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## **High-volume financial service claims**

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## **Status**

This document is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

## **Who is this warning notice relevant to?**

Law firms, solicitors and individuals working under their supervision to undertake claims management activity and where claims relate to financial services and products.

## **Our concerns**

Solicitors must act with integrity and uphold the high professional standards that we and the public expect. We have identified specific risks for consumers when they engage with solicitors and law firms about claims relating to financial services or products. We are concerned that these risks are increasing due to patterns of behaviour some law firms have shown and demonstrated in their commercial practices. This includes:

- members of the public reporting they did not consent to a law firm starting to act for them – including at pre-contract stages
- poor due diligence during client onboarding that leads to low quality and/or inaccurate claims entering the financial service redress system
- failures to act promptly or adequately in response to client instructions, including where clients wish to end their claim process and terminate their retainer with you.

We are particularly concerned about operational approaches for undertaking financial services claims management activity as part of high-volume/bulk claim processes that involve multiple clients.



## Standards and Regulations

You must comply with the [SRA Principles](https://upgrade.sra.org.uk/solicitors/standards-regulations/principles/)

[\[https://upgrade.sra.org.uk/solicitors/standards-regulations/principles/\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/principles/). For financial service claim representation this particularly includes:

- Principle 1 – act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice.
- Principle 2 – act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
- Principle 5 – act with integrity.
- Principle 7 – act in the best interests of each client.

You must also comply with requirements in the [Code of Conduct for Solicitors, RELs and RFLs](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/)

[\[https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) and the [Code of Conduct for Firms](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/)

[\[https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/). For financial service claim representation, this particularly includes:

- paragraph 1.2 the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 1.2 of the Code of Conduct for Firms, require that you do not abuse your position by taking unfair advantage of clients or others.
- paragraph 3.1 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 4.1 of the Code of Conduct for Firms, require you only to act for clients on their instructions, or from someone properly authorised to provide those instructions on their behalf.
- paragraph 7.3 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 3.2 of the Code of Conduct for Firms, require you to cooperate with bodies including other regulators and ombudsmen.
- paragraph 8.1 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 7.1 of the Code of Conduct for Firms, require that you identify who you are acting for in relation to any matter.
- paragraph 8.6 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 7.1 of the Code of Conduct for Firms, require that you give [clients](https://upgrade.sra.org.uk/solicitors/standards-regulations/glossary/#client) [\[https://upgrade.sra.org.uk/solicitors/standards-regulations/glossary/#client\]](https://upgrade.sra.org.uk/solicitors/standards-regulations/glossary/#client) information in ways they can understand, and ensure they are in positions to make informed decisions about the services they need, how their matter will be handled and options available to them.
- paragraph 3.4 of the Code of Conduct for solicitors, RELs and RFLs, and paragraph 4.2 of the Code of Conduct for Firms, require you to consider and take account of your client's attributes, needs and circumstances.
- Paragraphs 4.2 and 4.3 of the Code of Conduct for Firms require firms to make sure their managers and employees are competent and have the right knowledge and skills to carry out their roles.



Both Codes of Conduct also set important requirements to make sure that any work carried out on behalf of clients by employees of the firm is supervised by a solicitor or other suitably authorised individual.

## **Obtaining each client's instruction**

You must always obtain clear instruction and consent from each client, to proceed with undertaking any financial services claim work on their behalf.

This is required for each individual client and each claim, including circumstances where:

- you might have previously represented the same client during another claim
- a client's matter is intended to be progressed as part of group action, or alongside multiple other clients during an ongoing high-volume claim process.

Client onboarding processes and systems you might use must not undermine this, including where you receive client introductions from third parties. If any introduction purports to confirm a client's instructions, and their consent for you to act for them during their claim, you must take appropriate checks to be certain you can rely on information provided by the third party in order to be confident you have authority to proceed.

You might fail to meet your duties to your clients and your regulatory obligations if you do not secure clear, relevant and well-informed instructions from each client for representing them during their claim. If you undertake high-volume financial services claims activities, you may be managing significant numbers of client introductions and incoming instructions at the same time. Your processes and systems should support you to handle this volume of clients in ways that make sure you can meet your professional duties.

Irrespective of the fact that you may be managing a significant volume of instructions, you must consider and take account of each client's attributes, needs and circumstances during their claim. Similarly, you must maintain good on-going dialogue with clients about their claims and act promptly if your client's instructions change. This includes where a client decides that they do not wish to continue further with their claim. You must not ignore or deprioritise these requests, and you should handle them promptly and discuss relevant options with the client for their work, and for ending their retainer with your firm.

A [subject access request](https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/right-of-access/) [https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/right-of-access/] (SAR) made to a financial services provider may confirm that your client holds, or held, other financial products with that provider, in addition to the financial



service or product that you are advising the client about. You may only undertake claims management activity relating to those additional products where your client first provides clear and informed instructions to you to do so.

## **Identifying your clients and making subject access requests**

You may make SARs to potential or actual defendants as part of your client onboarding approach, requiring you first to secure certain information from clients. Your regulatory duty, at paragraph 8.1 of the Code of Conduct for Solicitors, RELs and RFLs, is to identify who you are acting for in relation to any matter. The definition of client means that this includes any and all prospective clients.

The duty to identify who you are acting for in any matter is yours – regardless of whether or not you rely on third parties to source and introduce clients to you. Where you do make arrangements with third parties, they may have, or may purport to have, taken steps to identify the client. However, in these cases, you must assure yourself the information provided is sufficient to allow you to identify who you are then acting for. If that information is not sufficient, you must take steps to be certain you know who your client is. This obligation must still be met during large-volume claim processes where you might be handling significant numbers of client details at once, and that might have been provided to you by clients remotely through digital channels.

If you are planning to make SARs on behalf of clients, this may mean you need to carry out additional due-diligence or specific checks on information provided initially by those clients before requesting information from potential defendants.

It is not acceptable practice to make SARs to potential defendants on behalf of clients, even as part of bulk exercises, if you have not first taken necessary steps to identify each individual client. It is also important to avoid making unreasonable demands of potential defendants during high-volume claims processes. This includes setting unrealistic deadlines or other requirements, particularly where large numbers of SARs are submitted at a single point in time. Early or informal engagement with a potential defendant before submitting SARs may be possible to manage expectations from both sides. If you make oppressive demands of defendants, you might fail to meet your regulatory duty to not abuse your position by taking unfair advantage of others.

## **Advising clients about the merits of financial service claims**



You must fully consider the merits of any claim when you advise a client about their matter, and options available to them – including any opportunities for the client to self-represent. This should include taking reasonable steps to access and assess information about the possible merits of pursuing a claim, and about any relevant options that might then be available to the client.

This is an important part of your initial advice to a client, and you need to be certain they have received and understood this information in order to provide you with their instructions. If you use standardised forms of authority you will need to ensure those forms are capable of being adapted or tailored to individual client's circumstances as required, and to specific defendants. The form of authority should reflect your client's instruction, and your clients will need to have been properly informed about the merits of their claim and their rights to pursue their claim directly themselves.

In your case-by-case consideration of merits you should on a continuing basis take account of decisions, notices and outcomes that might be published by (where relevant) the Financial Ombudsman Service, the Financial Services Compensation Scheme, the Pensions Ombudsman, and the courts. Where a relevant previous claim was determined by of these bodies as being without merit, you must make sure your client understands this and has a realistic understanding of their prospects of success with their claim. You must consider whether it is appropriate for you to act further on their matter. Our [conduct in disputes guidance](https://upgrade.sra.org.uk/solicitors/guidance/conduct-disputes/) [https://upgrade.sra.org.uk/solicitors/guidance/conduct-disputes/] discusses risks around making allegations without merit and misleading the court.

## **Supervision**

If your firm employs people to process large volumes of financial service claims, you must make certain your supervision arrangements are sufficient. Individuals supervising others to work on bulk claims, and the firm, are ultimately held responsible for work done. You should be able to justify your decisions and actions in order to demonstrate compliance with your obligations, informed by appropriate record keeping and evidence. For example, about each client's informed consent and authority for you to act on their behalf.

You should review our [effective supervision guidance](https://upgrade.sra.org.uk/solicitors/guidance/effective-supervision-guidance/) [https://upgrade.sra.org.uk/solicitors/guidance/effective-supervision-guidance/] which has more information about your duties, and includes a case study of a firm with supervision failures in its claims management activity. The case study confirms enforcement action we have taken, and corrective steps subsequently taken by the firm.

## **Enforcement action**



If you undertake financial service claims management activity and fail to have proper regard to this warning notice, you are at risk of disciplinary action. We can and will act where we find evidence that solicitors, firms and/or their employees contravene our rules. See our [Enforcement Strategy \[https://upgrade.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/?epiprojects=3\]](https://upgrade.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/?epiprojects=3) for information about our approach to taking regulatory action.

## **Further information**

The statutory redress schemes for financial services provide information about their decisions, and their expectations for professional representatives. It is important that you take account of these in line with your duty to co-operate with other bodies.

### **Financial Ombudsman Service**

- [Business Support Hub \[https://www.financial-ombudsman.org.uk/businesses/business-support-engagement/business-support-hub\]](https://www.financial-ombudsman.org.uk/businesses/business-support-engagement/business-support-hub)
- [Expectations of professional representatives \[https://financial-ombudsman.org.uk\]](https://financial-ombudsman.org.uk)

### **Financial Services Compensation Scheme**

- [Information for professional representatives \[https://www.fscs.org.uk/professional-representatives/\]](https://www.fscs.org.uk/professional-representatives/)
- [Terms of engagement \[https://www.fscs.org.uk/globalassets/cmcs-page/terms-of-engagement-june-23.pdf\]](https://www.fscs.org.uk/globalassets/cmcs-page/terms-of-engagement-june-23.pdf)

### **The Pensions Ombudsman**

- [Investigation rights and responsibilities \[https://www.pensions-ombudsman.org.uk/rights-and-responsibilities\]](https://www.pensions-ombudsman.org.uk/rights-and-responsibilities)

### **Information Commissioner's Office**

- [How do we recognise a subject access request? \[https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/right-of-access/how-do-we-recognise-a-subject-access-request-sar/#behalf\]](https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/right-of-access/how-do-we-recognise-a-subject-access-request-sar/#behalf)