or PRA on its own initiative

### 2.1 Application and purpose

...

#### Purpose

...

- 2.1.9 G The purpose of *SUP 2.4* is to explain a particular method of information gathering used by the *FCA*, known as “mystery shopping”. Information about how a *firm* sells ~~financial~~ products and services can be very difficult to obtain, and the purpose of this method is to obtain such information from individuals who approach a *firm* in the role of potential retail *consumers* on the *FCA*'s initiative. The *FCA* may seek information about particular issues or the activities of individual *firms* by means of mystery shopping.

...

### 2.4 ‘Mystery shopping’

...

- 2.4.2 G The *FCA* uses mystery shopping to help it protect *consumers*. This may be by seeking information about a particular practice across a range of *firms* (*SUP 2.4.3G(1)*) or the practices of a particular *firm* (*SUP 2.4.3G(2)*). One of the risks *consumers* face is that they may be sold ~~financial~~ products or services which are inappropriate to them. A problem in protecting *consumers* from this risk is that it is very difficult to establish after the event what a *firm* has said to a ‘genuine’ *consumer* in discussions. By recording what a *firm* says in discussions with a ‘mystery shopper’, the *FCA* can establish a *firm*'s normal practices in a way which would not be possible by other means.

...

## 3 Auditors

### 3.1 Application

...

#### 3.1.2 R Applicable sections (see SUP 3.1.1R)

...

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...	...	...	...
(5D)	<u>A CASS 13 claims management firm</u>	<u>SUP 3.1-3.7, 3.11</u>	<u>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</u>
...	...	...	...

...

### 3.10 Duties of auditors: notification and report on client assets

...

#### 3.10.5 R Client assets report

Whether in the auditor's opinion		
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> throughout the period;	
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> , at the date as at which the report has been made;	
...	...	...
(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the rules in CASS 5.6 and CASS 7A (Client money distribution) <del>and</del> , CASS 11.13 ( <i>debt management client money distribution rules</i> ) <del>and</del> CASS 13.11 ( <i>claims management</i>	



	client money distribution rules) in relation to that pooling event.
--	---

...

## **6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements**

...

### **6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements**

...

How long will an application take?

...

**6.3.38A** G If the relevant regulator fails to determine an application within the time period specified in section 55V of the Act, this does not mean that the application is deemed to be granted.

...

## **10A FCA Approved Persons**

### **10A.1 Application**

General

...

**10A.1.1** **R** This chapter applies to every:

- (1) *firm* that is not an *SMCR firm*; and
- (2) *SMCR firm*, but only to the extent required by *SUP* 10A.1.16BR (Appointed representatives),<sub>2</sub>

other than a *firm* which has permission to carry on only regulated claims management activities.

...

## **12 Appointed Representatives**

...

### **12.2 Introduction**

...

12.2.7 G ...

- (4) Regulated claims management activity is not a type of business for which an appointed representative may be exempt.

...

## 15 Notifications to the FCA

...

### 15.5 Core information requirements

Change in name

15.5.1 R A firm must give the FCA reasonable advance notice of a change in:

- (1) the firm's name (which is the registered name if the firm is a body corporate);
- (2) any business name under which the firm carries on a regulated activity (other than a regulated claims management activity) or ancillary activity either from an establishment in the United Kingdom or with or for clients in the United Kingdom; and
- (3) any business name under which the firm carries on a regulated claims management activity or ancillary activity.

...

## 16 Reporting requirements

### 16.1 Application

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17 and SUP 16.22)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.4 and SUP 16.5	All categories of firm except:	Entire sections
	...	
	(j <b>b</b> ) a firm with permission to carry	

		<u>on only regulated claims management activities;</u>	
	(k)	a firm falling within a combination of (i), (ia), (j), <del>and</del> (ja) <u>and</u> (jb).	
...			
<u>SUP 16.25</u>		<u>A firm with permission to carry on regulated claims management activities.</u>	<u>Entire section</u>
...			

...

### 16.3 General provisions on reporting

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

- (18) annual financial crime reporting (*SUP 16.23*); ~~and~~
- (18) employers' liability register compliance reporting (*SUP 16.23A*); ~~;~~  
A)
- (19) retirement income data reporting (*SUP 16.24*); and
- (20) claims management reporting (*SUP 16.25*).

...

After SUP 16.24 (Retirement income data reporting) insert the following new section, SUP 16.25. The text is not underlined.

#### 16.25 Claims management reporting

Application

16.25.1 G The effect of SUP 16.1.3R is that this section applies to a firm with permission to carry on regulated claims management activities.

Purpose

16.25.2 G (1) The purpose of this section is to ensure that the FCA receives, on a regular basis, comprehensive information about the activities of firms

which carry on *regulated claims management activities*.

- (2) The purpose of collecting this data is to monitor *firms*' compliance with applicable *rules* and to assess and identify any emerging risks within the claims management industry.

#### Requirement to submit Annual Claims Management Report

- 16.25.3 R A *firm* must submit an Annual Claims Management Report to the *FCA* annually in respect of the period of 12 *months* ending on the *firm*'s *accounting reference date*.
- 16.25.4 G *Firms* are only required to disclose in Annual Claims Management Reports information relating to the part of their business which is involved in carrying on *regulated claims management activities* and *ancillary activities*, except for questions 13 to 15, 19 to 27 and 30 to 34, which relate to the *firm* as a whole.

#### Method for submitting Annual Claims Management Report

- 16.25.5 R A *firm* must submit an Annual Claims Management Report in the format as set out in *SUP 16 Annex 45AR*, using the appropriate online systems specified on the *FCA*'s website.
- 16.25.6 G A *firm* submitting an Annual Claims Management Report should read the guidance notes available in *SUP 16 Annex 45BG*.

#### Time period for submitting Annual Claims Management Report

- 16.25.7 R A *firm* must submit the Annual Claims Management Report within 30 *business days* of the *firm*'s *accounting reference date*.

#### Group reporting

- 16.25.8 R If a *group* includes more than one *firm*, a single Annual Claims Management Report may be submitted, and so satisfy the requirements of all *firms* in the *group*. Such a report should contain the information required from all of the *firms* in the *group*, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their firm reference numbers. Nevertheless, the requirement to provide a report and the responsibility for the report remain with each *firm* in the *group*.

...

After *SUP 16 Annex 44BG* (Guidance notes for the completion of the Employers' Liability Register compliance return in *SUP 16 Annex 44AR*) insert the following new Annexes, *SUP 16 Annex 45AR* and *SUP 16 Annex 45BG*. The text is not underlined.

## 16 Annual Claims Management Report form Annex

45AR

CMC001: Key data for Claims Management

Currency: Sterling only

Units: integers

		A
Group reporting		
1	Does the data reported in this return relate to more than one <i>firm</i> ? (NB: You should always answer “No” if your <i>firm</i> is not part of a <i>group</i> )	
2	If “Yes” then list the firm reference numbers (FRNs) of all of the additional <i>firms</i> included in this return.	
Nil return		
3	Do you wish to report a nil return?	
	All <i>firms</i> answering 'no' to question 3, must complete the following:	
4	Over the reporting period, how many <i>employees</i> did the <i>firm</i> have on average?	
5	How many <i>employees</i> left the <i>firm</i> (for any reason) during the reporting period?	
6	What was the <i>firm</i> 's annual <i>employee</i> turnover rate during the reporting period?	
7	What was the total remuneration paid to the <i>firm</i> 's <i>employees</i> over the reporting period?	
8	What was the total amount of variable remuneration paid to the <i>firm</i> 's <i>employees</i> over the reporting period?	
9	How does the <i>firm</i> charge fees to its <i>customers</i> ?	
10	What was the total annual income for all <i>regulated claims management activities</i> , as defined in FEES 4 Annex 11AR for the purposes of FCA fees reporting (see <i>guidance</i> in FEES 4 Annex 13G)?	
Profit and loss account (over reporting period)		
11	What was the <i>firm</i> 's income from <i>seeking out, referrals</i>	

	<i>and identification of claims or potential claims?</i>	
12	What was the <i>firm's</i> income from all <i>regulated claims management activities</i> ?	
13	What was the <i>firm's</i> income from all <i>regulated activities</i> ?	
14	What was the <i>firm's</i> income from activities which are not <i>regulated activities</i> ?	
15	What was the <i>firm's</i> total income, including from activities which are not <i>regulated activities</i> ?	
16	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> ?	
17	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> (excluding expenditure of the sort listed in <i>CMCOB 7.2.8R(2)(b)</i> )?	
18	What was the <i>firm's</i> operating profit from <i>regulated claims management activities</i> ?	
Balance sheet (as at end of reporting period)		
19	What was the value of the <i>firm's</i> total assets (fixed and current)?	
20	How much <i>cash</i> did the <i>firm</i> hold?	
21	What was the value of the <i>firm's</i> other current assets?	
22	How much did the <i>firm</i> owe in overdrafts and bank loans due within one year?	
23	What was the value of the <i>firm's</i> current liabilities (other than overdrafts and bank loans)?	
24	What was the value of the <i>firm's</i> total (current and non-current) liabilities?	
25	What was the value of the <i>firm's</i> current assets less the value of its current liabilities?	
26	What was the value of the <i>firm's</i> total assets less the value of its current liabilities?	
Prudential resources		
27	What level of prudential resources did the <i>firm</i> hold at the end of the reporting period (as calculated in <i>CMCOB 7.3</i> )?	

28	Was the <i>firm</i> a Class 1 firm or a Class 2 firm (as defined in <i>CMCOB</i> 7.2.5R) at the end of the reporting period?	
29	What was the <i>firm's</i> overheads requirement (as calculated in <i>CMCOB</i> 7.2.8R) as at the end of the reporting period?	
30	As at the end of the reporting period, was the <i>firm's</i> overheads requirement (as calculated in <i>CMCOB</i> 7.2.8R) greater than the amount set out in whichever of <i>CMCOB</i> 7.2.6R(1)(a) or 7.2.7R(1)(a) was applicable to the <i>firm</i> ?	
31	Did the <i>firm</i> hold <i>client money</i> at any point during the reporting period?	
32	What was the <i>firm's</i> prudential resources requirement (as calculated in <i>CMCOB</i> 7.2.6R and 7.2.7R) as at the end of the reporting period?	
33	Did the <i>firm</i> have a prudential surplus or deficit at the end of the reporting period?	
34	What was the amount of the prudential surplus or deficit at the end of the reporting period?	
<p>The rest of the questions are only for <i>firms</i> that have permission for one or more of:</p> <ul style="list-style-type: none"> <li>• <i>advice, investigation or representation in relation to a personal injury claim;</i></li> <li>• <i>advice, investigation or representation in relation to a financial services or financial product claim;</i></li> <li>• <i>advice, investigation or representation in relation to a housing disrepair claim;</i></li> <li>• <i>advice, investigation or representation in relation to a claim for a specified benefit;</i></li> <li>• <i>advice, investigation or representation in relation to a criminal injury claim; and</i></li> <li>• <i>advice, investigation or representation in relation to an employment-related claim.</i></li> </ul>		
Professional Indemnity Insurance		
35	Does the <i>firm</i> have permission for <i>advice, investigation or representation in relation to a personal injury claim</i> ?	

36	Did the <i>firm</i> have a professional indemnity insurance policy in place for <i>advice, investigation or representation in relation to a personal injury claim</i> as at the end of the reporting period?	
	If yes:	
(a)	Who is the underwriter of the insurance?	
(b)	What is the policy renewal date?	
(c)	Have the minimum terms of the policy been reviewed in the last five years?	
(d)	What is the amount of the limit of indemnity (liability) for any single claim?	
(e)	What is the amount of the limit of indemnity (liability) for claims in the aggregate over the policy period?	
(f)	What is the amount of the excess (or deductible) that would be applicable for any one claim?	
(g)	Has the identity of the insurance provider or the terms and conditions of the insurance policy changed from the content of the last Annual Claims Management Report form submitted to the <i>FCA</i> ?	
Client Money		
37	What was the highest balance of <i>client money</i> held by the <i>firm</i> at any point during the reporting period?	
38	In relation to the balance reported for question 37, for how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> ?	
39	For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than two <i>business days</i> ?	
40	For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than five <i>business days</i> ?	
41	What was the longest period of time for which the <i>firm</i> held <i>client money</i> for a <i>customer</i> ?	
Product Data		
42	What was the average fee charged by the <i>firm</i> , during the reporting period in respect of a <i>claim</i> ?	



Third-party Lead Generators							
43	How many leads did the <i>firm</i> purchase from <i>lead generators</i> during the reporting period?						
44	If you have provided a figure in response to the previous question, provide the following details in respect of the three <i>lead generators</i> from which the <i>firm</i> purchased the most leads during this reporting period:						
		Name	Postal address	Email address	Does supplier use overseas facilities (e.g. a call centre)?	Number of leads purchased from supplier over reporting period	Average cost per lead purchased from supplier over reporting period
	1						
	2						
	3						
45	How many leads did the <i>firm</i> supply to a third party? (include all the occasions on which the <i>firm</i> passed a <i>customer</i> , or details of a <i>customer</i> or <i>claim</i> , to a third party)						
Product data							
How was the <i>firm's regulated claims management activity</i> divided among the following areas of work?							
		Revenue	Number of <i>claims</i> where lead obtained from <i>lead generator</i>	Number of <i>claims</i> pursued	Number of successful <i>claims</i>	Number of <i>claims</i> halted or not taken forward because: no good arguable base (left hand column), suspected fraud (middle column), or being	

												frivolous or vexatious (right hand column)
46	financial services or financial product <i>claims</i>											
	(a)	Payment protection insurance										
	(b)	Packaged bank accounts										
	(c)	Investments										
	(d)	Payment card or bank charges										
	(e)	Mortgages										
	(f)	Consumer credit										
	(g)	Pensions, including SERPS										
	(h)	Interest rate swaps and hedging products										
	(i)	Other (please specify)										
47	<i>personal injury claims</i>											
	(a)	Holiday sickness										

	(b)	Road traffic accidents (excluding whiplash)						
	(c)	Slips, trips and falls (excluding accidents at work)						
	(d)	Accidents at work						
	(e)	Clinical negligence						
	(f)	Whiplash						
	(g)	Other (please specify)						
48		<i>housing disrepair claims</i>						
49		<i>claims for a specified benefit</i>						
50		<i>criminal injury claims</i>						
51		<i>employment-related claims</i>						
52		Of the above types of <i>claim</i> , which three saw the largest percentage change in number of successful <i>claims</i> ?						
		Type of <i>claim</i>			Percentage change			
	(a)							

	(b)		
	(c)		

**16**  
**Annex**  
**45BG**

**Guidance notes for completion of the Annual Claims Management Report form**

Guidance for CMC001

General notes

This *data item* collects key information annually from *firms* with permission to undertake *regulated claims management activity*.

Except for rows 13 to 15, 19 to 27 and 30 to 34, the data provided in this form should relate only to *regulated claims management activity*, even if the *firm* undertakes regulated or unregulated activities in other areas. Except where a single Annual Claims Management Report is submitted in respect of a *group* in accordance with SUP 16.25.8R, the data should not include the assets, liabilities, income or costs of any consolidated subsidiaries of the *firm*.

If you have undertaken no *regulated claims management activity* during the reporting period, answer “yes” to question 3 “do you wish to report a nil return?” to attest that there is no activity to report to us.

All questions requiring a monetary answer must be answered in sterling only. Figures should be reported in integers (that is, single units, to the nearest whole number), except where otherwise specified in the form: for example, income figures should be given to the nearest pound, not to the nearest thousand pounds.

In the form there are two sections. The first section must be answered by all *firms* (including those that only have permission for *seeking out, referrals and identification of claims or potential claims, or agreeing to carry on a regulated activity* in respect of one of these activities). The second section however (from question 35 onwards) is only required from those *firms* that have permission for one or more of the following activities:

- *advice, investigation or representation in relation to a personal injury claim;*
- *advice, investigation or representation in relation to a financial services or financial product claim;*
- *advice, investigation or representation in relation to a housing disrepair claim;*
- *advice, investigation or representation in relation to a claim for a specified benefit;*

- *advice, investigation or representation in relation to a criminal injury claim; and*
- *advice, investigation or representation in relation to an employment-related claim,*

collectively referred to in these guidance notes as ‘advising on a *claim*, investigating a *claim*, or representing a *claimant*’.

Data elements

Question		Notes
3	Do you wish to report a nil return?	If the <i>firm</i> has undertaken no <i>regulated claims management activity</i> during this reporting period then answer “yes” and submit the form.
4	Over of the reporting period, how many employees did the <i>firm</i> have on average?	State how many employees the <i>firm</i> had on average during the reporting period.  Include part time workers in this figure as 0.5.
5	How many employees left the <i>firm</i> (for any reason) during the reporting period?	State the figure for the number of employees who left the <i>firm</i> .  Include part time workers in this figure as 0.5.
6	What was the <i>firm</i> ’s annual employee turnover rate during the reporting period?	This should be the number of employees who left the <i>firm</i> during the reporting period (item 5) divided by the average number of employees the <i>firm</i> had during the reporting period (item 4), multiplied by 100.
7	What was the total remuneration paid to the <i>firm</i> ’s employees over the reporting period?	Include all remuneration received by employees, including any variable remuneration such as bonuses, commissions or performance-based pay. Include share-based remuneration, options and the monetary value of benefits in kind.
8	What was the total amount of variable remuneration paid to the <i>firm</i> ’s	Include only variable remuneration such as bonuses, commissions or

	employees over the reporting period?	performance-based pay. Include share-based remuneration, options and the monetary value of benefits in kind to the extent that these are variable.
9	How does the <i>firm</i> charge fees to its <i>customers</i> ?	Please describe all the ways in which the <i>firm</i> charges fees: for example, whether calculated by reference to the amount recovered for the <i>customer</i> or on an hourly rate, and whether fees are charged up front or on account, or are invoiced periodically or at the end of the <i>claim</i> .
10	What was the total annual income for all <i>regulated claims management activities</i> , as defined in FEES 4 Annex 11AR for the purposes of FCA fees reporting (see <i>guidance</i> in FEES 4 Annex 13G)?	Refer to the <i>guidance</i> contained in FEES 4 Annex 13G before completing this question. If you undertake other activities this will be a subset of your total income.
11	What was the <i>firm's</i> income from <i>seeking out, referrals and identification of claims or potential claims</i> ?	State the revenue from generating leads for, or selling leads to, third parties. If you do not have this permission enter "0".
12	What was the <i>firm's</i> income from all <i>regulated claims management activities</i> ?	
13	What was the <i>firm's</i> income from all <i>regulated activities</i> ?	
14	What was the <i>firm's</i> income from activities which are not <i>regulated activities</i> ?	
15	What was the <i>firm's</i> total income, including from activities which are not <i>regulated activities</i> ?	This should be the sum of items 13 and 14.
16	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> ?	Include any share of overheads which is allocated to income from <i>regulated claims management activities</i> .
17	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> (excluding expenditure of the sort listed in	

	CMCOB 7.2.8R(2)(b))?	
18	What was the <i>firm's</i> operating profit from <i>regulated claims management activities</i> ?	Operating profit is equal to income (item 12) less expenditure (item 16).
	Balance sheet	Questions 19 to 27 are to be answered as at the end of the relevant reporting period
19	What was the value of the <i>firm's</i> total assets?	Include all fixed and current assets.
20	How much <i>cash</i> did the <i>firm</i> hold?	This should relate to the whole <i>firm</i> but should not include the cash of any consolidated subsidiaries. This should include cash held in a bank account available for instant withdrawal.
21	What was the value of the <i>firm's</i> other current assets?	A current asset is an asset that is expected to be converted to cash within a year of the date of measurement (but does not include cash). This should relate to the whole <i>firm</i> (including investments in or receivables from other group entities) but should not include the assets of any consolidated subsidiaries.
22	How much did the <i>firm</i> owe in overdrafts and bank loans due within one year?	Include only the drawn amount of overdrafts.
23	What was the value of the <i>firm's</i> current liabilities (other than overdrafts and bank loans)?	A current liability is a debt or obligation that falls due within one year of the date of the liability arising. This should relate to the whole firm (including any amounts owed to other group entities) but should not include any consolidated subsidiaries.
24	What was the value of the <i>firm's</i> total (current and non-current) liabilities?	Non-current liabilities are those falling due more than one year after the date of measurement.
25	What was value of the <i>firm's</i> current assets less the value of its current liabilities?	This should equal the sum of items 20 and 21 less the sum of items 22 and 23.
26	What was the value of the <i>firm's</i> total	This should equal the sum of item

	assets less the value of its current liabilities?	19, less the sum of items 22 and 23.
27	What level of prudential resources did the <i>firm</i> hold at the end of the reporting period (as calculated in <i>CMCOB 7.3</i> )?	<i>CMCOB 7.3</i> sets out how prudential resources are to be calculated and which forms of capital are eligible for inclusion.
28	Was the <i>firm</i> a Class 1 firm or a Class 2 firm (as defined in <i>CMCOB 7.2.5R</i> ) at the end of the reporting period?	
29	What was the <i>firm's</i> overheads requirement (as calculated in <i>CMCOB 7.2.8R</i> ) as at the end of the reporting period?	<i>CMCOB 7.2.8R</i> sets out how the overheads requirement is to be calculated.
30	As at the end of the reporting period, was the <i>firm's</i> overheads requirement (as calculated in <i>CMCOB 7.2.8R</i> ) greater than the amount set out in whichever of <i>CMCOB 7.2.6R(1)(a)</i> or <i>7.2.7R(1)(a)</i> was applicable to the <i>firm</i> ?	The sums applicable under <i>CMCOB 7.2.6R</i> and <i>7.2.7R</i> are £10,000 for a Class 1 firm and £5,000 for a Class 2 firm.
31	Did the <i>firm</i> hold <i>client money</i> at any point during the reporting period?	Answer "yes" or "no". For the purposes of this question, include <i>client money</i> which has been sent out by cheque and is uncleared and/or unbanked.
32	What was the <i>firm's</i> prudential resources requirement (as calculated in <i>CMCOB 7.2.6R</i> and <i>7.2.7R</i> ) as at the end of the reporting period?	<i>CMCOB 7.2.6R</i> sets out how the prudential resources requirement is to be calculated for Class 1 firms. <i>CMCOB 7.2.7R</i> sets out how the prudential resources requirement is to be calculated for Class 2 firms.
33	Did the <i>firm</i> have a prudential surplus or deficit at the end of the reporting period?	A <i>firm</i> with prudential resources in excess of its prudential resources requirement has a prudential surplus. A <i>firm</i> with prudential resources less than its prudential resources requirement has a prudential deficit.
34	What was the amount of the prudential surplus or deficit at the end of the reporting period?	Enter positive figures only (irrespective of whether the amount was a surplus or deficit.)



	The rest of the questions are only for <i>firms</i> that have permission for advising on a <i>claim</i> , investigating a <i>claim</i> , or representing a <i>claimant</i> .	All the questions below relate to advising on a <i>claim</i> , investigating a <i>claim</i> , or representing a <i>claimant</i> and should not include data for any other <i>regulated claims management activity</i> .
35	Does the <i>firm</i> have permission for <i>advice, investigation or representation in relation to a personal injury claim</i> ?	Answer “yes” or “no”. Having these permissions in respect of <i>personal injury claims</i> triggers a requirement to hold professional indemnity insurance.
36	Did the <i>firm</i> have a professional indemnity insurance policy in place for <i>advice, investigation or representation in relation to a personal injury claim</i> at the end of the reporting period?	Answer “yes” or “no”.
	If yes:	
	(a) Who is the underwriter of the insurance?	State the underwriter’s name.
	(b) What is the policy renewal date?	Provide the end date of the policy in the format dd/mm/yyyy.
	(c) Have the minimum terms of the policy been reviewed in the last five years?	
	(d) What is the amount of the limit of indemnity (liability) for any single claim?	If the policy applies different indemnity limits to different insured events, enter the lowest applicable limit.
	(e) What is the amount of the limit of indemnity (liability) for claims in the aggregate over the policy period?	
	(f) What is the amount of the excess (or deductible) that would be applicable for any one claim?	
(g) Has the identity of the insurance provider or the terms and conditions of the insurance policy changed from the content	Answer “yes” or “no”.	

	of the last Annual Claims Management Report form submitted to the <i>FCA</i> ?	
37	What was the highest balance of <i>client money</i> held by the <i>firm</i> at any point during the reporting period?	Report rounded to the nearest pound.
38	In relation to the balance reported for question 37, for how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> ?	Report the number of <i>customers</i> to whom the balance reported for question 37 relates.
39	For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than two <i>business days</i> ?	Report the total number of <i>customers</i> for whom the <i>firm</i> held <i>client money</i> for longer than two <i>business days</i> .
40	For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than five <i>business days</i> ?	Report the total number of <i>customers</i> for whom the <i>firm</i> held <i>client money</i> for longer than five <i>business days</i> . Exclude (for question 40 reporting purposes only) any <i>customers</i> to which the <i>firm</i> has sent a cheque or other payable order which is uncleared and/or unbanked. For the avoidance of doubt, a <i>firm</i> must continue to treat this money as <i>client money</i> until the cheque or order is presented and paid by the bank.
41	What was the longest period of time for which the <i>firm</i> held <i>client money</i> for a <i>customer</i> ?	Report in <i>days</i> .
42	What was the average fee charged by the <i>firm</i> , during the reporting period in respect of a <i>claim</i> ?	Include in the average only <i>claims</i> where a fee was charged.
43	How many leads did the <i>firm</i> purchase from <i>lead generators</i> during the reporting period?	State “None” or provide a positive figure.
44	If you have provided a figure in response to the previous question, provide the following details in respect of the three <i>lead generators</i> from which the <i>firm</i> purchased the most	Provide all the information requested in each column.

	leads during this reporting period:	
45	How many leads did the <i>firm</i> supply to a third party? (include all the occasions on which the <i>firm</i> passed a <i>customer</i> , or details of a <i>customer</i> or <i>claim</i> , to a third party)	
46-51	How was the <i>firm's regulated claims management activity</i> divided among the following areas of work?	<p>Provide the following figures for each area of work.</p> <p>For financial services and products <i>claims</i> and <i>personal injury claims</i> show how this work is split between different subcategories.</p> <p>When reporting "other", complete the free text box to indicate what the figures relate to.</p>
	Revenue	Enter the total income earned from this type of work during the reporting period.
	Number of <i>claims</i> where lead obtained from <i>lead generator</i>	Enter the number of <i>claims</i> where the <i>customer</i> was obtained from a lead purchased from a <i>lead generator</i> .
	Number of <i>claims</i> pursued	Enter the number of <i>claims</i> in respect of which an agreement was reached with the <i>customer</i> for the <i>firm</i> to investigate, advise or represent.
	Number of successful <i>claims</i>	Enter the number of <i>claims</i> which resulted in a payment or other remedy for the <i>customer</i> . Include <i>claims</i> settled on such terms.
	Number of <i>claims</i> halted or not taken forward because: no good arguable base, suspected fraud, or being frivolous or vexatious	Enter the number of <i>claims</i> which the <i>firm</i> declined, or declined to continue to pursue because there was no arguable case in the left hand column; the number of those where there was suspected fraud in the middle column; and the number of those which were frivolous or vexatious in the right hand column.

52	Of the above types of <i>claim</i> , which three saw the largest percentage change in number of successful <i>claims</i> ?	Percentage change is the increase or decrease in the number of successful <i>claims</i> concluded during the reporting period compared to the number in the equivalent period ending 12 months earlier. Enter the name of the type of <i>claim</i> and the percentage change. For financial services or financial product <i>claims</i> and <i>personal injury claims</i> , enter the more detailed <i>claim</i> category (e.g. Whiplash).
----	--	--

...

Amend the following as shown.

**TP 1 Transitional provisions**

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...	...	...	...	...	...
<u>3AC</u>	<u>SUP 3.10.4R to SUP 3.10.6R</u>	<u>R</u>	<p><u>(1) This transitional provision applies in respect of an auditor which was subject to SUP 3.10 immediately before 1 April 2019 in relation to a firm which becomes subject to the claims management client money rules on 1 April 2019.</u></p> <p><u>(2) For the purposes of SUP 3.10.5R(1) in its application to the claims management</u></p>	<u>From 1 April 2019</u>	<u>1 April 2019</u>

			<p><u>client money rules</u>, the first report which the auditor submits under <u>SUP 3.10.4R</u> which covers the <u>claims management client money rules</u> must state whether, in the auditor's opinion, the <u>firm</u> was in compliance with those <u>rules</u> from 1 April 2019 to the end of the period covered by the report.</p>		
...	...	...	...	...	...
19	<u>SUP 16.25.7</u>	<u>R</u>	<p>(1) This transitional provision applies in respect of the first <u>Annual Claims Management Report</u> which a <u>firm</u> is required to submit under <u>SUP 16.25.7R</u>.</p> <p>(2) No report is required under <u>SUP 16.25.7R</u> in respect of a period ending on an <u>accounting reference date</u> of the <u>firm</u> earlier than 1 July 2019.</p> <p>(3) If no report is provided under <u>SUP 16.25.7R</u> in respect of a period ending on an <u>accounting reference date</u> of the <u>firm</u> earlier than 1 July 2019, the first report under <u>SUP 16.25.7R</u> must address the period from 1 April 2019 to the <u>firm's first accounting reference date</u> which occurs on or after 1 July 2019.</p>	From 1 April 2019 to 1 July 2020	<u>1 April 2019</u>

## Annex G

### Amendments to the Dispute Resolution: Complaints manual (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1 Treating complainants fairly

##### 1.1 Purpose and application

Purpose

- 1.1.1 G This chapter contains *rules and guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments in the *United Kingdom*, by certain *branches of firms* in the *EEA* or by certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*. In respect of regulated claims management activities, this chapter applies to business carried on in Great Britain (see PERG 2.4A). It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

Application to firms

- 1.1.3 R ...

(1A) This chapter also applies to a firm in respect of complaints from eligible complainants concerning activities which are, or which are ancillary to, regulated claims management activities.

...

- 1.1.5 R This chapter does not apply to:

...

(3A) a firm in respect of complaints concerning activities which:

(a) are not carried on in Great Britain but which would be regulated claims management activities if they were carried on in Great Britain; or

(b) are ancillary to activities described in (a);

...

- 1.1.5-B G For an activity to amount to a regulated claims management activity it must be carried on in Great Britain (see PERG 2.4A). The effect of DISP 1.1.3R(1A) and DISP 1.1.5R(3A) is that the application of this chapter to

regulated claims management activities and activities ancillary to regulated claims management activities depends on whether the activity is carried on in Great Britain rather than whether it is carried on from an establishment maintained in the United Kingdom.

...

- 1.1.10 R In relation to a *firm*'s obligations under this chapter, references to a complaint also include an expression of dissatisfaction which is capable of becoming a *relevant new complaint*, a *relevant transitional complaint*, ~~or~~ a *relevant new credit-related complaint*, or a relevant new claims management complaint.

...

### 1.3 Complaints handling rules

...

Further requirements for all respondents

...

- 1.3.6 G Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service or claims management service, it should (in accordance with *Principle 6* (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

...

...

### 1.10 Complaints reporting rules

- 1.10.1 R (1) Unless (2) applies, twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants*.
- (2) If a *firm*:
- (a) has *permission* to carry on only *credit-related regulated activities* or *operating an electronic system in relation to lending* and has revenue arising from those activities that is less than or equal to £5,000,000 a year; or
  - (b) has permission to carry on only regulated claims management activities;

the *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* once a year.

- (3) The report required by (1) and (2) must be set out in the format in:
- (a) *DISP* 1 Annex 1R, in respect of *complaints* which do not relate to *regulated claims management activity* or any activity ancillary to *regulated claims management activity*; and
  - (b) *DISP* 1 Annex 1ABR, in respect of *complaints* relating to *regulated claims management activity* or any activity ancillary to *regulated claims management activity*.

...

#### Information requirements

...

- 1.10.2B R *DISP* 1 Annex 1ABR requires (for the relevant reporting period) information about:
- (1) in Table 1, the total number of *complaints* received by the *firm* and the main focus of the *complaint*;
  - (2) in Table 2:
    - (a) the number of *complaints* that were closed or upheld within different time periods;
    - (b) the total amount of redress paid by the *firm* in relation to *complaints* upheld and not upheld in the relevant reporting period; and
    - (c) redress in relation to the *claims management fee cap*, where this was done at the *firm*'s instigation rather than as the result of a *complaint* about the fee.

- 1.10.3 G For the purposes of *DISP* 1.10.2R, *DISP* 1.10.2-AR<sub>2</sub> and *DISP* 1.10.2AR<sub>7</sub> and *DISP* 1.10.2BR, when completing the return, the *firm* should take into account the following matters.

...

- (2) Under *DISP* 1.10.2R(1)(b), *DISP* 1.10.2R(2)(b)<sub>2</sub> or *DISP* 1.10.2-AR or *DISP* 1.10.2BR(2), a *firm* should report information relating to all *complaints* which are closed and upheld within the relevant reporting period, including those resolved under *DISP* 1.5 (Complaints resolved by close of the third business day). Where a *complaint* is upheld in part, or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint* as upheld for reporting purposes.



However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as “rejected”.

- (3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(1)(b)(ii), *DISP* 1.10.2R(2)(b)(ii), *DISP* 1.10.2-AR(4), ~~or *DISP* 1.10.2AR or *DISP* 1.10.2BR(2)(b)~~, redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:

...

- (e) waiver of an excess on an insurance policy; ~~and~~
- (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred; and
- (g) the refund of fees paid in excess of the *claims management fee cap*, and any amount which the *firm* had attempted to charge but which was written off or waived (before the *customer* paid it) on the basis that it would have exceeded the *claims management fee cap*.

...

...

- 1.10.4A R If a *firm* ~~has permission to carry on only credit related regulated activities or operating an electronic system in relation to lending and has revenue arising from those activities that is less than or equal to £5,000,000 a year, is one to which *DISP* 1.10.1R(2) applies,~~ the relevant reporting period is the year immediately following the *firm*'s *accounting reference date*.

...

## 1.10A Complaints data publication rules

Obligation to publish summary of complaints data or total number of complaints

- 1.10A.1 R ...

(1A)

- (a) This paragraph applies to a *firm* which:
  - (i) has *permission* to carry on only *credit-related regulated activities* or to *operate an electronic system in relation to lending*; and
  - (ii) has revenue arising from those activities that is less than or equal to £5,000,000 a year.

- (aa) This paragraph also applies to a *firm* which has *permission* to carry on only *regulated claims management activities*.
- (b) Where a *firm* to which this paragraph applies submits a report to the *FCA* in accordance with *DISP* 1.10.1R reporting 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

...

...

After DISP 1 Annex 1AAG (Notes on completing electronic money and payment services complaints return form) insert the following new Annex, DISP 1 Annex 1ABR. The text is not underlined.

**1 Annex Claims management complaints and redress return form  
1ABR**

Currency: Sterling only

Units: Integers

		A
Group reporting		
1	Does the data reported in this return cover <i>complaints</i> relating to more than one <i>firm</i> ?  (NB: You should always answer “No” if your <i>firm</i> is not part of a <i>group</i> .)	
2	If “Yes” then list the firm reference numbers (FRNs) of all of the additional <i>firms</i> included in this return.	
Nil return declaration		
3	We wish to declare a nil return  (If yes, leave all questions on <i>complaints</i> activities, including contextualisation, blank.)	
Return details required		
4	Total <i>complaints</i> outstanding at reporting period start date.	
5	Total number of <i>complaints</i> opened during the reporting	

	period.	
Complaints data publication by FCA		
6	If you are reporting 1000 or more <i>complaints</i> , do you consent to the <i>FCA</i> publishing the <i>complaints</i> data and information on context contained in this report in advance of the <i>firm</i> publishing the data itself?	
7	If “Yes”, do you confirm that the <i>complaints</i> data and information on context contained in this report accurately reflects the information required to be published by the reporting <i>firm</i> under <i>DISP</i> ?	
Contextualisation data		
8	Total number of leads generated or obtained during the reporting period	
9	Total number of <i>claims</i> opened during the reporting period	

Table 1

		A	B	C	D	E	F
		Type of claim					
	Numbers of complaints during reporting period	<i>personal injury claims</i>	financial services or financial product <i>claims</i>	<i>housing disrepair claims</i>	<i>claims for a specified benefit</i>	<i>criminal injury claims</i>	<i>employment-related claims</i>
10	Total number of complaints						
	Main focus of complaint						
11	Lead generation, unsolicited marketing and cold calling						
12	Quality of advice / provision of misleading information						

	(including in advertisements)						
13	Customer service issues (including call handling)						
14	General administration						
15	Upfront fees						
16	Fee dispute (at settlement – other than one in 17 below)						
17	Fees in excess of the <i>claims management fee cap</i>						
18	Claim outcome						
19	Process for obtaining and/or sharing of customer data						
20	Delay in processing claim						
21	Other – please provide details						

Table 2

Number of complaints closed during the reporting period (22 to 25) and complaints upheld (26)

Redress paid, in integers (27 to 30): for example, figures for redress paid should be to the nearest pound not to the nearest thousand pounds. Include all amounts in excess of the *claims management fee cap*, whether a refund of fees paid or a waiver of excess fees.

22	Complaints closed within 3 days	
23	Complaints closed within 8 weeks, but after more than 3 days	
24	Complaints closed after more than 8 weeks	

25	Total complaints closed	
26	Complaints upheld	
27	Redress paid for upheld complaints	
28	Redress paid for complaints not upheld	
29	Redress in relation to the <i>claims management fee cap</i> , where this was done at the <i>firm's</i> instigation rather than as the result of a <i>complaint</i> about the fee	
30	Total redress paid	

Amend the following as shown.

**1 Annex Complaints publication report  
1B**

...

	Number of complaints opened by volume of business							
Product / service grouping	Provision (at reporting period end date)	Intermediation (within the reporting period)	Number of complaints opened	Number of complaints closed	Percentage closed within 3 days	Percentage closed after 3 days but within 8 weeks	Percentage upheld	Main cause of complaints opened
...								
Credit related	...	...			...	...		...
<u>Claims management</u>	<u>per 1000 claims in progress and/or leads generated</u>	<u>N/A</u>						

	<u>ed</u>							
--	-----------	--	--	--	--	--	--	--

...

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.1 Purpose, interpretation and application

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service*'s two jurisdictions:

(1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services*, issuance of *electronic money*, and *CBTL business* and covers:

...

(b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order*, ~~and~~ the *Mortgage and General Insurance Complaints Transitional Order* and the Claims Management Order;

...

...

2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise:

...

(4) ... ; ~~and~~

(5) ... ;

(6) *relevant existing claims management complaints* referred to the *Legal Ombudsman* before 1 April 2019 and inherited by the *Financial Ombudsman Service* under the *Claims Management Order*; and

(7) *relevant new claims management complaints* about events which took place before 1 April 2019 but referred to the *Financial Ombudsman Service* on or after 1 April 2019 under the *Claims Management Order*.

2.1.3 G The *Ombudsman Transitional Order* and the Claims Management Order requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints* and relevant existing claims management complaints, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

...

## 2.3 To which activities does the Compulsory Jurisdiction apply?

...

Activities by firms and unauthorised persons subject to a former scheme

2.3.2 G The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

(1) ... ; ~~or~~

(2) ... ; or

(2A) as a result of the *Claims Management Order*, a *relevant claims management complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* at the time of the act or omission;

...

...

## 2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities, other than *regulated claims management activities* and activities ancillary to *regulated claims management activities*, which (at ~~3 January 2018~~ 1 April 2019) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

(ca) an activity which would be a *regulated claims management activity* and would be covered by the *Compulsory Jurisdiction* if it were carried on in *Great Britain* (see *PERG 2.4A*);

...

...

2.5.3 G *DISP 2.5.1R (2)(a)* is for those that are subject to the *Compulsory Jurisdiction for regulated activities* but are not covered by the *Ombudsman*

*Transitional Order*, ~~or the Mortgage and General Insurance Complaints Transitional Order~~, or the *Claims Management Order*. It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.

...

## 2.6 What is the territorial scope of the relevant jurisdiction?

### Compulsory Jurisdiction

2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, of a *designated credit reference agency* or of a *designated finance platform* which:

(a) (except for *regulated claims management activities* and *activities ancillary to regulated claims management activities*) are carried on from an establishment in the *United Kingdom*; or

(b) are, or are ancillary to, *regulated claims management activities*.

...

2.6.2 G This:

...

(2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* other than:

(a) ... ; and

(b) ... ; and

(c) *complaints in relation to regulated claims management activity*.

2.6.2A G For an activity to amount to a *regulated claims management activity* it must be carried on in *Great Britain* (see *PERG 2.4A*). The application of the *Compulsory Jurisdiction to firms which carry on regulated claims management activities* (and *activities ancillary to regulated claims management activities*) depends on whether the activity is carried on in *Great Britain* rather than whether it is carried on from an establishment maintained in the *United Kingdom*.

...



Voluntary Jurisdiction

...

2.6.4A    G    Complaints about activities which are claims management services but which are not regulated claims management activity (for example, services provided by a company incorporated in Northern Ireland to a natural person ordinarily resident in Northern Ireland) may be covered by the Voluntary Jurisdiction under DISP 2.6.4R(1) where the activities are carried on from an establishment in the United Kingdom.

...

**2.7        Is the complainant eligible?**

...

Eligible complainants

...

2.7.6        R    ...

(17)    the complainant is a customer of the respondent in relation to regulated claims management activity.

...

2.7.8        G    In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order*, ~~and~~ the *Mortgages and General Insurance Complaints Transitional Order* and *Claims Management Order*, where a complainant:

- (1)    wishes to have a *relevant new complaint*, ~~or~~ a relevant transitional complaint or a relevant new claims management complaint dealt with by the *Ombudsman*; and
- (2)    is not otherwise eligible; but
- (3)    would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before the relevant ~~transitional~~ order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

...

**2 Annex    Regulated Activities for the Voluntary Jurisdiction as at ~~27 July 2018~~ 1 April  
1G            2019**

...

The activities which were covered by the *Compulsory Jurisdiction* (at ~~27 July 2018~~ 1 April 2019) were:

...

The activities which (at ~~27 July 2018~~ 1 April 2019) were *regulated activities* were, in accordance with section 22 of the *Act* (Regulated Activities), any of the following activities specified in Part II and Parts 3A and 3B of the *Regulated Activities Order* (with the addition of *auction regulation bidding* and *administering a benchmark*):

...

- (41) *seeking out, referrals and identification of claims or potential claims* (article 89G);
- (42) *advice, investigation or representation in relation to a personal injury claim* (article 89H);
- (43) *advice, investigation or representation in relation to a financial services or financial product claim* (article 89I);
- (44) *advice, investigation or representation in relation to a housing disrepair claim* (article 89J);
- (45) *advice, investigation or representation in relation to a claim for a specified benefit* (article 89K);
- (46) *advice, investigation or representation in relation to a criminal injury claim* (article 89L);
- (47) *advice, investigation or representation in relation to an employment-related claim* (article 89M);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of ~~(22)~~, (22A), (22B), (22C), (22D), (22E) and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a *person's* financial standing or, in the case of (41) to (47), is or relates to *claims management services* and is carried on in *Great Britain*.

### **3 Complaint handling procedures of the Financial Ombudsman Service**

#### **3.1 Purpose, interpretation and application**

...

Interpretation

...

- 3.1.4 G The *Ombudsman Transitional Order* and the Claims Management Order requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints* and relevant existing claims management complaints, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

...

### 3.3 Dismissal without consideration of the merits and test cases

...

- 3.3.3 G Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* and the Claims Management Order, where the *Ombudsman* is dealing with a *relevant complaint*, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the *former scheme* in question, as it had effect immediately before the relevant ~~transitional~~ order came into effect.

- 3.3.3A G Under the Claims Management Order the Ombudsman may dismiss a relevant claims management complaint, if he considers that the complaint would have been dismissed under the rules of the former scheme or should be dismissed under the grounds for dismissal in DISP 3.3.4R or DISP 3.3.4AR. Where the Ombudsman is dealing with a relevant new claims management complaint the rules of the former scheme must be read as if they were subject to paragraph 13 of Schedule 3 of the ADR Regulations.

...

### 3.6 Determination by the Ombudsman

Fair and reasonable

...

- 3.6.5 G Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint* or a *relevant transitional complaint* or a relevant new claims management complaint, the *Ombudsman Transitional Order*, ~~and~~ the *Mortgage and General Insurance Complaints Transitional Order* and the Claims Management Order ~~require~~ make provision for him to take into account what determination the former Ombudsman might have been expected to reach in relation to an equivalent complaint dealt with under the former scheme in question immediately before the relevant ~~transitional~~ order came into effect.

...

### 3.7 Awards by the Ombudsman

...

Money awards

...

- 3.7.3 G Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint*, ~~or a relevant transitional complaint~~ or a relevant new claims management complaint, the *Ombudsman Transitional Order*, ~~and the *Mortgages and General Insurance Complaints Transitional Order* and the *Claims Management Order*~~ require make provision for him to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the former scheme in question immediately before the relevant transitional order came into effect.

...

**TP 1 Transitional provisions**

TP1.1 Transitional provisions table

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...	...	...	...	...	...
47	<u>DISP 1.10.1R, DISP 1.10.4AR, DISP 1.10.5R, and DISP 1 Annex 1ABR</u>	R	(1) This transitional provision applies where a firm with <u>permission to carry on only regulated claims management activities</u> is required to provide the FCA with its first report under <u>DISP 1.10.1R in the form of DISP 1 Annex 1ABR.</u>  (2) No report is required under <u>DISP 1.10.1R in the form of DISP 1 Annex 1ABR in respect of a period ending on an accounting reference date of the firm earlier</u>	From 1 April 2019 to 1 July 2020	1 April 2019

			<p><u>than 1 July 2019.</u></p> <p><u>(3) If the firm does not provide a report in the form of DISP 1 Annex 1ABR under DISP 1.10.1R in respect of a period ending on an accounting reference date of the firm earlier than 1 July 2019, the first report in the form of DISP 1 Annex 1ABR provided under DISP 1.10.1R must cover the period from 1 April 2019 to the firm's first accounting reference date which occurs on or after 1 July 2019.</u></p>		
<u>48</u>	<u>DISP 2 and DISP 3</u>	<u>R</u>	<p><u>In DISP 2 and DISP 3 references to a "firm" or "firms" include unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant claims management complaints in accordance with the Claims Management Order.</u></p>	<u>From 1 April 2019</u>	<u>From 1 April 2019</u>
<u>49</u>	<u>DISP 2 and DISP 3</u>	<u>G</u>	<p><u>Under the Claims Management Order, a relevant claims management complaint is subject to the Compulsory Jurisdiction whether or not it is about a firm or an unauthorised person. Unauthorised persons are not subject to DISP 1, but references to "firm" in DISP 2</u></p>	<u>From 1 April 2019</u>	<u>From 1 April 2019</u>

			and <i>DISP 3</i> include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant claims management complaints</i> , where applicable.		
<u>50</u>	<u><i>DISP 1, DISP 2, DISP 3</i></u> and <u><i>DISP 4</i></u>	<u>R</u>	In relation to <i>relevant claims management complaints</i> , references in <i>DISP 1, DISP 2, DISP 3</i> and <i>DISP 4</i> to an “ <i>eligible complainant</i> ” include a person who is to be treated as an <i>eligible complainant</i> in accordance with the <i>Claims Management Order</i> and references to a <i>complaint</i> shall be construed accordingly.	<u>From 1 April 2019</u>	<u>From 1 April 2019</u>

## Annex H

### Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Conduct of business standards: general

...

### 2.5 Conduct of business: credit broking

2.5.3 R A *firm* must:

...

- (4) before referring the *customer* to a third party which carries on *regulated activities* or a *claims management service* (within the meaning of section ~~4 of the Compensation Act 2006~~ 419A of the Act) or other services, obtain the *customer's* consent, after having explained why the *customer's* details are to be disclosed to that third party;

[Note: paragraph 3.9r of *CBG*]

...

...

## 3 Financial promotions and communications with customers

...

### 3.9 Financial promotions and communications: debt counsellors and debt adjusters

...

3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

...

- (3) promote a claims management service (within the meaning of section ~~4 of the Compensation Act 2006~~ 419A of the Act) as a way of managing a *customer's* debts;

[Note: paragraph 3.18k of *DMG*]

...

## Annex I

### Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, all the text is new and is not underlined.

#### Claims Management: Conduct of Business sourcebook (CMCOB)

#### 1 Application and purpose

##### 1.1 Application

Application

- 1.1.1 G (1) The Claims Management: Conduct of Business sourcebook (*CMCOB*) is the specialist sourcebook for *regulated claims management activities*.
- (2) *CMCOB* applies as described in this chapter, unless the application of a chapter, section or a *rule* is described differently in the chapters, sections or *rules* in *CMCOB*.

Purpose

- 1.1.2 G The purpose of *CMCOB* is to set out the detailed obligations that are specific to *regulated claims management activities* and activities connected to those activities carried on by *firms*. These build on and add to the high-level obligations, for example, in *PRIN*, *GEN* and *SYSC*.
- 1.1.3 G Other parts of the *FCA Handbook* also apply to *regulated claims management activities*. For example, the arrangements for supervising *firms*, including applicable reporting obligations, are described in the Supervision manual (*SUP*) and the detailed requirements for handling complaints are set out in the Dispute Resolution: Complaints sourcebook (*DISP*). The Client Assets sourcebook (*CASS*) also contains *rules* about *client money* that apply in certain circumstances.
- 1.1.4 G *Firms* are reminded that they may require permissions to carry on *regulated activities* other than *regulated claims management activities*: for example, *credit broking*, *entering into a regulated credit agreement as lender* or *insurance distribution activity*.

##### 1.2 Who? What? Where?

- 1.2.1 R *CMCOB* applies to a *firm* with respect to carrying on *regulated claims management activities* and *ancillary activities*, unless otherwise stated in, or in relation to, a *rule*.



1.2.2 G For an activity to amount to a *regulated claims management activity* it must be carried on in *Great Britain*. *Firms* should note that *regulated claims management activities* (and activities ancillary to *regulated claims management activities*) can be carried on in *Great Britain* whether or not they are carried on from an establishment maintained in the *United Kingdom* (see *PERG 2.4A*).

1.2.3 R A *firm* must:

- (1) ensure that its *employees* and agents comply with *CMCOB*; and
- (2) take reasonable steps to ensure that other persons acting on its behalf comply with *CMCOB*.

## 2 Conduct of business

### 2.1 General principles

2.1.1 R A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *customer* (the *client's best interests rule*).

2.1.2 R A *firm* must establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable *customers*.

2.1.3 G *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.

2.1.4 R A *firm* must not engage in high pressure selling in relation to *regulated claims management activity*.

[Note: *CAPR CSR 3*]

2.1.5 R A *firm* must not carry out a *cold call* in person.

[Note: *CAPR CSR 4*]

2.1.6 G *CMCOB 2.2* sets out further *rules* and *guidance* in relation to generating, obtaining, and passing on leads.

2.1.7 R A *firm* must not make or pursue a *claim* on behalf of a *customer*, or advise a *customer* to make or pursue a *claim*, if the *firm* knows or has reasonable grounds to suspect that the *claim*:

- (1) does not have a good arguable base; or
- (2) is fraudulent; or
- (3) is frivolous or vexatious.

2.1.8 G (1) A *firm* should take all reasonable steps to investigate the existence

and merits of each element of a potential *claim* before making or pursuing the *claim* or advising the *customer* themselves to make or pursue the *claim*.

[**Note:** *CAPR GR 2(a)*]

- (2) In accordance with *Principle 1* (Integrity) and *Principle 2* (Skill, care and diligence), the *firm's* investigations should be such that it is able, in presenting a *claim*, to make representations which:
  - (a) substantiate the basis of the *claim*;
  - (b) relate to the nature of the *claim* and are specific to the *claim*; and
  - (c) are not false or misleading, or an exaggeration-
- (3) In complying with *CMCOB 2.1.7R* *firms* should have regard to:
  - (a) relevant guidance, including about their decisions, published by the *Financial Ombudsman Service*, any other relevant statutory ombudsman, or statutory compensation scheme; and
  - (b) decisions by the *Financial Ombudsman Service*, or any other relevant statutory ombudsman, or statutory compensation scheme concerning similar *claims* in respect of which the *firm* acted for the *claimant* to whom the decision was addressed.

2.1.9 R A *firm* must publish on its website (if it operates a website) the standard terms and conditions of the contracts it enters into with *customers*.

[**Note:** *CAPR CSR 11*]

2.1.10 R A *firm* must not take any payment from a *customer* until the *customer* has signed an agreement with the *firm* which provides for such a payment to be made.

[**Note:** *CAPR CSR 11*]

2.1.11 G (1) *CMCOB 2.1.10R* prohibits a *firm* from taking a payment from a *customer* before the *customer* has signed an agreement with the *firm*. It is not sufficient for the *firm* to enter into an agreement with the *customer* orally for this purpose: the agreement should be signed.

(2) The signature should be on a hard copy of the agreement which may be given or posted to the *firm*, else sent by fax, or scanned or photographed and sent electronically. Alternatively, the *customer* could insert a digital image of their handwritten signature into an electronic copy of the agreement before returning the agreement to the *firm* by email.

(3) The *FCA* would not view an agreement as having been signed for the

purposes of *CMCOB* 2.1.10R where the *customer* does no more to indicate their acceptance of the *firm's* terms and conditions than to send a text message or email or to tick a box on a website or web-based form.

- (4) The *firm* will also need to have complied with the requirements of *CMCOB* 4 (Pre-contractual requirements), including the requirement to take reasonable steps to ensure that the *customer* understands the agreement (see *CMCOB* 4.3.1R(3)). Where an agreement is entered into electronically, those steps should include the *firm* satisfying itself that the *customer* has had the opportunity to familiarise themselves with the contract.

2.1.12 R (1) This *rule* applies in respect of an agreement entered into between the *customer* and the *firm* under which the *firm* is to provide *claims management services*.

(2) The *firm* must:

- (a) allow the *customer* to cancel the agreement during a period of 14 *days* beginning on the day that the agreement is entered into; and
- (b) permit the *customer* to terminate the agreement at any time after that period.

(3) Where the *customer* cancels an agreement under (2)(a), the *firm* must provide the *customer* with a refund of any payments made to the *firm*.

(4) Where the *customer* terminates an agreement as in (2)(b), the *firm* must not charge the *customer* an amount in excess of what is reasonable in the circumstances and reflects the work undertaken by the *firm*.

(5) This *rule*:

- (a) does not apply if regulation 8 (Terms and conditions of termination in an employment matter) of the Damages-Based Regulations 2013, or any equivalent provision made under the law of Scotland, applies; and
- (b) is subject to:
- (i) *CMCOB* 2.1.13R and *CMCOB* 2.1.14R; and
- (ii) the *claims management fee cap* (see *CMCOB* 5).

[**Note:** *CAPR* CSR 17 and 18]

2.1.13 R (1) A *firm* must not charge a fee to a *customer* in relation to a financial services or financial product *claim* before the provision of a *claims*

*management service to the customer other than seeking out, referrals and identification of claims or potential claims.*

[Note: CAPR CSR 15]

- (2) This *rule* is subject to CMCOB 2.1.14R.
- 2.1.14 R (1) A *firm* must not charge a fee to a *customer* in relation to a *claim* in respect of a *payment protection contract* prior to the later of:
- (a) the *customer* withdrawing or deciding not to pursue the *claim*; and
  - (b) the settlement of the *claim*.
- (2) A *firm* must not charge a fee to a *customer* in relation to a *claim* in respect of a *payment protection contract* if there was no such contract between the *customer* and the *person* whom it was alleged was the counterparty to the contract.

[Note: CAPR CSR 15 and 16]

## 2.2 Generating, obtaining and passing on leads

- 2.2.1 G (1) The *Principles* (in particular *Principle 6* and *Principle 7*) apply to actions of a *firm* dealing with a *claim* or a *customer* whose details the *firm* has obtained from a *lead generator*. For example, where there is a possibility that the *lead generator* is using misleading information, advice or actions to obtain a *customer's* personal data, acting on those sales leads could amount to a breach by the *firm* of *Principle 6* and *Principle 7*.
- (2) The definition of “*customer*” in the *Glossary* includes a *person* who may have a *claim* and either (i) may use the services of a *person* who carries on a *regulated claims management activity* or an activity which would be a *regulated claims management activity* but for the exclusion in the *Regulated Activities Order*; or (ii) in respect of whom a *person* carries on the *regulated activity of seeking out, referrals and identification of claims or potential claims* or an activity which would be the *regulated activity of seeking out, referrals and identification of claims or potential claims* but for an exclusion in the *Regulated Activities Order*. An individual who is contacted by a *lead generator*, or whose details are obtained by a *lead generator* and passed on to another *firm*, is, therefore, a *customer* of both the *lead generator* and, where relevant, that other *firm*.

Requirements relating to use of a lead generator

- 2.2.2 R (1) A *firm* that accepts or proposes to accept sales referrals, leads or data (including details of *claims* or of *customers*) from a *lead generator* must:
- (a) ascertain whether the *lead generator* is an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims or potential claims*; and
  - (b) satisfy itself as to whether the *lead generator* has appropriate systems and processes in place to ensure compliance with (i) and (ii) (including that the referrals, leads or data have been obtained in compliance with (i) and (ii)):
    - (i) *data protection legislation*; and
    - (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (or, if the *lead generator* is established in an *EEA State* but has no establishment in the *United Kingdom*, the equivalent legislation in that *EEA State*).
- (2) The *firm* must take the steps required by (1):
- (a) before accepting sales referrals, leads or data from a particular *lead generator* for the first time; and
  - (b) if the *firm* continues to accept sales referrals, leads or data from that *lead generator*, at appropriate intervals.
- (3) If the *lead generator* is not an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims or potential claims*, the *firm* must take reasonable steps to satisfy itself that the *lead generator* may carry on that *regulated activity* without breaching the *general prohibition*.
- (4) The *firm* must keep a record of the steps it has taken under (1), and its conclusions in relation to (1)(a) and (1)(b).
- 2.2.3 G (1) A *firm* may ascertain whether a *person* is an *authorised person* by checking the *Financial Services Register* on the *FCA* website.
- (2) In order to comply with *CMCOB 2.2.2R(1)(b)* the *FCA* expects *firms* and *lead generators* to ensure that they are aware of any requirements to obtain consent under:
- (a) regulation 21A of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the cold calling ban);
  - (b) *data protection legislation*; and

- (c) any guidance published by the Information Commissioner's Office in relation to *data protection legislation* and the cold calling ban.
- (3) In satisfying itself as to whether a *lead generator* has appropriate systems and processes in place to ensure compliance with *data protection legislation*, a *firm* should consider, in particular, the procedures by which the *lead generator* obtains *customers'* personal data and *customers'* consent to the use (including the acquisition, storage and sharing) of that data and whether there is consent to use it in the *firm's* intended marketing.
- (4) *Firms* are reminded that, under *data protection legislation*, they must have consent from the *customer* to process the *customer's* personal data, for example to contact the *customer* or to pass their details on to a third party, unless one of the other conditions which renders the processing of that data lawful is satisfied. In this context, the *FCA* would normally expect *firms* to obtain consent and would only expect *firms* to be able to rely on the legitimate interests condition (under article 6(1)(f) the General Data Protection Regulation (EU) No 2016/679) very occasionally. Where the *firm* relies on consent which has been obtained by a *lead generator*, the *firm* should satisfy itself that the consent was properly obtained, and clearly covers both the *firm* and the use that the *firm* intends to make of the *customer's* personal data. In relation to consent, *firms* are also reminded of the requirements in article 7(2) of the General Data Protection Regulation (EU) No 2016/679.
- (5) In satisfying itself as to whether a *lead generator* has appropriate systems and processes in place to ensure compliance with the Privacy and Electronic Communications (EC Directive) Regulations 2003, a *firm* should consider, in particular, the systems and processes the *lead generator* has in place to ensure compliance with the prohibition of cold-calling in relation to *claims management services* (regulation 21A) and the requirements in relation to the use of electronic mail, including text messages, for direct marketing purposes (regulation 22). The Regulations also contain restrictions on marketing by fax, email and text message and apply to both the caller/sender of the marketing (e.g. the *lead generator*) and the instigator (e.g. the *firm*, where the *lead generator* is acting on behalf of the *firm*). Both the instigator of the marketing and the business carrying out the marketing may be subject to enforcement action if any breaches occur. *Firms* should therefore ensure that any marketing carried out on their behalf by a *lead generator* is compliant.
- (6) A *firm* should have regard to the frequency with which it accepts leads from a *lead generator* when determining what an appropriate interval is at which it should take the steps required by *CMCOB 2.2.2R*: the more frequently it accepts leads from that *lead generator*,

the shorter should be the interval; and where the *firm* accepts leads from the *lead generator* on an ongoing basis, it should take those steps regularly.

#### Recording the source of sales referrals, leads or data

- 2.2.4 R Where a *firm* accepts a sales referral, lead or data, or details of a *claim* or of a *customer*, from a *lead generator*, the *firm* must keep a record of the *lead generator* from whom it accepted that lead or those details for at least three years.
- 2.2.6 R If the *firm* is not satisfied as to the matters in *CMCOB 2.2.2R(1)(b)*, it must neither accept sales referrals, leads or data from that *lead generator* nor use sales referrals, leads or data obtained from that *lead generator*.

#### Notifying the FCA if a lead generator is not authorised

- 2.2.7 R (1) If the *lead generator* is not an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims or potential claims* and the *firm* is not satisfied that the *lead generator* may carry on that *regulated activity* without breaching the *general prohibition*, the *firm* must:
- (a) promptly notify the *FCA* in writing, using the form at *SUP 15 Annex 4R*; and
  - (b) neither accept sales referrals, leads or data from that *lead generator* nor use sales referrals, leads or data obtained from that *lead generator*.
- (2) A notification under (1)(a) must include:
- (a) the identity of the *lead generator* and, if known, contact details for the *lead generator*; and
  - (b) the *firm's* reasons for not being satisfied that the *lead generator* may carry on *seeking out, referrals and identification of claims or potential claims* without breaching the *general prohibition*.

#### Provision of information by lead generators

- 2.2.8 R (1) This *rule* applies to a *firm* from the time at which it could reasonably be expected to know or suspect that it is going to:
- (a) pass the *customer*, or details of a *customer* or of a *claim*, to a third party, or give details about the third party to a *customer*; and
  - (b) receive a payment from the third party in relation to the *firm* doing so.

- (2) The *firm* must, in its *financial promotions* and in any communication with the *customer*, include a prominent statement to the effect that the *firm* receives payments from third parties to whom it passes *customers*, or the details of *customers* or of *claims*, or whose details it passes to *customers*, in respect of doing so.
  - (3) If a communication relates to a *claim* which may be made by a *customer*, without using the services of the *firm* and without incurring a fee, to a statutory ombudsman or statutory compensation scheme the *firm* must ensure that the communication contains a prominent statement to the effect that:
    - (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
    - (b) 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 relevant statutory ombudsman or statutory compensation scheme.
  - (4) Where the communication is made by voice telephony, the *firm* must comply:
    - (a) with (2) at the start of the call; and
    - (b) with (3) as soon as the *firm* knows the sort of *claim* to which the communication relates.
  - (5) The *firm* need not comply with (2) or, as relevant, (3) if it has previously complied with those *rules* in respect of that *customer* within the previous *month*.
- 2.2.9 G (1) *CMCOB 2.2.8R* applies to *lead generators*, and to other *firms* which generate leads, as soon as there is a possibility of *customers*, or the details of *customers* or of *claims* being passed to another *person*.
- (2) Examples of a *firm* receiving a payment from a third party in relation to doing any of the things mentioned in *CMCOB 2.2.8R(1)(a)* include (but are not limited to):
    - (a) the third party paying the *firm* a fee for each sales referral or lead it passes on; and
    - (b) the third party making a monthly, occasional or a one-off payment to the *firm* irrespective of how many sales referrals, or leads or data the *firm* actually passes on and irrespective of how this might be described (for example as a ‘marketing budget’).
  - (3) Where that *rule* applies to telephone calls, it applies in respect of



both incoming and outgoing calls, including voice telephony over the internet.

- (4) The *guidance* at *CMCOB* 3.2.8G also applies in relation to *CMCOB* 2.2.8R(3).
- (5) *Firms* are reminded that section 56 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 prohibits the payment and receipt of fees for the referral of legal services in cases involving personal injury or death.

## 2.3 Recording and retention of telephone calls and electronic communications

Recording and retention of telephone calls and electronic communications

- 2.3.1 R This section applies to telephone calls and *electronic communications* between the *firm* and a *customer* made for the purposes of, or in connection with, a *regulated claims management activity* carried on by the *firm* (“relevant communications”).
- 2.3.2 R *Firms* must record all telephone calls and retain all other relevant communications.
- 2.3.3 G The requirement to record and retain all relevant communications applies to incoming and outgoing calls, text messages, emails, and other *electronic communications* between the *firm* (or a *person* acting for the *firm*) and a *customer*, including calls and communications relating to complaints about the *firm*.
- 2.3.4 R A *firm* must take all reasonable steps to prevent an *employee* or contractor from making, sending, or receiving relevant communications:
- (1) on equipment owned by a *person* other than the *firm*; and
  - (2) which the *firm* is unable to record or retain.
- 2.3.5 R A *firm* must notify a *customer* at the start of each telephone call (including a call made by voice telephony via the internet) that the call will be recorded.

Retention period

- 2.3.6 R The *firm* must retain telephone call recordings (including recordings of calls made by voice telephony via the internet) for a minimum of 12 *months*, from the latest of:
- (1) the *customer* withdrawing or deciding not to pursue the *claim*;
  - (2) the settlement of the *claim*;
  - (3) the conclusion of any legal proceedings commenced in connection

with the *claim*;

- (4) the conclusion of the handling of any complaint made by the *customer* to or about the *firm*, including the handling of the complaint by an alternative dispute resolution scheme (such as the *Financial Ombudsman Service*);
- (5) the termination of the agreement between the *firm* and the *customer*; and
- (6) the date of the *firm*'s last contact (by whatever method) with the *customer*.

- 2.3.7 G (1) For the purposes of *CMCOB 2.3.6R(2)*, a *claim* is settled when the *customer* receives compensation, damages or redress in respect of the *claim*.
- (2) The effect of *CMCOB 2.3.6R* is that where, for example, the only contact with the *customer* is a telephone call made with a view to selling the *firm*'s services, but the *customer* does not engage the *firm*, the *firm* is required to keep a record of that call for at least 12 *months*. (*Firms* are reminded that, in relation to cold calling by telephone, the Privacy and Electronic Communications (EC Directive) Regulations 2003 prohibit unsolicited calls for the purposes of direct marketing in relation to *claims management services* without the consent of the subscriber of the line being called (regulation 21A).)
- (3) The effect of *CMCOB 2.3.6R(4)* is as follows. Where the *firm* would otherwise become entitled to cease to keep the record absent that provision but at that time there is a complaint that has been made and not concluded, the *firm* must retain that record for a minimum of twelve *months* from the point at which the complaint has been concluded.

## 2.4 Record keeping

- 2.4.1 G (1) *Firms* are reminded that *SYSC 9.1.1R* requires a *firm* to arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FCA* to monitor the *firm*'s compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.
- (2) *Firms* are also reminded that *SYSC 9.1.5G* states that in relation to the retention of records, a *firm* should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the *firm* may fulfil its regulatory and

statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made. For these purposes retaining records would include keeping all text messages, emails, and other *electronic communications* between the *firm* (or a *person* acting for the *firm*) and a *customer*.

- (3) As a minimum, *firms* should retain records in their files of any advice given to, and correspondence with, their *customers*, and of any correspondence with third parties in the course of their providing services to their *customers*.
- (4) *CMCOB* also imposes a number of specific record-keeping requirements: see Schedule 1.

### **3 Financial promotions, and communications with customers**

#### **3.1 Application**

3.1.1 G This chapter sets out *rules* and *guidance* on *financial promotions* and communications with *customers* that relate to *regulated claims management activity*.

- 3.1.2 G
- (1) In accordance with *Principle 7*, a *firm's financial promotions* and communications with its *customers* should be fair, clear and not misleading.
  - (2) The *guidance* in this chapter is relevant to all stages of a *firm's* interaction with its *customers*: from seeking out and obtaining *customers*, whether for itself or for another *firm*; negotiating and entering into contracts with its *customers*; advising its *customers*; investigating *claims*; presenting *claims* and representing *customers*; keeping its *customers* informed of progress; and through to settling a *claim*, being paid and the relationship with the *client* coming to an end.

#### **3.2 Financial promotions and communications – general standards**

The fair, clear and not misleading rule

- 3.2.1 R
- (1) A *firm* must ensure that each of its communications and *financial promotions* is fair, clear and not misleading (the *fair, clear and not misleading rule*).
  - (2) This *rule* applies in relation to all communications with *customers*, including:

- (a) communications intended to generate leads either for the *firm* or for another *person*;
  - (b) pre-contract disclosures and other information which *CMCOB* 4 requires a *firm* to give to a *customer*; and
  - (c) post-sales communications with *customers*, including:
    - (i) communications intended to keep the *customer* up to date, in accordance with *CMCOB* 6.1;
    - (ii) communications of or about fees, charges, invoices and payments; and
    - (iii) communications about complaints relating to the *firm*.
- (3) This *rule* and the other *rules* in this *chapter* apply when a *firm* approves a *financial promotion* in the same way as when a *firm* communicates a *financial promotion* itself. Before a *firm* approves a *financial promotion* it must confirm that it complies with the *rules* in this *chapter* and if, at any time after the *firm* approves a *financial promotion*, it becomes aware that the *financial promotion* no longer complies with the *rules* in this *chapter*, it must withdraw its *approval* and notify any *person* it knows to be relying on its *approval* as soon as practicable.
- 3.2.2 G (1) The *fair, clear and not misleading rule* means that *firms* should communicate with their *customers* in a way that is appropriate, taking into account the means of communication, the information the communication is intended to convey and the nature of the *customer* and of the *claim*.
- (2) In complying with that *rule*, *firms* should:
- (a) have regard to the average *customer*'s understanding of the services that the *firm* provides;
  - (b) present information in a logical order;
  - (c) use plain and intelligible language and, where the use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms;
  - (d) make key information prominent and easy to identify, including by means of headings and the layout, display and font attributes of text, and by the use of design devices such as tables, bullet points and graphs; and
  - (e) avoid unnecessary disclaimers.
- 3.2.3 R If, in relation to a particular communication or *financial promotion*, a *firm*

takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

- 3.2.4 R A *firm* must ensure that each of its *financial promotions* and communications with a *customer*:
- (1) identifies the *firm* and that it is a *claims management company*;
  - (2) does not offer a cash payment or any benefit in money or money's worth (for example, a 'free' gift) as an inducement for entering into an agreement with the *firm* or making a *claim*;
  - (3) does not promote the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the *claim*;
  - (4) does not falsely imply that the business is approved by the Government or is connected with any government agency or any regulator.

[Note: CAPR CSR 6]

- 3.2.5 G (1) The *firm* may identify itself by using a trading name or shortened version of the legal name of the *firm* (provided the *customer* can identify the *firm* communicating the information) and that it is a *claims management company*.
- (2) The *FCA* would view a *financial promotion* or communication as promoting the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the *claim* if the *financial promotion* or communication states or implies that a *claim* is a means of making money, rather than being for the purpose of compensating the *customer* for damage, injury or loss.

- 3.2.6 R (1) Where a *claim* is one that falls within the province of a statutory ombudsman or statutory compensation scheme such as the *Financial Ombudsman Scheme*, the *compensation scheme*, the Criminal Injuries Compensation Authority, a *housing complaint service* or any other such body, the *firm* must not suggest that a *customer* will have a more favourable outcome if the *customer* uses the services of the *firm*.

[Note: CAPR CSR 12]

- (2) Where (1) does not apply, a *firm* must not state or imply in any *financial promotion* or communication with a *customer* that a *claim* will be resolved more quickly, or with a better prospect of success, or with a better outcome for the *customer*, than if the *customer* were to make the *claim* themselves, unless the statement or implication is true and the *firm* can provide evidence to substantiate the statement or implication.

3.2.7 R If a *claim* to which a *financial promotion* relates is of a sort that may be made by a *customer* to a statutory ombudsman or statutory compensation scheme, without using the services of the *firm* and without incurring a fee, the *firm* must ensure that the *financial promotion* contains a prominent statement to the effect that:

- (1) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
- (2) 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 relevant statutory ombudsman or the statutory compensation scheme.

3.2.8 G (1) Where a *claim* can be made to a statutory ombudsman or statutory compensation scheme, *CMCOB 3.2.7R* requires *firms* to name the relevant ombudsman or compensation scheme.

- (2) The relevant statutory ombudsmen or statutory compensation schemes that the *firm* should name should include those specified in the following table. If there are other statutory ombudsmen or compensation schemes relevant to the nature of *claims* to which the *financial promotion* relates, the *firm* should name them in addition.

Claim	Ombudsman or compensation scheme
<i>criminal injury claim</i>	the Criminal Injuries Compensation Authority
<i>employment-related claim</i>	none specified
financial services or financial product <i>claim</i>	the <i>Financial Ombudsman Service</i> : for any <i>financial promotion</i> which is generic in nature or where the <i>firm</i> would expect those to whom the <i>financial promotion</i> is addressed to be eligible to pursue their <i>claim</i> with the <i>Financial Ombudsman Service</i>
	the <i>compensation scheme</i> : for any <i>financial promotion</i> addressed to <i>persons</i> who may have a <i>claim</i> against a <i>person</i> which is no longer in business, where the <i>firm</i> would expect those to whom the <i>financial promotion</i> is addressed to be eligible to pursue their <i>claim</i> with <i>compensation scheme</i>
	the Pensions Ombudsman: for any <i>financial promotion</i> addressed to <i>persons</i> who may be eligible to pursue their <i>claim</i> with the Pensions

	Ombudsman, for example where the <i>financial promotion</i> relates to <i>claims</i> against an occupational pension provider
<i>housing disrepair claim</i>	a <i>housing complaint service</i>
<i>personal injury claim</i>	none specified
<i>claim for a specified benefit</i>	none specified

- (3) *Firms* should also indicate whether *claims* may be made direct to the ombudsman or compensation scheme, or whether it is necessary for the *customer* first to pursue their *claim* directly with the *person* to whom it relates.
- (4) For example, where the *financial promotion* that relates to *claims* in respect of packaged bank accounts, a *firm* could comply with *CMCOB* 3.2.7R by indicating: “You do not need to use a claims management company to make your complaint to your bank, and if your complaint is not successful you can refer it to the Financial Ombudsman Service yourself for free”.

‘No-win, no-fee’

- 3.2.9 R (1) This *rule* applies if a *firm* uses the term “no win, no fee” or a term having a similar meaning in a *financial promotion*.
- (2) In the case of a *firm* which charges or may charge a fee for services to which the *financial promotion* relates, the *firm* must include prominently in the *financial promotion*:
- (a) the fees that the *firm* charges in respect of *claims* of the sort to which the *financial promotion* relates;
- (b) where those fees are not fixed or ascertainable in advance, the method by which the fees would be calculated; and
- (3) In the case of a *firm* which charges a *termination fee* in respect of an agreement with a *customer* for services to which the *financial promotion* relates (see *CMCOB* 2.1.12R(2)(b) and *CMCOB* 2.1.12R(4)), the *firm* must ensure that the *financial promotion* indicates:
- (a) that the *firm* may charge a *termination fee* in the event that the *customer* terminates the agreement other than during the cancellation period (see *CMCOB* 2.1.12R(2)(a)); and
- (b) what that *termination fee* is or, where it is not fixed or ascertainable in advance, the method by which it would be

calculated.

(4) Subject to (5), where a *firm* (F) passes *customers*, or details of a *customer* or of a *claim*, to a third party (T), or gives details about the third party (also T) to a *customer*, F must include prominently in the *financial promotion*:

(a) the fees that T charges in respect of *claims* of the sort to which the *financial promotion* relates; or

(b) where those fees are not fixed or ascertainable in advance, the method by which the fees would be calculated.

(5) Where F does not know the information required by (4), F must include prominently in the *financial promotion* an indication of the fee that may be charged for services to which the *financial promotion* relates.

(6) Subject to (7), where T charges a *termination fee* in respect of an agreement with a *customer* for services to which the *financial promotion* relates (see *CMCOB* 2.1.12R(2)(b) and *CMCOB* 2.1.12R(4)), F must ensure that the *financial promotion* indicates:

(a) that T may charge a *termination fee* in the event that the *customer* terminates the agreement other than during the cancellation period (see *CMCOB* 2.1.12R(2)(a)); and

(b) what that *termination fee* is or, where it is not fixed or ascertainable in advance, the method by which it would be calculated.

(7) Where F does not know the information required by (6), F must still inform the *customer* that they may be required to pay a *termination fee*.

(8) Where a *firm* is required, under this *rule*, to include information about fees or *termination fees* in a *financial promotion*, that information must be no less prominent than the term referred to in (1).

3.2.10 G (1) As a consequence of *CMCOB* 3.2.9R(4) and *CMCOB* 3.2.9R(5) if a *firm* is unaware of the charging basis of the third parties, to whom they pass the *customer* or details of the *customer*, or of a *claim*, or whose details they give to a *customer*, they should not advertise a no-win, no-fee service.

(2) When providing an indication of the fee for the purposes of *CMCOB* 3.2.9R(5), the *FCA* expects *firms* to provide a reasonable indication of the fee the *customer* is likely to pay bearing in mind the *fair, clear and not misleading rule*.



- (3) In particular, the *FCA* expects *firms* to provide:
- (a) an indication of a typical fee; or
  - (b) a range of the fees;
- that may become payable by the *customers*:
- (c) whom the *firm* passes to third parties or whose details the *firm* passes to third parties;
  - (d) whose *claims* the *firm* passes to third parties; or
  - (e) to whom the *firm* gives the details of third parties.
- (4) A *firm* could provide an indication of a typical fee where a significant majority of such *customers* all pay the same fee (e.g. where the fee inclusive of VAT is 25% of the compensation amount).
- (5) Where the *firm* provides an indication of a typical fee, it should make clear that that figure is only an indication of the amount which *customers* may be required to pay and that the actual fee may be higher. For example, the *firm* could state:
- “Typically customers pay 25% of the amount recovered, although this will be subject to your individual circumstances and the actual fee may be more or less than this”.
- (6) Where the *firm* provides a range of fees:
- (a) subject to (c), the range should represent all of the third parties to whom the *firm* passes *customers* or details of *customers*, or of *claims*, or whose details the *firm* gives to *customers*,
  - (b) the range should include the highest and the lowest fee that may become payable by such *customers*;
  - (c) the *firm* should not include a fee as the lowest fee unless that fee is charged to a reasonable proportion of such *customers*.

#### Restriction on advertising in certain buildings

- 3.2.11 R A *firm* must not make a *financial promotion*, or a communication intended to generate a lead, in a medical facility, a care facility or a public building without the approval in writing of the management of the facility or building.

[**Note:** in part, *CAPR CSR 5*]

- 3.2.12 G (1) The purpose of *CMCOB* 3.2.11R is to prohibit the marketing of *regulated claims management activity*, and lead generation for *regulated claims management activity*, in medical facilities and public buildings without permission. Permission should be obtained from the management of the organisation which occupies the facility or building, rather than from junior members of staff.
- (2) In *CMCOB* 3.2.11R:
- (a) a “medical facility” should be taken to include hospitals, GP surgeries, walk-in clinics and any other medical establishment in which people who have suffered an accident or other incident that might give rise to a *claim* may go to seek treatment;
  - (b) a “care facility” includes any sort of establishment in which children or adults receive social care, either as residents or as outpatients; and
  - (c) a “public building” should be taken to include any building to which the public has access, such as police stations and court buildings.

## 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 (1) 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.
- (2) 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:
    - (i) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
    - (ii) 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:
- (a) the fact and circumstances of the *claim*, to the extent that the *firm* has knowledge of them; and
  - (b) 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:
- (a) 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*;
  - (b) where (4) applies, an explanation of how the estimate has been calculated; and
  - (c) 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.
- (6) Where the fee is a fixed amount, the *firm* may indicate that the fee is a fixed amount and not an estimate.

- 4.2.6 G (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 R 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:
- (a) late repayments due under a *credit agreement* for financial services claims; or
  - (b) 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(1)]

- 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 G *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 G (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.
- (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*.

- 4.3.3 G (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*.

## 5 Fee cap for regulated claims management activities

### 5.1 Fee cap for payment protection insurance claims

- 5.1.1 G (1) Under section 29(3) of the Financial Guidance and Claims Act 2018, the fee cap applicable to *regulated claims management activity* in connection with a PPI claim is 20% of the amount recovered. The cap applies by reference to a sum comprising all amounts charged for such services in connection with the claim (whether or not charged under a single agreement), exclusive of VAT.
- (2) Section 31 of that Act (PPI claims: interim restriction on charges imposed by authorised persons after transfer of regulation to FCA) prohibits a *firm* from:
- (a) charging an amount which exceeds the *claims management fee cap* in connection with a PPI claim; and
  - (b) entering into an agreement which provides for the payment by a *customer* of charges which would breach or are capable of breaching the *claims management fee cap* in connection with a PPI claim.
- (3) Any payment in excess of the *claims management fee cap* is recoverable by the *customer*. The *FCA* would expect the *firm* to reimburse the *customer* promptly, irrespective of whether the *customer* has asserted that the *firm* has breached the fee cap.
- (4) Any agreement which provides for the payment by a *customer* of charges which would breach or are capable of breaching the *claims management fee cap* are not enforceable to the extent that they provide for such a payment.
- (5) A *firm* that breaches the *claims management fee cap* is subject to the *FCA*'s disciplinary powers in the same way as if the *firm* had breached a *rule*.

## 6 Post-contractual requirements

## 6.1 Keeping the customer and others informed

### Application

- 6.1.1 R This section applies to a *firm* in relation to it carrying on *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*.

### Enquiries regarding outstanding liabilities

- 6.1.2 R (1) After a *firm* has entered into an agreement with a *customer* relating to *regulated claims management activity*, the *firm* must promptly ask the *person* against whom the *claim* is to be made whether the *customer* has any outstanding liabilities with that *person*, which the damages, compensation or settlement monies might be off-set against.
- (2) If the *person* against whom the *claim* is to be made confirms that the *customer* has such liabilities with it, the *firm* must:
- (a) in a *durable medium*, promptly inform the *customer* of this;
  - (b) inform the *customer* that they will, where necessary, need to pay the *firm's* fees from their own funds.
- 6.1.3 G (1) The *guidance* at *CMCOB* 4.2.10G also applies in relation to *CMCOB* 6.1.2R.
- (2) A *firm* should comply with *CMCOB* 6.1.2R(1) at the first opportunity it has, for example at the time of sending a letter of authority or initial information request to the *person* against whom the *claim* is to be made.

### Passing on information and requests for information

- 6.1.4 R (1) The *firm* must pass on to the *customer*:
- (a) any information received from a third party which is addressed to, or meant for, the attention of that *customer*; and
  - (b) any request received by the *firm* from a third party for the supply of information by the *customer* that the *firm* does not already hold.
- (2) The *firm* must pass on the information or request:
- (a) promptly, and in any event within ten *business days* of receiving the information or request; and
  - (b) in a *durable medium*.

- 6.1.5 R (1) A *firm* must notify the *customer* of:
- (a) the *firm* becoming aware of:
    - (i) any costs that the *customer* may have to meet which the *firm* has not previously notified to the *customer*; or
    - (ii) where the *firm* has notified the *customer* of the amount of any costs, any change to those costs (including any changes to the *firm*'s fees); and
  - (b) any material development in the progress of the *customer*'s *claim*; and
  - (c) if the *firm* becomes aware that the *person* against whom the *claim* is being or 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 *CMCOB* 4.2.2R(2)(g)), the fact that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme; and
  - (d) any actions the *firm* intends to take to present and pursue the *claim* that were not notified to the *customer* under *CMCOB* 4.2.8R (1)(c) at the time of contracting; and
  - (e) any allegation by a third party that the *claim* is fraudulent, except where there is a legal obligation preventing such disclosure. Where a *firm* is required to make such a notification under this provision, the *firm* must also advise its customer of the consequences of pursuing a fraudulent *claim*. *Firms* are reminded of their obligations under *CMCOB* 2.1.7R(2).
- (2) The *firm* must make a notification in (1):
- (a) promptly, and in any event within ten *business days* of an event listed in (1) occurring; and
  - (b) in a *durable medium*, except for (1)(d), which may alternatively be made over the telephone.
- (3) Where a *firm* notifies the *customer* of any costs or changes to costs in accordance with (1)(a), the *firm* must obtain and record the *customer*'s consent in relation to those costs before it invoices the *customer* for them.
- (4) The *firm* must obtain consent for any actions it proposes to take that:
- (a) have not previously been notified to the *customer*; or
  - (b) were notified to the *customer* more than six *months* ago and

are significant in nature.

- (5) For the purposes of (4)(b), examples of actions that are significant in nature include, but are not limited to, the *firm* proposing to:
  - (a) commence legal proceedings; or
  - (b) submit a *claim* to a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.
- (6) A *firm* must obtain the *customer's* consent in (3) and (4):
  - (a) over the telephone; or
  - (b) in a *durable medium*.

6.1.6 G (1) Examples of developments in the progress of the *claim* which should be treated as material for the purposes of *CMCOB* 6.1.5R(1)(b) include:

- (a) the *firm* becoming aware of the timetable for any court proceedings or alternative dispute resolution schemes (such as the *Financial Ombudsman Scheme*), or of any changes to that timetable;
  - (b) the *firm* receiving any information relating to the *claim* which is likely to have an effect on the amount of time within which the *firm* expects the *claim* to be determined;
  - (c) the *firm* becoming aware of any information relating to the *claim* which is likely to have an effect on the prospects of the *claim* succeeding;
  - (d) the *firm* receiving an offer of any kind from the *person* against whom the *claim* is being made to settle the claim, whether for money or some other non-monetary benefit, even where such an offer was not originally the intended outcome of the *claim*; and
  - (e) the *firm* receiving a decision in respect of the *claim* from a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.
- (2) When making a notification in accordance with *CMCOB* 6.1.5R (1)(b), a *firm* should consider whether it is necessary to inform the *customer* that:
- (a) updates from the *firm* are likely to be less frequent while the progress of the claim is not within the *firm's* control; and
  - (b) the *customer* may contact the *firm* at any time to discuss their *claim* and its progress.

Revised fee estimates

- 6.1.7 R When the *firm* has sufficient information from which it may reasonably estimate what its fee will be, or that the fee payable by the *customer* will differ from the illustration or estimate provided under *CMCOB* 4.2.5R or a previous estimate provided under this *rule*, the *firm* must promptly provide the *customer*, in a *durable medium*, with:
- (1) an estimate of the fee; and
  - (2) an explanation of why that estimate differs from the illustration or the estimate (if any) which the *firm* has most recently provided.
- 6.1.8 G (1) *CMCOB* 6.1.7R requires a *firm* to give a *customer* updated fee estimates. For example, a *firm* is likely to have sufficient information to produce a revised estimate once:
- (a) it knows how much compensation the *customer* is claiming in relation to a misold financial product (for example because it has obtained the relevant *credit agreement*) where the fee is a percentage of that sum; or
  - (b) it realises that its fee, if charged by reference to an hourly rate, is likely to differ from its original estimate.
- (2) When calculating the likely compensation, damages or redress to provide the revised fee estimate under *CMCOB* 6.1.7R, a *firm* should include in their calculation any interest or other sum likely to be paid in satisfaction of the *claim* on which the *firm's* fees will be based.
- (3) If the *firm* realises that a revised estimate is incorrect, it should provide a further revised estimate.
- (4) When giving a revised fee estimate as required by *CMCOB* 6.1.7R the *firm*:
- (a) should, where relevant, communicate to the *customer* any assumptions it has used in its calculations, for example that the *customer* made all of the payments they were obliged to make under the agreement; and
  - (b) may, where appropriate, include a statement to the effect that the fee estimate may be subject to change and may be different to the actual amount the *customer* will receive.
- (5) For *claims* concerning pension or *investment* products or services, *firms* are expected to:
- (a) take all reasonable steps to obtain sufficient information about the *claim* as soon as reasonably practicable after entering into an agreement with the *customer* to provide *regulated claims*

*management activity*, enabling them to comply with *CMCOB* 6.1.7R promptly; and

- (b) where such information is unavailable, consider whether, based on experience of similar claims, the *firm* is in any case able to give the *customer* a more reliable indication of the fee that the *customer* is likely to pay.

#### Keeping the customer informed

- 6.1.9 R (1) A *firm* must provide each *customer* with an update on the progress of the *claim* at least once every six *months*, in a *durable medium*.
- (2) But the *firm* need not provide an update under (1) if, in the previous six *months*, the *firm* has:
- (a) as part of a notification required under *CMCOB* 6.1.5R(1), given an update on the progress of the claim; and
  - (b) the notification contains sufficient information as to constitute an update for the purposes of (1).
- (3) An update under (1) must:
- (a) summarise the progress of the *claim* since the last report (or, in the case of the first report, since the *firm* entered into an agreement with the *customer* in relation to the *claim*); and
  - (b) indicate the current state of affairs in relation to the *claim*; for example, whether the *firm* is awaiting an expert's report, whether solicitors have issued a letter before action, or whether the *claim* has been submitted to the *Financial Ombudsman Service* but it is yet to make a determination.
- 6.1.10 G (1) If, during the period to which the report relates, the *firm* has not sent any notifications to the *customer* under *CMCOB* 6.1.5R, the update should indicate why, to the best of the *firm*'s knowledge, there have been no material developments.
- (2) The *firm* should give updates under *CMCOB* 6.1.9R until such time as the *claim* is finally determined or settled, or is withdrawn or discontinued.
- (3) If, for the purposes of notifications under *CMCOB* 6.1.5R(1) and updates under *CMCOB* 6.1.9R, the *firm* has made available an online portal through which *customers* may receive such notifications and updates, the *firm* should ensure that it alerts the *customer* to the notification or update being available via the portal, for example by sending a text message or email (and provided that the *customer* is content to, and is able to, receive such communications).



- 6.1.11 R *CMCOB* 6.1.9R does not apply if the *customer* expressly requests not to receive such updates.

Providing information to persons other than the customer

- 6.1.12 R (1) A *firm* must pass on to a third party any information received from a *customer* and intended for that third party:
- (a) promptly, and in any event within ten *business days*; and
  - (b) in a *durable medium*.
- (2) Where the information received from the *customer* is incomplete for the third party's purposes, the *firm* need not comply with (1) until such time as the *customer* has supplied the outstanding information, provided that the delay caused by waiting for the outstanding information does not, and could reasonably be expected not to, harm, prejudice or invalidate the *claim*.

Advising the customer where the claim is not successful

- 6.1.13 R (1) If a *customer's claim* is not successful, the *firm* must advise the *customer* of the available methods by which the *customer* may continue to pursue their *claim*.
- (2) 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, the advice must include a statement to the effect that:
- (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
  - (b) 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.
- (3) If the *firm* is aware that the *person* against whom the *claim* was 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 (2)), the advice must also include a statement to the effect that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme.
- (4) For the purposes of this *rule*, a *claim* is not successful if it produces an outcome with which the *customer* is not satisfied.
- 6.1.14 G (1) A *claim* may progress through several stages. For example, it may start as a complaint made against a company, then proceed to an

ombudsman scheme or to the courts. The *firm* must advise the *customer*, after each stage at which the *claim* is not successful, about how they might continue with their *claim*.

- (2) The *guidance* at *CMCOB* 3.2.8G also applies in relation to *CMCOB* 6.1.13R.

## 6.2 Fees and fee collection

Explanation of fees and charges

- 6.2.1 R (1) A *firm* must provide the *customer* with an itemised bill, in a *durable medium*:
- (a) if the agreement is terminated under *CMCOB* 2.1.12R(2)(b), before the *firm* takes any payment (for example, using payment details provided by the *customer*); or
  - (b) before the *firm* takes or deducts its fees and charges from money received from a third party for onward transmission to the *customer*; or
  - (c) when the *firm* presents an invoice or request for payment to the *customer*.
- (2) The itemised bill must explain:
- (a) what *claims management services* the *firm* has provided; and
  - (b) how the fees and charges have been calculated including, where relevant, by reference to the full amount of any money recovered for the *customer* in respect of damages or compensation, or in settlement of the claim.
- (3) A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* without the *customer's* consent.
- 6.2.2 G *Firms* are reminded that they may be carrying on a *credit-related regulated activity* if they permit *customers* to enter into instalment plans or give them an extended period of time to pay fees and charges later than the date on which they are payable (see *PERG* 2.7.19AG and 2.7.19GG).

Fee collection

- 6.2.3 R A *firm* must establish and implement clear, effective and appropriate policies and procedures for:
- (1) dealing with *customers* who are unable to pay fees and charges to the *firm* when they fall due; and

- (2) the fair and appropriate treatment of *customers* in (1) whom the *firm* understands or reasonably suspects to be vulnerable.
- 6.2.4 R (1) If a *customer* is unable to pay fees and charges to the *firm* when they fall due, a *firm* must:
- (a) treat the *customer* with forbearance and due consideration, including by allowing the *customer* a reasonable opportunity to pay the fee and charges; and
  - (b) where appropriate, direct the *customer* to sources of free and independent debt advice.
- (2) A *firm* must not impose charges on a *customer* who is unable to pay fees and charges to the *firm* when they fall due unless the charges are no higher than necessary to cover the reasonable costs of the *firm*.
- 6.2.5 G (1) *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.
- (2) In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines “Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt” (March 2015).
- [**Note:** see <http://malg.org.uk/resouces/malg-mental-health-and-debt-guidelines/>]
- (3) A *firm* should suspend the pursuit of the recovery of fees and charges from a *customer* who is unable to pay those fees and charges when they fall due, when:
- (a) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges; or
  - (b) the *firm* understands or ought reasonably to be aware that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges.
- 6.2.6 R A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* unless it has written consent from the *customer* to do so, whether given in the *firm*’s agreement with the *customer* or by some other means.

### 6.3 Ceasing regulated claims management activities

Who and when?

- 6.3.1 R (1) *CMCOB* 6.3.3R to 6.3.6R apply to a *firm*:
- (a) which carries on any *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*; and
  - (b) in respect of which it has been determined that the *firm* is to cease carrying on any of those *regulated claims management activities*.
- (2) *CMCOB* 6.3.7R applies to a *firm*:
- (a) which carries on *seeking out, referrals and identification of claims or potential claims*; and
  - (b) in respect of which it has been determined that the *firm* is to cease carrying on that *regulated activity*.
- (3) The following provisions in *CMCOB* 6.3 apply to a *firm* with a *claims management temporary permission* as modified below:
- (a) the reference in *CMCOB* 6.3.3R(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*;
  - (b) the reference in *CMCOB* 6.3.5R to 40 *business days* must be read as 30 *days*; and
  - (c) the reference in *CMCOB* 6.3.7(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*.

- 6.3.2 G Circumstances of it being determined that a *firm* is to cease carrying on a *regulated claims management activity* would include:
- (1) the *governing body* of the *firm* deciding to cease carrying on that activity;
  - (2) the *firm* becoming insolvent or insolvency proceedings being commenced in respect of the *firm*; and
  - (3) the *FCA* issuing a written notice under the *Act* or *final notice* removing or suspending the relevant *permission*.

Notifying customers

- 6.3.3 R (1) Within 20 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must, in a *durable medium*:

- (a) notify each *customer* in relation to whom it carries on those activities that it is to cease carrying on the relevant activities;
  - (b) explain to each *customer* what options are available for the *customer* to continue with their *claim*; and
  - (c) notify each third party to whom the *claim* has been presented and (if different) each third party against which the *claim* has been made:
    - (i) that the *firm* is to cease carrying on those *regulated claims management activities*; and
    - (ii) of the identity of the *person* who will act for the *customer* in place of the *firm* (where the identity of that *person* is known).
- (2) In explaining to the *customer* what options are available to them to continue with their *claim*, the *firm* must include a statement to the effect of:
- (a) the statement in (3), 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; and
  - (b) the statement in (4), if the *firm* is aware that the *person* against whom the *claim* is being or 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 (a)).
- (3) The statement in this paragraph is that:
- (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
  - (b) 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 a statutory compensation scheme.
- (4) The statement in this paragraph is that it is possible for the *customer* to present the claim themselves to the alternative dispute resolution mechanism mentioned in (3)(b).

6.3.4 G The *guidance* at *CMCOB* 3.2.8G also applies in respect of *CMCOB* 6.3.3R(2)(a).

Sending information and documents to customers

- 6.3.5 R Within 40 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must send to each *customer* whose *claim* has not been settled, withdrawn or discontinued all information and documentation the *firm* holds relating to their *claim*.

Passing customer details to third parties

- 6.3.6 R If the *firm* passes the *customer*, or details of the *customer* or of the *claim* to a third party, with a view to that third party carrying on a *regulated claims management activity* in respect of the *claim* or the *customer* (or activity which would constitute such a *regulated activity* but for an exemption or an exclusion), the *firm* must promptly notify the *customer* in a *durable medium*:
- (1) that it has done so; and
  - (2) of the identity and contact details of the third party.

Ceasing to carry on seeking out, referrals and identification of claims or potential claims

- 6.3.7 R (1) This *rule* applies in respect of a *firm* which has indicated to a *customer* that it will:
- (a) identify a third party to assist the *customer* with their *claim*; and
  - (b) pass the *customer's* details or details relating to the *claim* to the third party, or pass details of the third party to the *customer*,
- but has not yet done so and will not do so within 20 *business days* of it being determined that the *firm* is to cease carrying on *seeking out, referrals and identification of claims or potential claims*.
- (2) Within the time period referred to in (1), the *firm* must, in respect of each *customer* to whom it has made an indication of the sort described in (1) in a *durable medium*, notify the *customer* that it has not done so and explain why.

## 7 Prudential requirements and professional indemnity insurance

### 7.1 Purpose

- 7.1.1 G (1) This chapter builds upon the appropriate resources *threshold condition* set out in paragraph 2D of Schedule 6 to the *Act* (see *COND 2.4*), which requires *firms* to have appropriate resources including financial resources.

- (2) This chapter also builds upon *Principle 4*, which requires a *firm* to maintain adequate financial resources, by focusing upon the adequacy of that part of a *firm's* financial resources that consists of *capital resources*.
- (3) The chapter also includes requirements for *firms* to have professional indemnity insurance if they carry on *advice, investigation or representation in relation to a criminal injury claim*.

7.1.2 R A contravention of the *rules* in *CMCOB 7.2* or *CMCOB 7.3* does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules*) is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

## 7.2 Prudential requirements

### General solvency requirement

7.2.1 R A *firm* must ensure that it is able at all times to meet its liabilities as they fall due.

### General prudential resources requirement

7.2.2 R A *firm* must ensure at all times that its prudential resources, calculated in accordance with *CMCOB 7.3*, are not less than its prudential resources requirement.

### Prudential resources: general accounting principles

7.2.3 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its *annual financial statements* unless a *rule* requires otherwise.

### Prudential resources requirement: firms carrying on other regulated activities

7.2.4 R The prudential resources requirement for a firm carrying on a *regulated activity* in addition to those covered by this chapter, is the higher of:

- (1) the requirement which is applied by this chapter; and
- (2) the prudential resources requirement or *capital resources requirement* which is applied by another *rule* or requirement to the *firm*.

### Classification of firms for prudential resources purposes

7.2.5 R (1) For the purposes of this chapter, a *firm* which carries on any *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims* is:

- (a) a “Class 1 firm” if its total income in the year ending on its most recent *accounting reference date* is not less than £1million; and
  - (b) a “Class 2 firm” if its total income in the year ending on its most recent *accounting reference date* is less than £1million.
- (2) A *firm* which carries on no *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims* is neither a Class 1 firm nor a Class 2 firm, and its prudential resources requirement is specified in *CMCOB 7.2.10R*.
- (3) For the purposes of this chapter, total income only includes income relating to the part of the business which is involved in carrying on *regulated claims management activities* and *ancillary activities*.
- (4) Where the *firm* has not yet started to trade, total income is to be calculated based on forecast income included in the budget for the first twelve *months*’ trading, as submitted with the *firm*’s application for *authorisation*.

#### Prudential resources requirement for a Class 1 firm

- 7.2.6 R Subject to *CMCOB 7.2.10R*, the prudential resources requirement for a Class 1 firm is:
- (1) the higher of:
    - (a) £10,000; and
    - (b) the *firm*’s overheads requirement (see *CMCOB 7.2.8R*); plus
  - (2) if the *firm* has held *client money* at any time in the last 12 *months*, the client money requirement (see *CMCOB 7.2.9R*).

#### Prudential resources requirement for a Class 2 firm

- 7.2.7 R Subject to *CMCOB 7.2.10R*, the prudential resources requirement for a Class 2 firm is:
- (1) the higher of:
    - (a) £5,000; and
    - (b) the *firm*’s overheads requirement (see *CMCOB 7.2.8R*); plus
  - (2) if the *firm* has held *client money* at any time in the last 12 *months*, the client money requirement (see *CMCOB 7.2.9R*).

#### The overheads requirement

- 7.2.8 R (1) A *firm*’s overheads requirement is an amount that is equal to one



sixth of its overheads expenditure.

- (2) For the purposes of (1), a *firm's* overheads expenditure is to be calculated as follows:
  - (a) the *firm's* total expenditure in the period of 12 *months* ending on its most recent *accounting reference date*; less
  - (b) the total of the following items (if they are included in such expenditure) in that period:
    - (i) staff bonuses, except to the extent that they are guaranteed;
    - (ii) *employees' and directors' shares* in profits, except to the extent that they are guaranteed;
    - (iii) other appropriations of profits and other variable *remuneration*, except to the extent that they are guaranteed;
    - (iv) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue;
    - (v) interest charges in respect of borrowings made to finance the acquisition of the *firm's readily realisable investments*;
    - (vi) interest paid to *customers* on *client money*;
    - (vii) 20% of total marketing expenditure; and
    - (viii) other variable expenditure.
- (3) Where the *firm's* total expenditure in the year ending on its *accounting reference date* was incurred in a period of less than twelve *months*, the items in (2)(a) and (2)(b) are to be calculated on a pro-rated basis to produce an equivalent annual amount.
- (4) Where the *firm* has not yet started to trade, the items in (2)(a) and (2)(b) are to be calculated based on forecast expenditure included in the budget for the first twelve *months' trading*, as submitted with the *firm's* application for *authorisation*.
- (5) In (2)(b)(vii) total marketing expenditure means spending in the twelve *months* ending on the *firm's* most recent *accounting reference date* on, or relating to:
  - (a) advertising across different media channels;
  - (b) digital marketing;

- (c) publicity expenses;
  - (d) advertising agency fees;
  - (e) public relations consultancy fees;
  - (f) expenses for promotions offered in connection with services provided by the *firm*;
  - (g) market research and customer surveys;
  - (h) publications including printed promotional material such as brochures and leaflets, and the *firm's annual report*;
  - (i) sponsorships; and
  - (j) gifts to *customers*.
- (6) Where, during a period of six *months*, a *firm's* overheads expenditure, calculated according to (2), decreases by 20% or more relative to the overheads expenditure calculated at the last *accounting reference date*, the *firm* may recalculate its overheads requirement and therefore its prudential resources requirement accordingly.
- (7) For the purpose of the recalculation in (6), the *firm's* overheads requirement shall be equal to one third of:
- (a) the *firm's* total expenditure in the period of 6 *months* ending on the date it changes its prudential resources requirement; less
  - (b) the total of the items in (2)(b) (if they are included in such expenditure) in that six *month* period.
- (8) A *firm* must notify the *FCA* of any change in its prudential resources requirement within 14 *days* of that change.

#### The client money requirement

7.2.9 R The *client money* requirement is £20,000.

#### Prudential requirement for lead generators

7.2.10 R If a *lead generator* holds *client money*, the prudential requirement for the *firm* is the client money requirement (see *CMCOB 7.2.9R*).

### 7.3 Calculation of prudential resources

#### Eligible prudential resources

7.3.1 R (1) A *firm* must calculate its prudential resources only from the items

which are eligible to contribute to a *firm*'s prudential resources as set out in the table in *CMCOB 7.3.2R*.

- (2) In arriving at its calculation of its prudential resources, a *firm* must deduct certain items as set out in the table in *CMCOB 7.3.3R*.

7.3.2R Table: Items which are eligible to contribute to the prudential resources of a firm

	Item	Additional explanation
1	<i>Share capital</i>	<p>This must be fully paid and may include:</p> <p>(1) ordinary <i>share capital</i>; or</p> <p>(2) preference <i>share capital</i> (excluding preference <i>shares</i> redeemable by shareholders within two years).</p>
2	Capital other than <i>share capital</i> (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i> )	<p>The capital of a <i>sole trader</i> is the net balance on the <i>firm</i>'s capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners</i>':</p> <p>(1) capital account, that is the account:</p> <p>(a) into which capital contributed by the <i>partners</i> is paid; and</p> <p>(b) from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:</p> <p>(i) the <i>person</i> ceases to be a <i>partner</i> and an equal amount is transferred to another such account by the <i>person</i>'s former <i>partners</i> or any <i>person</i> replacing that <i>person</i> as their <i>partner</i>; or</p> <p>(ii) the <i>person</i> ceases to be a <i>partner</i> and an equal amount is transferred to another such account by the <i>person</i>'s former <i>partners</i> or any <i>person</i> replacing that <i>person</i> as their <i>partner</i>; or</p> <p>(iii) the <i>partnership</i> is otherwise dissolved or wound up; and</p> <p>(2) current accounts according to the most recent financial statement.</p>

		<p>For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i>:</p> <p>(3) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(4) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</p>
3	Reserves (Note 1)	<p>These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p> <p>For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:</p> <p>(1) a <i>firm</i> must deduct any realised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;</p> <p>(2) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;</p> <p>(3) in respect of a <i>defined benefit occupational scheme</i>:</p> <p>(a) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(b) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</p>
4	Interim net profits (Note 1)	<p>If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.</p>
5	Revaluation reserves	<p>Revaluation reserves such as reserves arising from the revaluation of land and buildings, including any net unrealised gains for the fair valuation of equities held in the available-for-sale financial assets category.</p>

6	Subordinated loans/debt	Subordinated loans/debt must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans/debts.
Note:		
1		Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemption from audit) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies; Conditions for exemption from audit)) relating to the audit of accounts.

7.3.3R Table: Items which must be deducted in arriving at prudential resources

1	<i>Investments in own shares</i>
2	<i>Investments in subsidiaries</i> (Note 1)
3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)
Notes:	
1	<i>Investments in subsidiaries</i> are valued at the full balance sheet value.
2	Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.
3	The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the prudential resources are being computed.

Subordinated loans/debt

- 7.3.4 R A subordinated loan/debt must not form part of the prudential resources of the *firm* unless it meets the following conditions:
- (1) it has an original maturity of:
    - (a) at least five years; or
    - (b) it is subject to five years' notice of repayment;
  - (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
  - (3) the only events of default must be non-payment of any interest or

principal under the debt agreement or the winding-up of the *firm*;

- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding-up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;
- (8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms which provide for the conditions set out in this *rule*; and
- (9) the loan/debt must be unsecured and fully paid up.

7.3.5 R When calculating its prudential resources, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

a – b

where:

a = the sum of Items 1-5 in the Table of items, which are eligible to contribute to a *firm*'s capital resources (see *CMCOB* 7.3.2R)

b = the sum of Items 1-5 in the Table of items, which must be deducted in arriving at a *firm*'s capital resources (see *CMCOB* 7.3.3R)

7.3.6 G *CMCOB* 7.3.5R can be illustrated by the examples set out below:

(1)	Share capital	£20,000
	Reserves	£30,000
	Subordinated loans/debts	£10,000
	Intangible assets	£10,000
As subordinated loans/debts (£10,000) are less than the total of share capital + reserves - intangible assets (£40,000) the <i>firm</i> need not exclude any of its subordinated loans/debts pursuant to <i>CMCOB</i>		

7.3.4R when calculating its prudential resources. Therefore the <i>firm's</i> total prudential resources will be £50,000.	
(2) Share capital	£20,000
Reserves	£30,000
Subordinated loans/debts	£60,000
Intangible assets	£10,000
As subordinated loans/debts (£60,000) exceed the total of share capital + reserves - intangible assets (£40,000) by £20,000, the <i>firm</i> should exclude £20,000 of its subordinated loans/debts pursuant to <i>CMCOB</i> 7.3.5R when calculating its prudential resources. Therefore the <i>firm's</i> total prudential resources will be £80,000.	

#### 7.4 Professional indemnity insurance: personal injury claims management

##### Application

- 7.4.1 R This section applies only to *firms* who carry on *advice, investigation or representation in relation to a personal injury claim*.

##### Requirement to hold

- 7.4.2 R A *firm* must take out and maintain at all times a *professional indemnity insurance contract* that provides for a level of cover at least equal to the requirements in this section from an *insurer* which is authorised to enter into *professional indemnity insurance contracts* in:

- (1) a *Zone A country*; or
- (2) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

- 7.4.3 R The *professional indemnity insurance contract* must make provision for cover in respect of any claim for loss or damage, for which the *firm* may be liable as a result of a negligent act, error or omission by:

- (1) the *firm*; or
- (2) any *person* acting on behalf of the *firm* including *employees*, or its other agents.

- 7.4.4 R The minimum limit of indemnity per year in the *professional indemnity insurance contract* must be no lower than:

- (1) £250,000 for a single claim against the *firm*;
- (2) £500,000 in the aggregate.

- 7.4.5 R (1) Where the *professional indemnity insurance contract* includes an excess, the excess must not be greater than £10,000 per claim.
- (2) The *professional indemnity insurance contract* must contain cover in respect of legal defence costs.
- (3) The *professional indemnity insurance contract* must provide for continuous cover for all claims:
- (a) first made against the *firm* during the period of insurance; or
- (b) made against the *firm* during or after the period of insurance and arising from claims first notified to the insurer during the period of insurance.

## 8 Requirements for firms with temporary permission for regulated claims management activities

### 8.1 Application and purpose

- 8.1.1 R This chapter applies to a *firm* with a *claims management temporary permission*.
- 8.1.2 G The purpose of these *rules* is to provide that certain provisions of the *FCA Handbook*:
- (1) that would otherwise apply to *persons* with a *claims management temporary permission* are not to apply; or
- (2) are to apply to those *persons* with the modifications specified in the table in *CMCOB* 8.1.4R.

Disapplication or modification of certain modules or provisions of the Handbook

- 8.1.3 R The modules or parts of the modules of the *FCA Handbook* listed in the table in *CMCOB* 8.1.4R:
- (1) do not apply, to the extent set out in the table, to a *person* with a *claims management temporary permission* with respect to the carrying on of a *regulated claims management activity*; or
- (2) are to apply to such a *person* with the modifications specified in the table.

Table: Disapplied or modified modules or provisions of the Handbook

8.1.4 R	Module	Disapplication or modification
	Threshold Conditions	<i>Guidance</i> applies with necessary modifications to reflect the <i>Claims Management Order</i> (see Note 1).



(COND)	Note 1	<p>A <i>firm</i> is treated as having a <i>claims management temporary permission</i> on and after 1 April 2019 to carry on <i>regulated claims management activity</i> under the <i>Claims Management Order</i> if it met the conditions set out in Chapter 5 of Part 3 of that Order at that date. According to article 83(9) of the <i>Claims Management Order</i> section 55B(3) of the <i>Act</i> (The threshold conditions) does not require the <i>FCA</i> to ensure that the <i>firm</i> will satisfy, and continue to satisfy, in relation to <i>regulated claims management activity</i> for which it has a <i>claims management temporary permission</i>, the threshold conditions for which the <i>FCA</i> is responsible. The <i>FCA</i> can, however, exercise its power under section 55J of the <i>Act</i> (variation or cancellation on initiative of regulator) or under section 55L of the <i>Act</i> (imposition of requirements by the regulator) in relation to a <i>firm</i> if, among other things, it appears to the <i>FCA</i> that the <i>firm</i> is failing, or is likely to fail, to satisfy the threshold conditions in relation to the <i>regulated claims management activity</i> for which it has a <i>claims management temporary permission</i> for which the <i>FCA</i> is responsible. The <i>guidance</i> in <i>COND</i> should be read accordingly.</p>
Supervision Manual ( <i>SUP</i> )		<p><i>SUP</i> 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies with necessary modifications to reflect Chapters 2 and 5 of Part 3 of the <i>Claims Management Order</i> (see Note 2).</p>
	Note 2	<p>If a <i>firm</i> with <i>claims management temporary permission</i> applies to the <i>FCA</i> under section 55A of the <i>Act</i> for <i>permission</i> to carry on a <i>regulated activity</i> or under section 55H or 55I of the <i>Act</i> to vary a <i>permission</i> that the <i>firm</i> has otherwise than by virtue of the <i>Claims Management Order</i> by adding a <i>regulated activity</i> to those to which the <i>permission</i> relates, the application may be treated by the <i>FCA</i> as relating also to some or all of the <i>regulated activities</i> for which the <i>firm</i> has <i>claims management temporary permission</i>.</p>
	<p>For a <i>firm</i> with only <i>claims management temporary permission</i>: <i>SUP</i> 15.5.1R, <i>SUP</i> 15.5.2G, <i>SUP</i> 15.5.4R, <i>SUP</i> 15.5.5R are modified so that the words “reasonable</p>	

	advance”, “and the date on which the <i>firm</i> intends to implement the change of name” and “and the date of the change” are omitted.
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**TP 1 Transitional provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	CMCOB 6.1.7R	R	<p>In relation to an agreement entered into before 1 April 2019:</p> <p>(1) the <i>firm</i> need not comply with CMCOB 6.1.7R until 1 July 2019; and;</p> <p>(2) the reference in CMCOB 6.1.7R to an illustration or estimate provided under CMCOB 4.2.5R is to be treated as a reference to the most recent illustration or estimate of fees (if any) provided before 1 April 2019.</p>	From 1 April 2019	1 April 2019
2	CMCOB 6.1.7R	G	<p>The effect of TP 1.1 is that, where a <i>firm</i> has sufficient information from which it may reasonably estimate what its fee under an agreement entered into before 1 April 2019 will be, the <i>firm</i> must provide an estimate to the <i>customer</i> no later than 1 July 2019 unless that estimate is unchanged from the most recent estimate given before 1 April 2019.</p>		
3	CMCOB 7.2.4R to 7.2.10R	R	<p>A <i>firm</i> need not comply with CMCOB 7.2.4R to 7.2.10R.</p>	1 April 2019 to 31 July 2019	1 April 2019

**Schedule 1**    **Record keeping requirements**

- 1.1    G    The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements in *CMCOB*.
- 1.2    G    It is not a complete statement of those requirements and should not be relied on as if it were.

<b>Handbook reference</b>	<b>Subject of record</b>	<b>Content of record</b>	<b>When record must be made</b>	<b>Retention period</b>
<i>CMCOB</i> 2.2.2R	<i>Lead generators</i>	Steps taken to ascertain whether <i>lead generator</i> authorised and has systems and processes in place to comply with <i>data protection legislation</i> and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and conclusions reached	When the steps are taken	Not specified
<i>CMCOB</i> 2.2.4R	Source of sales leads	<i>Lead generator</i> which supplied the lead	When the lead is accepted	Not specified
<i>CMCOB</i> 2.3.2R and 2.3.6R	Telephone calls and <i>electronic communications</i>	Call recording; and retention of <i>electronic communications</i>	When the call or the <i>electronic communication</i> is made or received	At least 12 <i>months</i> for call recording; according to SYSC 9.1.1R for electronic

				communications
<i>CMCOB</i> 4.3.1R	Availability of alternative methods for pursuing a claim; whether <i>customer</i> has outstanding liabilities with the <i>person claim</i> made against; and whether <i>customer</i> subject to bankruptcy etc	The <i>customer's</i> confirmation that they have alternative methods and the reasons for not using them; and the <i>customer's</i> confirmation regarding outstanding liabilities and bankruptcy etc	Before an agreement is entered into with the <i>customer</i>	Not specified
<i>CMCOB</i> 6.1.5R	Costs not previously notified or changes to notified costs	<i>Customer's</i> consent in relation to costs	When consent obtained	Not specified

**Schedule 2 Notification and reporting requirements**

- 2.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements in *CMCOB*.
- 2.2 G It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Matter to be notified	Contents of notification	Trigger Event	Time allowed
<i>CMCOB</i> 2.2.7R	<i>Lead generator</i> not an <i>authorised person</i>	Identity and contact details (if known) of the <i>lead generator</i> , and the <i>firm's</i> reasons for not being satisfied that	The <i>firm</i> not being satisfied that the <i>lead generator</i> may carry on <i>seeking out, referrals and identification of claims or</i>	Promptly

		the <i>lead generator</i> may carry on <i>seeking out, referrals and identification of claims or potential claims</i> without breaching the <i>general prohibition</i>	<i>potential claims</i> without breaching the <i>general prohibition</i>	
<i>CMCOB</i> 7.2.8R	Changes in prudential resources requirement	Change in prudential resources requirement	The <i>firm</i> changing its prudential resources requirement	Within 14 <i>days</i> of that change

**Sched  
ule 3 Rights of action for damages**

Sch 3.1 G The table below sets out the *rules* in *CMCOB* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 3.2 G If a “Yes” appears in the column headed “For private person?”, the *rule* may be actionable by a “*private person*” under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A “Yes” in the column headed “Removed” indicates that the *FCA* has removed the right of action under section 138D(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 3.3 G The column headed “For other person?” indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the rule may be actionable is given.

Chapter / Appendix	Section/ Annex	Paragraph	Right of action under section 138D		
			For private person?	Removed?	For other person?
		The clear, fair and not misleading <i>rule</i> in <i>CMCOB</i> 3.2.3 R	Yes	In part (Note 1)	No

The prudential <i>rules</i> for <i>firms</i> carrying on regulated claims management activity in <i>CMCOB</i> 7.2 and 7.3	No	Yes, <i>CMCOB</i> 7.1.2R	No
All other <i>rules</i> in <i>CMCOB</i>	Yes	No	No
<p>Note: <i>CMCOB</i> 3.2.3R provides that if, in relation to a particular communication or <i>financial promotion</i>, a <i>firm</i> takes reasonable steps to ensure it complies with the <i>fair, clear and not misleading rule</i>, a contravention of that <i>rule</i> does not give rise to a right of action under section 138D of the <i>Act</i>.</p>			

## Annex J

### Amendments to the Financial Crime Guide (FC)

In this Annex, striking through indicates deleted text.

#### 5 Data Security

...

- 5.1 Customers routinely entrust ~~financial~~ firms with important personal data; if this falls into criminal hands, fraudsters can attempt to undertake ~~financial~~ transactions in the customer's name. Firms must take special care of their customers' personal data, and comply with the data protection principles set out in Schedule 1 to the Data Protection Act 1998. The Information Commissioner's Office provides guidance on the Data Protection Act and the responsibilities it imposes on data controllers and processors.

...

## Annex K

### Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

## 2 Authorisation and regulated activities

...

### 2.3 The business element

#### 2.3.2 G ...

(3C) No provision in relation to the business element is made in respect of *not-for-profit bodies* carrying on *regulated claims management activity*; but article 89O of the *Regulated Activities Order* provides an exclusion for such bodies (see *PERG 2.8.14DG(2)*).

...

...

After PERG 2.4 (Link between activities and the United Kingdom) insert the following new section PERG 2.4A. The text is not underlined.

### 2.4A Link between regulated claims management activities and Great Britain

2.4A.1 G Under section 22(1B) of the *Act*, a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.

2.4A.2 G (1) Article 89F(3) of the *Regulated Activities Order* provides that a *person* is to be treated as carrying on a *regulated claims management activity* when either or both of the conditions in (2) and (3) are met.

(2) The condition in this paragraph is that the activity is carried on by a *person* who is:

(a) a natural person who is ordinarily resident in *Great Britain*; or

(b) a *person*, other than a natural person, who is constituted under the law of a part of *Great Britain*.

(3) The condition in this paragraph is that the activity is carried on in



respect of a *claimant* or potential *claimant* who is:

- (a) a natural person who is ordinarily resident in *Great Britain*; or
- (b) a *person*, other than a natural person, who is constituted under the law of a part of *Great Britain*.

2.4A.3 G Ordinary residence is to be determined for these purposes by reference to the Statutory Residence Test set out in Schedule 45 to the Finance Act 2013:

- (1) at the time of the facts giving rise to the *claim* or potential *claim*; or
- (2) at the time when the activity is carried out in respect of that *claimant* or potential *claimant*.

2.4A.4 G Accordingly, the following list gives examples of activity which would be *regulated claims management activity* if carried on by way of business and where no exemption or exclusion applies:

- (1) a sole trader in England and Wales advising a natural person who is ordinarily resident in Northern Ireland in relation to a financial services or financial product *claim*;
- (2) a company incorporated in Northern Ireland advising a natural person who is ordinarily resident in Scotland in relation to a *personal injury claim*;
- (3) a company incorporated in France advising a natural person who is ordinarily resident in England in relation to a financial services or financial product *claim*;
- (4) a company incorporated in Scotland investigating a *personal injury claim* for a natural person who is ordinarily resident in Germany; and
- (5) a company incorporated in India seeking out details of claimants with *personal injury claims* who are ordinarily resident in Great Britain.

Amend the following as shown.

## 2.7 Activities: a broad outline

...

### Regulated claims management activity

2.7.20M G (1) Section 22(1B) of the Act provides that an activity is a *regulated activity* if it is an activity of a specified kind which:

- (a) is, or relates to, *claims management services*; and
- (b) is carried on in *Great Britain*.

- (2) The activities which have been specified are those set out in articles 89G to 89M of the *Regulated Activities Order*; these are listed in the *Glossary* definition of “*regulated claims management activity*” and set out in *PERG 2.7.20N*. However, these are subject to the exclusions set out in articles 89N to 89W of the *Regulated Activities Order*: an activity which falls within one of the exclusions is not a *regulated activity* (see *PERG 2.8.14D*).
- (3) The activity must be or relate to a *claims management service*. The drafting of the *Regulated Activities Order* has the effect that the *regulated claims management activities* all meet this condition.
- (4) The activity must be carried on in *Great Britain*: see *PERG 2.4A*. A *person* outside *Great Britain* (including a *person* outside the *United Kingdom*) may require *permission* for a *regulated claims management activity* if they deal with *claims* involving *claimants* who are constituted or ordinarily resident in *Great Britain* or handle details of such *claimants*, even if that *person* has no branch, office or establishment in *Great Britain*.

2.7.20N    G    (1) *Seeking out, referrals and identification of claims or potential claims, as specified in article 89G of the Regulated Activities Order, involves any or all of the following:*

- (a) seeking out *persons* who may have a *claim* (unless that activity constitutes a *controlled claims management activity*: see *PERG 8.7A.5G*);
- (b) referring details of a *claim* or a potential *claim* or a *claimant* or potential *claimant* to another *person*; and
- (c) identifying a *claim* or potential *claim*, or a *claimant*, or potential *claimant*;

when carried on in relation to a *personal injury claim*, a *financial services or financial product claim*, a *housing disrepair claim*, a *claim for a specified benefit*, a *criminal injury claim* or an *employment-related claim*.

- (2) The other *regulated claims management activities* are:
  - (a) *advice, investigation or representation in relation to a personal injury claim*;
  - (b) *advice, investigation or representation in relation to a financial services or financial product claim*;

- (c) advice, investigation or representation in relation to a housing disrepair claim;
  - (d) advice, investigation or representation in relation to a claim for a specified benefit;
  - (e) advice, investigation or representation in relation to a criminal injury claim; and
  - (f) advice, investigation or representation in relation to an employment-related claim.
- (2) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
- (3) Investigation of a claim means carrying out an investigation into, or commissioning the investigation of, the circumstances, merits or foundation of a claim (see article 89F(2)(i) of the Regulated Activities Order).
- (4) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made (see article 89F(2)(j) of the Regulated Activities Order).

...

## 2.8 Exclusions applicable to particular regulated activities

...

### Regulated claims management activity

2.8.14D G The Regulated Activities Order excludes a number of activities from regulated claims management activity. The exclusions include:

- (1) activity carried on by or through a legal practitioner, or by a natural person who carries on that activity at the direction of, and under the supervision of, a legal practitioner, provided that the legal practitioner carries on that activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject (article 89N);
- (2) activity carried on by a charity or not-for-profit body (article 89O);
- (3) exclusion from seeking out, referrals and identification of claims or potential claims for providers of referrals who meet all the following conditions (article 89V):

- (a) the person who refers those details (“the introducer”) carries on no other regulated claims management activity;
  - (b) the activity is incidental to the introducer’s main business;
  - (c) the details are only referred to authorised persons, legal practitioners, or a firm, organisation, or body corporate that provides the service through legal practitioners;
  - (d) of the claims that the introducer refers to such persons, that introducer is paid, in money or money’s worth, for no more than 25 claims per calendar quarter;
  - (e) the introducer, in obtaining and referring those details, has complied with the provisions of the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (EU) and the Unfair Trading Regulations (but this condition does not apply in the case of a referral to a legal practitioner, or to a firm, organisation, or body corporate that carries on the activity through legal practitioners); and
- (4) any regulated activity of the kind specified in articles 21, 25, 39A, 53 or 64 of the Regulated Activities Order carried on by a person who has permission to carry on that activity in relation to a contract of insurance (article 89U).

## 5 Guidance on insurance distribution activities

### 5.1 Application and purpose

...

Guidance on other activities

- 5.1.11 G A person may wish to carry on activities related to other forms of investment in connection with contracts of insurance, such as advising on and arranging regulated mortgage contracts. Such a person should also consult the guidance in PERG 2 (Authorisation and Regulated Activities), PERG 4 (Regulated activities connected with mortgages) and PERG 8 (Financial Promotion and Related Activities). A person may also wish to carry on regulated claims management activities (where their activities are not insurance distribution activities, and they fall outside of the exclusion in article 89U of the Regulated Activities Order). Such a person should also consult the guidance in PERG 2.7.20M and PERG 2.7.20N.

...

### 5.7 The regulated activities: assisting in the administration and performance of a

**contract of insurance**

5.7.1 G The *regulated activity* of *assisting in the administration and performance of a contract of insurance* (article 39A) relates, in broad terms, to activities carried on by intermediaries after the conclusion of a *contract of insurance* and for or on behalf of *policyholders*, in particular in the event of a claim. Loss assessors acting on behalf of *policyholders* in the event of a claim are, therefore, likely in many cases to be carrying on this *regulated activity*. By contrast, managing claims ~~management~~ on behalf of certain insurers is not a *regulated activity* (see *PERG 5.7.7G (Exclusions)*).

...

5.7.8 G ...

So, a *person* whose activities are excluded under article 12 of the *Regulated Activities Order* (Breakdown insurance) will not be a relevant insurer for these purposes and any *person* who performs loss adjusting or managing claims ~~management~~ on behalf of such a *person* will not be able to use the exclusion in article 39B.

...

**5.15 Illustrative tables**

...

5.15.4 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
...		
<b>ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS</b>		
Negotiation of settlement of claims on behalf of an <i>insurance undertaking</i>	No.	<del>Claims management</del> <u>Managing claims</u> on behalf of an <i>insurance undertaking</i> does not amount to <i>assisting in the administration and performance of a contract of insurance</i> by virtue of the exclusion in article 39B (see <i>PERG 5.7.7G</i> )
...		
Loss <del>adjusters</del> <u>adjusting</u> and <del>claims management</del> <u>managing</u>	Potentially.	These activities may amount to <i>assisting in the administration and performance of a contract</i>

<p><u>claims services</u> (for example, by administration outsourcing providers)</p>		<p><i>of insurance</i>. Article 39B excludes these activities, however, when undertaken on behalf of an <i>insurance undertaking</i> only (see <i>PERG 5.7.7G</i>).</p>
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...

## 8 Financial promotion and related activities

### 8.1 Application and purpose

...

Purpose of guidance

...

8.1.3 G In particular, this *guidance* covers:

...

(4A) meaning of ‘engage in claims management activity’ (see *PERG 8.7A*);

...

...

### 8.2 Introduction

8.2.1 G The effect of section 21 of the *Act* (Restrictions on financial promotion) is that in the course of business, an *unauthorised person* must not *communicate* an invitation or inducement to *engage in investment activity* or *to engage in claims management activity* unless either the content of the communication is *approved* for the purposes of section 21 by an *authorised person* or it is exempt. ...

...

8.2.4 G A *person* who is concerned to know whether his communications will require *approval* or, if he is an *authorised person*, whether the appropriate *financial promotion rules* will apply to his communications will need to consider the following:

...

(4A) alternatively, is the invitation or inducement to *engage in claims management activity*? (see *PERG 8.7A*);

...

...

### 8.3 Financial promotion

...

8.3.2 G Section 21 of the *Act* does not itself (other than in its heading and side-note) refer to a '*financial promotion*' but rather to the *communication* of 'an invitation or inducement (a) to engage in investment activity or (b) to engage in claims management activity'. References in this *guidance* to a *financial promotion* mean an invitation or inducement to *engage in investment activity or to engage in claims management activity*.

8.3.3 G Section 21 of the *Act* contains a number of key expressions or phrases which will determine whether or not it will apply. These are:

...

(4) ...; ~~and~~

(4A) 'engage in claims management activity' (see PERG 8.7A); and

...

...

### 8.4 Invitation or inducement

Promotional element

...

8.4.4 G The *FCA* considers that it is appropriate to apply an objective test to decide whether a communication is an invitation or an inducement. In the *FCA*'s view, the essential elements of an invitation or an inducement under section 21 are that it must both have the purpose or intent of leading a *person* to *engage in investment activity or to engage in claims management activity*, and be promotional in nature. So it must seek, on its face, to persuade or incite the recipient to *engage in investment activity or to engage in claims management activity*. The objective test may be summarised as follows. Would a reasonable observer, taking account of all the circumstances at the time the communication was made:

(1) consider that the communicator intended the communication to persuade or incite the recipient to *engage in investment activity or to engage in claims management activity*, or that that was its purpose; and

(2) ...

...

#### Invitations

- 8.4.5 G An invitation is something which directly invites a *person* to take a step which will result in his *engaging in investment activity or engaging in claims management activity*. It follows that the invitation must cause the *engaging in investment activity or engaging in claims management activity*. Examples of an invitation include:

...

...

#### Inducements

- 8.4.7 G An inducement may often be followed by an invitation or vice versa (in which case both communications will be subject to the restriction in section 21 of the Act). An inducement may be described as a link in a chain where the chain is intended to lead ultimately to an agreement to *engage in investment activity or to engage in claims management activity*. But this does not mean that all the links in the chain will be an inducement or that every inducement will be one to *engage in investment activity or to engage in claims management activity*. Only those that are a significant step in persuading or inciting or seeking to persuade or incite a recipient to *engage in investment activity or to engage in claims management activity* will be inducements under section 21. ...

- 8.4.8 G *PERG 8.4.9G to PERG 8.4.34G* apply the principles in *PERG 8.4.4G to PERG 8.4.7G* to communications made in certain circumstances. They do not seek to qualify those principles in any way. A common issue in these circumstances arises when contact details are given (for example, of a provider of investments or investment services). In the *FCA's* view, the inclusion of contact details should not in itself decide whether the item in which they appear is an inducement or, if so, is an inducement to *engage in investment activity or to engage in claims management activity*. However, they are a factor which should be taken into account. The examples also refer, where appropriate, to specific exemptions which may be relevant if a communication is an invitation or inducement to *engage in investment activity or to engage in claims management activity*.

#### Directory listings

- 8.4.9 G Ordinary telephone directory entries which merely list names and contact details (for example where they are grouped together under a heading such as 'stockbrokers') will not be inducements. They will be sources of information. Were they to be presented in a promotional manner or accompanied by promotional material they would be capable of being inducements. Even so, they may merely be inducements to make contact with the listed person. Specialist directories such as ones providing details of venture capital providers, unit trust managers, contractual scheme managers or investment trusts will usually carry greater detail about the services or products offered by the listed firms and are often produced by



representative bodies. Such directories may also be essentially sources of information. Whether or not this is the case where individual entries are concerned will depend on their contents. If they are not promotional, the entries will not be inducements to *engage in investment activity* or to *engage in claims management activity*. However, it is possible that other parts of such a directory might, for example, seek to persuade recipients that certain *controlled investments* offer the best opportunity for financial gain. They may go on to incite recipients to contact one of the member firms listed in the directory in order to make an investment. In such cases, that part of the directory will be an inducement to *engage in investment activity*. But this does not mean that the individual entries or any other part of the directory will be part of the inducement. *PERG 8.6* provides *guidance* on the meaning of ‘communicate’ and ‘causing a communication’. This is of relevance to this example and those which follow.

Tombstone advertisements (announcements of a firm’s past achievements)

- 8.4.10 G Such advertisements are almost invariably intended to create awareness, hopefully generating future business. So they may or may not be inducements. This depends on the extent to which their contents seek to persuade or incite persons to contact the advertiser for details of its services or to do business with it. Merely stating past achievements with no contact details will not be enough to make such an advertisement an inducement. Providing contact details may give the advertisement enough of a promotional feel for it to be an inducement. But, if this is the case, it will be an inducement to contact the advertiser to find out information or to discuss what he can offer. Only if the advertisement contains other promotional matter will it be capable of being an inducement to *engage in investment activity* or to *engage in claims management activity*. In practice, such advertisements are often aimed at influencing only investment professionals. Where this is the case, the exemption in article 19 of the *Financial Promotion Order* (Investment professionals) may be relevant (see *PERG 8.12.21G*). Tombstone advertisements will not usually carry the indicators required by article 19 to establish conclusive proof. However, article 19 may apply even if none of the indicators are present if the *financial promotion* is in fact directed at investment professionals.

Links to a website

- 8.4.11 G Links on a website may take different forms. Some will be inducements. Some of these will be inducements under section 21 and others not. Links which are activated merely by clicking on a name or logo will not be inducements. The links may be accompanied by or included within a narrative or, otherwise, referred to elsewhere on the site. Whether or not such narratives or references are inducements will depend upon the extent to which they may seek to persuade or incite persons to use the links. Simple statements such as ‘these are links to stockbrokers’ or ‘click here to find out about stockmarkets – we provide links to all the big exchanges’ will either not amount to inducements or be inducements to access another site to get information. If they are inducements, they will be inducements to *engage in investment activity* or to *engage in claims management activity* only if they

specifically seek to persuade or incite persons to use the link for that purpose. Where this is the case, but the inducement does not identify any particular *person* as a provider of a *controlled investment* or as someone who carries on a *controlled activity* or a *controlled claims management activity*, the exemption in article 17 of the *Financial Promotion Order* (Generic promotions) may be relevant (see *PERG* 8.12.14G).

#### Banner advertisements on a website

- 8.4.12 G These are the Internet equivalent to an advertisement in a newspaper and are almost bound to be inducements. So whether they are inducements to *engage in investment activity* or to *engage in claims management activity* will depend upon their contents as with any other form of advertising and the comments in *PERG* 8.4.11G will be relevant.

...

#### Journalism

- 8.4.15 G Journalism can take many forms. But typically a journalist may write an editorial piece on a *listed company* or about the *investments* or investment services that a particular firm provides or the *controlled claims management activity that it carries on*. This may often be in response to a press release. The editorial may or may not contain details of or, on a website, a link to the site of the *company* or firm concerned. Such editorial may specifically recommend that readers should consider *buying or selling investments* (whether or not particular *investments*) or obtaining investment services (whether or not from a particular firm) or obtaining services which constitute a *controlled claims management activity* (whether or not from a particular firm). If so, those recommendations are likely to be inducements to *engage in investment activity* (bearing in mind that a recommendation not to *buy or sell investments* cannot be an inducement to *engage in investment activity*) or to *engage in claims management activity*. In other cases, the editorial may be an objective assessment or account of the investment or its *issuer* or of the ~~investment~~ firm and may not encourage *persons* to make an *investment* or obtain *investment* services or other services which constitute a *controlled claims management activity*. If so, it will not be an inducement to *engage in investment activity* or to *engage in claims management activity*.

...

...

#### Image advertising

- 8.4.20 G Activities which are purely profile raising and which do not identify and promote particular investments or investment services or services which constitute a *controlled claims management activity* may not amount to either an invitation or inducement of any kind. Examples of this include where *listed companies* sponsor sporting events or simply put their name or logo on the side of a bus or on an umbrella. This is usually done with a view, among other things, to putting their names in the minds of potential

investors or consumers. In other cases, an image advertisement for a *company* which provides investment services (for example, on a pencil or a diary) may include, along with its name or logo, a reference to its being an investment adviser or fund manager or a telephone or fax number or both. Profile raising activities of this kind may involve an inducement (to contact the advertiser) but will be too far removed from any possible *investment activity* or, where relevant, *controlled claims management activity*, to be considered to be an inducement to *engage in investment activity* or to *engage in claims management activity*.

#### Advertisements which invite contact with the advertiser

- 8.4.21 G These will be advertisements that contain encouragement to contact the advertiser. They are likely to be inducements to do business with him or to get more information from him. If so, they will be inducements to *engage in investment activity* or to *engage in claims management activity* if they seek to persuade or incite *persons* to buy or sell *investments* or to get investment services or services which constitute a *controlled claims management activity*. See *PERG* 8.4.7G for more *guidance* on preliminary communications and whether they are a significant step in the chain of events which are intended to lead to the recipient *engaging in investment activity* or *engaging in claims management activity*. Where advertisements invite *persons* to send for a prospectus, article 71 (Material relating to prospectus for public offer of unlisted securities) may provide an exemption. Any *financial promotion* which contains more information than is allowed by article 71 but which is not the prospectus itself is likely to require *approval* by an *authorised person* unless another exemption applies.

#### Introductions

- 8.4.22 G (1) Introductions may take many forms but typically involve an offer to make an introduction or action taken in response to an unsolicited request. An introduction may be an inducement if the introducer is actively seeking to persuade or incite the *person* he is introducing to do business with the *person* to whom the introduction is made. So it may fall under section 21 if its purpose is to lead to investment activity or *controlled claims management activity*. For example, if a person answers the question ‘do you or can you provide investment advice’ with a simple ‘no, but I can introduce you to someone who does’, that may be an inducement. But, if so, it is likely to be an inducement to contact someone to find out information about his services rather than to *engage in investment activity* or to *engage in claims management activity*.

...

...

#### Invitations to attend meetings or to receive telephone calls or visits

- 8.4.25 G These are clearly invitations or inducements. Whether they will involve

invitations or inducements to *engage in investment activity* or to *engage in claims management activity* rather than to attend the meeting or receive the call or visit, will depend upon their purpose and content. *PERG 8.4.7G* discusses communications which are a significant step in the chain of events leading to an agreement to *engage in investment activity* or to *engage in claims management activity*. The purpose of the meeting, call or visit to which the invitation or inducement relates may be to offer the audience or recipient investment services or services which constitute a *controlled claims management activity*. In this case, the invitation or inducement will be a significant step in the chain if it seeks to persuade or incite the invitee to *engage in investment activity* or to *engage in claims management activity* at the meeting, call or visit. Any *financial promotions* made during the meeting, call or visit would still need to be *communicated* or *approved* by an *authorised person* or be exempt.

...

Enquiries about a person's status or intentions

8.4.27 G A person ('A') may enquire:

(3) ...; or

(4) whether a person has been involved in an accident.

Enquiries of this or a similar kind will not amount to inducements to *engage in investment activity* or to *engage in claims management activity* unless they involve persuasion or incitement to do so. ...

Solicited and accompanying material

8.4.28 G Solicited or accompanying material which does not contain any invitation or inducement to *engage in investment activity* or to *engage in claims management activity* will not itself be a *financial promotion*. This is provided that the material is not part of any *financial promotion* which may accompany it. This is explained in greater detail in *PERG 8.4.29G* to *8.4.30G*.

...

Telephone services

...

8.4.31A G Where the telephone services that P provides, or other services provided in conjunction with those telephone services, have the result that P is carrying on the regulated activity of seeking out, referrals and identification of claims or potential claims, instead of (or in addition to) communicating a financial promotion that relates to controlled claims management activity, P will require permission to carry on the regulated activity of seeking out, referrals and identification of claims or potential claims.

...

## **8.7 Engage in investment activity**

- 8.7.1 G A communication must be an invitation or inducement to *engage in investment activity* (or to *engage in claims management activity* (see *PERG 8.7A*)) for the restriction in section 21 to apply. ...

...

After PERG 8.7 (Engage in investment activity) insert the following new section PERG 8.7A. The text is not underlined.

## **8.7A Engage in claims management activity**

Controlled claims management activity

- 8.7A.1 G A communication must be an invitation or inducement to *engage in claims management activity* (or to *engage in investment activity* (see *PERG 8.7*)) for the restriction in section 21 to apply. Section 21(10A) of the *Act* defines this phrase as “entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity”. And section 21(10B) of the *Act* provides that an activity is a “controlled claims management activity” if:
- (a) it is an activity of a specified kind;
  - (b) it is, or relates to, *claims management services*; and
  - (c) it is carried on in *Great Britain*.
- 8.7A.2 G The activities which have been specified are those set out in Part 1A of the *Financial Promotion Order* (which are listed in the *Glossary* definition of “*controlled claims management activity*”). These are the same as the activities which have been specified in the *Regulated Activities Order* as *regulated claims management activities*; the exclusions set out in articles 89N to 89W of the *Regulated Activities Order* in relation to *regulated claims management activities* are set out as exemptions in articles 73A to 73J of the *Financial Promotions Order* in relation to *controlled claims management activity*.
- 8.7A.3 G The activity must be or relate to a *claims management service*. The drafting of the *Financial Promotions Order* has the effect that the *controlled claims management activities* all meet this condition.
- 8.7A.4 G The activity must be carried on in *Great Britain*: see *PERG 2.4A*.

The distinction between controlled claims management activity and regulated claims management activity

- 8.7A.5 G The *regulated activity* of *seeking out, referrals and identification of claims or potential claims*, as specified in article 89G of the *Regulated Activities Order*, constitutes three activities one of which is seeking out *persons* who may have a *claim* unless that activity constitutes a *controlled claims management activity*.
- 8.7A.6 G For a communication to constitute a *financial promotion*, it must constitute an invitation or inducement to *engage in claims management activity* (or to *engage in investment activity*): see *PERG* 8.4. Where a *person* advertises the services of a *firm* which carries on a *regulated claims management activity* with a view to seeking out *customers*, the *person* is likely to be communicating an invitation or inducement to *engage in claims management activity*: the *person* will therefore have to be an *authorised person* or the communication will have to be approved by an *authorised person*, if the *person* is not to breach the prohibition in section 21 of the *Act*.
- 8.7A.7 G It may be possible for a *person* (for example, for a *lead generator*) to seek out claimants or potential claimants without communicating an invitation or inducement to *engage in claims management activity*. Whether or not there is an invitation or inducement would depend on the facts and circumstances of the communication. Where there is no invitation or inducement, the seeking out would constitute the *regulated activity* of *seeking out, referrals and identification of claims or potential claims*, and the *person* would need to be an *authorised person* if they are not to breach the *general prohibition*, or to hold the necessary *permission* if they are not to breach the requirement for *permission* in section 20 of the *Act*.

Amend the following as shown.

## **8.9 Circumstances where the restriction in section 21 does not apply**

...

- 8.9.4 G With *approval* generally, issues may arise as to what would be subject to the restrictions in section 21 where an invitation or inducement to *engage in investment activity* or to to *engage in claims management activity* is made through a publication, broadcast or website or is accompanied by other material. ...

...

## **8.10 Types of financial promotion**

...

Solicited v unsolicited real time financial promotions

...

8.10.10 G Article 8(3) of the *Financial Promotion Order* also has the effect in broad terms that *financial promotions* made during a visit, call or dialogue will be solicited only if they relate to *controlled activities* or *controlled investments* or *controlled claims management activities* of the kind to which the recipient envisaged that they would relate. ...

8.10.11 G ... Article 8(4) of the *Financial Promotion Order* recognises this and has the effect that an *unsolicited real time financial promotion* will have been made to the *persons* other than the *person* who expressly asked for or initiated the call, visit or dialogue in which it was made unless they are:

(1) ...; or

(2) expected to engage in any investment activity or to engage in claims management activity jointly with that *person*.

8.10.12 G In the *FCA's* view, *persons* who may be *engaging in investment activity* or *engaging in claims management activity* jointly include:

...

8.10.13 G There will be occasions when *financial promotions* are received by *persons* other than those in *PERG* 8.10.11G(1) or *PERG* 8.10.11G(2) who will not have solicited them. For example, a more distant relative or friend ('F') who acts as a support to the *person* who is to *engage in investment activity* or to *engage in claims management activity* ('P') or P's professional adviser ('A'). As explained in *PERG* 8.6.10G, in such cases the *financial promotion* will not be made to F or A unless it is also addressed to them. And it will only be addressed to F or A if the invitation or inducement relates to F or A *engaging in investment activity* or *engaging in claims management activity*. So a solicited financial promotion made to P will not also be an unsolicited *financial promotion* made to F or A.

...

## 8.11 Types of exemption under the Financial Promotion Order

...

8.11.5 G ... If the indication is given enough prominence, taking account of the medium through which it is *communicated*, to ensure that the recipient will be aware of it and able to consider it before deciding whether to *engage in investment activity* or to *engage in claims management activity*, the *FCA* would regard article 9 as being satisfied.

...

## 8.12 Exemptions applying to all controlled activities

...

Financial promotions to overseas recipients (article 12)

- 8.12.2 G This exemption concerns *financial promotions* which are made to or directed only at *overseas persons* (except in the circumstances referred to in *PERG 8.12.8G*). But this exemption does not apply to communications in respect of *controlled claims management activity*.

...

Financial promotions from customers and potential customers (article 13)

- 8.12.9 G *Financial promotions* made by a prospective customer to a *person* who supplies a *controlled investment* or services comprising *controlled activities or controlled claims management activities* with a view to his acquiring the *investment*, or receiving the services or receiving information about those *investments* or services, are exempted. This exemption will only be of relevance to corporate customers or others who are acting in the course of business. Other types of customers will not be subject to section 21 to begin with.

...

Introductions (article 15)

...

- 8.12.11B G This exemption also does not apply to any *financial promotion* that is made with a view to, or for the purpose of, an introduction to a *person* who carries on a *controlled claims management activity*.

Exempt persons (article 16)

- 8.12.12 G ... Article 16(1) applies to all *exempt persons* where they make *financial promotions* for the purpose of their exempt activities. .... So, it allows *exempt persons* both to promote that they have expertise in certain *controlled activities or controlled claims management activities* and to make *financial promotions* in the course of carrying them on.

...

Generic promotions (article 17)

- 8.12.14 G Under this exemption, the *financial promotion* itself must not relate to a *controlled investment* provided by a *person* who is identified in it, nor must it identify any *person* as someone who carries on any *controlled activity or controlled claims management activity*. So, it will apply where there is a *financial promotion* of a class of products. For example ‘ISAs are great’ or ‘buy into an investment trust and help the economy’. Such *financial*



*promotions* may be made by a *person* such as a trade association which is not itself carrying on a *controlled activity* or a *controlled claims management activity*. ...

...

- 8.12.16 G Other *persons* may be able to take advantage of the exemption. For example, a *person* making a generic *financial promotion* may identify himself, whether he may carry on a *controlled activity* or *controlled claims management activity*, or not. This is provided that the *financial promotion* does not (directly or indirectly) identify him as someone who carries on a *controlled activity* or a *controlled claims management activity*.

...

Investment professionals (article 19)

...

- 8.12.22 G This exemption does not apply to communications in respect of *controlled*  
A *claims management activity*.

Journalists (article 20)

- 8.12.23 G The broad scope of the restriction in section 21 of the *Act* will inevitably mean that it will, from time to time, apply to journalists and others who make their living from commenting on news including financial affairs (such as broadcasters). This is liable to happen when such *persons* offer share tips or recommend the use of a particular firm for investment purposes or *claims management services*. Such tips or recommendations are likely to amount to inducements to *engage in investment activity* or to *engage in claims management activity*.

...

- 8.12.26 G Provided the conditions in *PERG* 8.12.25G are met, the exemption in article 20 applies to any *non-real time financial promotion*. However, there is an additional condition where the subject matter of the *financial promotion* is *shares* or *options*, *futures* or *contracts for differences* relating to *shares* and the *financial promotion* identifies directly a *person* who issues or provides such an investment, or the subject matter of the *financial promotion* is a *controlled claims management activity* and the *financial promotion* directly identifies a *person* who undertakes that activity. In such cases, the exemption is subject to a disclosure requirement which is itself subject to certain exceptions (see *PERG* 8.12.27G). ...

...

## 8.14 Other financial promotions

...

8.14.2A G The exemptions in Part 6 of the *Financial Promotions Order* apply to communications which relate to “*controlled claims management activity*” except where stated otherwise in that Part (article 27).

One-off financial promotions (articles 28 and 28A)

8.14.3 G Article 28 exempts *financial promotions*, other than *unsolicited real time financial promotions*, which are one-off in nature. Whether or not any particular *financial promotion* is one-off in nature will depend upon the individual circumstances in which it is made. Article 28(3) sets out conditions which, if all are met, are conclusive. Otherwise they are indicative. Even if none are met the exemption may still apply. This makes it clear that the overriding issue is whether the *financial promotion* is, in fact, a one-off. The conditions are that:

- (1) the *financial promotion* is made only to one recipient or to a group of recipients in the expectation that they would *engage in investment activity or engage in claims management activity* jointly;

...

8.14.4 G The *FCA* considers the effect of each of the conditions in *PERG* 8.14.3G(1) to *PERG* 8.14.3G(3) to be as follows.

- (1) ... If the *financial promotion* is addressed to more than one *person* they must be proposing to *engage in investment activity or engage in claims management activity* jointly (see *PERG* 8.14.6G).

...

8.14.6 G In the *FCA*'s view, a group of recipients who may be *engaging in investment activity or engaging in claims management activity* jointly could include:

...

8.14.7 G A *financial promotion* may fail to satisfy all of the indicators referred to in *PERG* 8.14.4G because it is addressed to more than one recipient and they are not *persons* who will *engage in investment activity or engage in claims management activity* jointly. ...

...

8.14.13 G The article 28A exemption does not apply to communications in respect of  
A *controlled claims management activity*.

...

Overseas communicators (articles 30-33)

8.14.14 G There are a number of exemptions in the *Financial Promotion Order* relating to *financial promotions* sent into the *United Kingdom* by an

overseas *communicator* who does not carry on certain *controlled activities* in the *United Kingdom*. These exemptions apply in addition to any other exemptions which may apply to any particular *financial promotion* by an overseas *communicator*. The article 30-33 exemptions do not apply to any communications in respect of *controlled claims management activity*.

...

Nationals of EEA States other than the United Kingdom (article 36)

- 8.14.18 G This exemption allows a *person* in another *EEA State* who lawfully carries on a *controlled activity* in that State to promote into the *United Kingdom*. This exemption does not apply to any communication in respect of a *controlled claims management activity*. ...

Joint enterprises (article 39)

- 8.14.19 G ... A joint enterprise means, in general terms, arrangements entered into by two or more *persons* for commercial purposes related to a business that they carry on. The business must not involve a *controlled activity* or a *controlled claims management activity*. ...

- 8.14.20 G ... This means that the sponsors or promoters of a *company* who arrange for private investors to become shareholders will not be setting up a joint enterprise simply because the *company* may intend to carry on a relevant business which is not a *controlled activity* or a *controlled claims management activity*. ...

...

High net worth companies, unincorporated associations and trusts (article 49)

...

- 8.14.26-  
A G The article 49 exemption does not apply to communications in respect of *controlled claims management activity*.

...

Advice centres (article 73)

- 8.14.40B G Article 73 exempts any *financial promotion* made by a *person* in the course of carrying out his duties as an adviser for, or employee of, an advice centre. This is provided the *financial promotion* relates to:

(3) ...; or

(4) *controlled claims management activity*.

...

## 8.15 Financial promotions by members of the professions (articles 55 and 55A)

...

Non-real time financial promotions by professional firms

...

- 8.15.6 G *A financial promotion* made under article 55A must contain a statement in the following terms: “The [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment and consumer credit-related and claims-management related services to clients because we are members of [relevant designated professional body]. We can provide these investment and consumer credit-related and claims-management related services if they are an incidental part of the professional services we have been engaged to provide”. ...

...

## 8.22 The Internet

...

- 8.22.2 G The test for whether the contents of a particular website may or may not involve a *financial promotion* is no different to any other medium. If a website or part of a website, operated or maintained in the course of business, invites or induces a *person* to *engage in investment activity* or to *engage in claims management activity*, it will be a *financial promotion*. ...

- 8.22.3 G ... The *FCA*’s views on the position of hypertext links (which should be read with the remainder of *PERG* 8, especially *PERG* 8.4 (Invitation or inducement)) are as follows.

...

- (2) The material on a host website which contains the hypertext link may in itself be a *financial promotion*. For example, it may contain text which seeks to encourage or incite *persons* to activate the link with a view to *engaging in investment activity* or *engaging in claims management activity*.
- (3) Website material which represents a directory of website addresses or e-mail addresses will not be a *financial promotion* in its own right. That is unless the material also contains an inducement to contact a named addressee with a view to *engaging in investment activity* or *engaging in claims management activity*.

...

## 8.23 Regulated activities

...

8.23.6    G    Guidance on the distinction between *controlled claims management activity* and *regulated claims management activity* can be found at *PERG 8.7A.5G* to *PERG 8.7A.7G*.

## Annex L

### Amendments to the Wind-down Planning Guide (WDPG)

In this Annex, underlining indicates new text.

### 3 The concept and process of wind-down planning

...

### 3.6 Impact assessment: who will be affected by a wind-down?

...

3.6.4 G *Firms* can support their impact assessment of winding down by a risk assessment of each stakeholder group along with the mitigating actions the *firm* would consider appropriate. Some factors that a *firm* may consider include:

- (1) How quickly can a *firm* conclude any outstanding transactions? Will there be any tax or other implications for *customers*?
- (2) Can the *firm* help transfer its *customers* to another *financial institution* or, where relevant, *firm* with a *permission* to carry on regulated claims management activities? If the *firm* has many *customers* to be transferred out, do other *firms* in the same sector have the capacity to take them on?
- (3) How quickly can *client monies* and *custody assets* be returned?

...

## Annex M

### Amendments to the Reader's Guide

In this Annex, underlining indicates new text.

#### Reader's Guide: An introduction to the Handbook

...

#### 3. Structure of the Handbook

The Handbook is divided into the following blocks. The Handbook also contains a Glossary of definitions <https://www.handbook.fca.org.uk/handbook/glossary/> which specifies what the legal meaning is of various phrases and wording used.

...

#### Business Standards

Day-to-day conduct rules that apply to firms, as specified.

...

- BCOBS (Banking: Conduct of Business sourcebook) – applies to firms that accept deposits from banking customers
- CMCOB (Claims Management: Conduct of Business sourcebook) – applies to firms that provide claims management services

...