



Ministry
of Justice



**Memorandum of understanding
between the Claims Management
Regulator and the Advertising
Standards Authority**

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1. Introduction

- 1.1 This memorandum records the arrangements for cooperation and coordination between the Claims Management Regulator (CMR), part of the Ministry of Justice and the Advertising Standards Authority (ASA) in carrying out their respective regulatory responsibilities.
- 1.2 The CMR and ASA agree that this MOU is to be construed as a statement of intentions only and neither the CMR nor the ASA intends this MOU to be legally binding.

2. Statement of intent

- 2.1 Its purpose is to facilitate and provide the framework for the relationship between the CMR and the ASA that will lead to a constructive exchange of relevant information and reports.
- 2.2 This will assist the CMR in carrying out its duties in enforcing legislation and rules in the claims management sector and assist the ASA in carrying out its function in regulating advertising.

3. The role of the CMR

- 3.1 The CMR is responsible for the regulatory regime for claims management activities under Part 2 of the Compensation Act 2006 ("the Act"). The CMR's statutory powers in respect of claims management regulation derive from the Act, and its enforcement and enquiry powers are identified within the following sources:
 - The Compensation (Claims Management Services) Regulations 2006
 - Authorised businesses are required to comply with the conditions of their authorisation which are set out in regulation 12 of the 2006 which includes compliance with the rules (known as the Conduct of Authorised Persons Rules)
 - The Conduct of Authorised Persons Rules, Client Specific Rule 2 states:
*"All advertising, marketing and other soliciting of business must conform to the relevant code:
The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code); or
The UK Code of Broadcast Advertising (BCAP Code)
These codes are accessible at www.cap.org.uk/advertising-codes.aspx"*

- The application form for authorisation under the Act, which includes a declaration, signed by the applicant, worded as follows:
“I authorise the MOJ to make such enquiries and to seek further information as it thinks appropriate to verify the information on this form and third parties to provide private data in response to such enquiries.”
 - The Conduct of Authorised Persons Rules, General Rule 16b states:
“A business shall provide to the Regulator the following information: any additional information that the Regulator determines it is reasonable for the business to provide within timescales provided for in the request. The information provided must not be false or misleading.”
- 3.2 The CMR Enforcement Policy is published on the Claims Management Regulation pages of the Justice website at www.gov.uk/moj/cmr.

4. The role of the ASA

- 4.1 The ASA is the UK’s independent regulator of advertising. Its work includes acting on complaints and proactively checking media, to take action against misleading, harmful or offensive advertising, sales promotions and direct marketing.
- 4.2 The ASA administers the UK Advertising Codes, which are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). These rules are mandatory and advertisers cannot opt out of the system.

5. CMR and ASA information needs

- 5.1 The CMR and ASA will cooperate over an exchange of information about a claims management business which concerns potential rule breaches. Both the CMR and ASA recognise that such an exchange will benefit both parties.
- 5.2 The CMR acknowledges the need for information on breaches of legislation and rules by CMCs. It also acknowledges the need for knowledge of information relating to any changes in the way in which CMCs are operating.

6. Co-ordination between the CMR and ASA

- 6.1 The CMR and ASA recognise that there are areas in which they have complementary functions and powers. They will therefore endeavour to ensure that in these cases, the most appropriate body or bodies will commence and lead investigations. To the extent permitted by law and having regard to their respective powers, expertise and resources, in these cases they will seek to ensure that they will notify each other of

significant developments where the other is likely to have an interest and discuss where appropriate the steps they propose to take and co-ordination takes place in a timely manner, where possible, allowing for a proper exchange of views.

- 6.2 The CMR and ASA may refer a matter for action if the other body is considered more appropriate to deal with the matter. Any such referral will include the action sought and the legal powers it considers are available to the other. Where the other recipient determines not to proceed, an explanation will be provided, where possible.
- 6.3 Relevant CMR and ASA staff will, where appropriate, seek to maintain general awareness and understanding of each other's function and needs and will liaise with each other to ensure that issues are appropriately identified.
- 6.4 The CMR may refer authorised CMCs to the ASA where it identifies a potential breach of the Codes where it is identified that advice is required.
- 6.5 If a CMC refuses to comply with the codes or an ASA ruling, or has repeated breaches of the codes, the ASA will consider referring the case back to CMR for possible regulatory action.
- 6.6 Where an advertising complaint is referred by one party to another and the organisation receiving the complaint does not consider itself the most appropriate body to manage that complaint, both parties will discuss the rationale behind the decision and agree an appropriate resolution.
- 6.7 The CMR will inform a complainant that it may re-direct their complaint to the ASA.
- 6.8 The ASA will refer complaints to the CMR that relate to potential breaches of rules within the Conduct of Authorised Persons Rules, including but not limited to the following:
 - General Rule 3: A business must not engage in high pressure selling.
 - General Rule 6: In soliciting business through advertising, marketing and other means a business must:
 - a) Clearly identify the name of the advertiser.
 - b) Not offer any cash payment or a similar benefit as an inducement for making a claim.
 - c) Not promote the idea that it is appropriate that compensation may be used in a way that is not consistent with the cause of the claim.
 - d) Not imply that the business is approved by the Government or is connected with any government agency or any regulator. (If a business wishes to mention in advertising and marketing material that it is authorised it may use only the following words which must be used in

their entirety: “Regulated by the Claims Management Regulator in respect of regulated claims management activities”.)

- General Rule 8: Where business is introduced to a solicitor, the business must not act in a way that puts the solicitor in breach of the rules governing solicitors’ conduct.
- Client Specific Rule 12: Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, the Financial Services Compensation Scheme, the Housing Ombudsman Service or any other recognised dispute resolution procedure, the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.

6.9 The CMR and ASA may decide which party is best placed to deal with a complaint about a CMC and will inform the complainant of their decision.

7. Information to be exchanged

7.1 Subject to legal constraints, the CMR agrees:

- to provide the ASA with information about Claims Management Regulation unit and CMCs on request to assist its decision making.

7.2 Subject to legal constraints, the ASA agrees:

- to provide the CMR with information if it discovers evidence of a serious breach of legislation and/or rules including the Conduct of Authorised Persons Rules by an individual CMC, including potentially inappropriate behaviour and poor levels of service.
- to provide the CMR with information it requests about an individual CMC to assist in the investigating of breaches of, and the processing of applications under, the Act.
- to notify the CMR of complaints that it has received about CMCs and to give advance notice of any outcome from that complaint prior to publication on its website.

7.3 Shared information must not be further disclosed to any other party or used for a purpose alternative to any one stated without the consent of the originating agency.

8. Contact points

8.1 The contact point within the CMR for the purposes of this MOU is Sarah Mutton, Claims Management Regulation, Ministry of Justice, 10th floor, 102 Petty France, London, SW1H 9AJ.

8.2 The contact point within the ASA for the purposes of this MOU is Louise Maroney, Advertising Standards Authority, Mid City Place, 71 High Holborn, WC1V 6QT.

9. Other assistance

9.1 The contact points within the ASA and the CMR agree to meet at regular intervals (on request) to discuss activity in general and provide updates on matters of mutual interest.

10. Review, retention and disposal

10.1 This MOU will be reviewed annually by both parties.

10.2 Any proposed amendments to the MOU must be agreed in writing by both parties.

10.3 Information must not be retained for longer than is necessary for the purpose for which it has been disclosed.

10.4 Information will be disposed of/deleted securely in line with each party's respective record management procedures.

10.5 Each party shall bear its own expenses and costs for all negotiations and activities relating to this MOU.

11. Signatories

Authorised Signature:



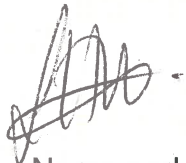
Name and Title:

KEVIN ROUSE
HEAD OF CLAIMS MANAGEMENT
REGULATION

Date:

19/8/15

Authorised Signature:



Name and Title:

LOUISE MARONEY
OPERATIONS MANAGER - COMPLAINTS

Date:

18/9/15

