Guidance

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Claims management activity

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Status

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

Who is this guidance for?

All SRA-regulated firms, individuals and their employees.

Purpose of this guidance

This guidance explores professional duties and key risks for solicitors, law firms and their employees when representing clients during claims.

General

Regulatory framework

Consumers can make claims in different ways, and in a range of circumstances. The redress that is sought can vary claim-to-claim, and can include compensation, restitution (both financial and non-monetary), and acceptance of liability by a defendant.

Consumers can represent themselves during their claims in many circumstances, including in sectors where there are statutory or voluntary redress schemes in place. However, consumers might also seek help from claim representatives to progress some elements, or the entirety, of their claims.

This representation is claims management activity, defined as such in the Financial Services and Markets Act 2001 (Regulated Activities) Order 2001 [https://www.legislation.gov.uk/uksi/2001/544/contents] and regulated through the Financial Services and Markets Act 2000 [https://www.legislation.gov.uk/ukpga/2000/8/contents] (amended by the Financial

Guidance and Claims Act 2018 [https://www.legislation.gov.uk/ukpga/2018/10/pdfs/ukpga_20180010_en.pdf] (FGCA). This activity is:

- Seeking out claims or potential claims
- Referrals of claims or potential claims
- Identification of claims or potential claims
- Advice in relation to a claim
- Investigation in relation to a claim
- Representation in relation to a claim

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 prescribes a number of claim areas. This order requires activities to seek out, refer and/or identify claims or potential claims in those areas to be subject to regulation. The areas are:

- Personal injury
- Financial services and products
- Employment
- Criminal injuries compensation
- Industrial disablement benefit
- Housing disrepair

Solicitors and registered foreign lawyers are among the legal service professionals permitted to undertake claims management activity in England and Wales, and who are exempt from Financial Conduct Authority (FCA) regulation when they do so through suitably authorised organisations. Regulation 9.8 of our Authorisation of individuals regulations [https://rules.sra.org.uk/solicitors/standards-regulations/authorisation-individuals-regulations/] confirms that solicitors, RELs and RFLs may only undertake claims management activity involving reserved legal activities through suitably-authorised organisations, such as SRA-regulated law firms. If no reserved activities are delivered, solicitors, RELs and RFLs may also undertake claims management activity through a suitably authorised body regulated by the FCA.

Regulatory duties

Sometimes specific events and market-wide failures result in a high number of consumers who may be entitled to redress. This can generate large volumes of potential and actual claims in short time periods. One well-known example was the mis-selling of payment protection insurance (PPI). Law firms advising, supporting and representing people in these circumstances operate different business models. For example, some specialise in high-volume claim representation, while others are specialists on bespoke claims that are often in more niche areas.

All firms should undertake claims management activity efficiently and at fair and reasonable cost. Your charges must reflect any relevant

regulatory requirements - including specific charging restrictions for law firm representation on financial service claims, which are to be introduced during 2024. Claims management activity might encompass conditional fee agreements, templated letters and documents. However, these activities must operate and be managed in ways that do not cause you to breach your regulatory duties - in particular you must not fail to act in your client's best interests or take unfair advantage of third parties.

We have previously issued guidance and warnings on specific issues in particular areas of claim, including on PPI and personal injury claims. This new guidance combines common themes from those guidance notes with issues we have identified more recently from other areas of claim. It is important to note that our expectations and your regulatory obligations remain the same regardless of the type of claim.

Standards and Regulations

SRA Principles

Generally, the most relevant SRA Principles [https://rules.sra.org.uk/solicitors/standards-regulations/principles/] for claims management activity are that you must act:

- in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice (Principle 1)
- in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons (Principle 2)
- with independence (Principle 3)
- with integrity (Principle 5)
- in the best interests of each client (Principle 7).

Regulatory requirements

The most relevant requirements from the Code of Conduct for Solicitors, RELs and RFLs [https://rules.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/], and from the Code of Conduct for Firms [https://rules.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] are:

- You do not abuse your position by taking unfair advantage of clients or others. (paragraph 1.2 in both Codes of Conduct)
- You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client) (paragraph 1.4 in both Codes of Conduct)
- You do not seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their

evidence (paragraph 2.2 of the Code of Conduct for Solicitors, RELs and RFLs)
- You only make assertions or put forward statements, representations or submissions to the court or others which are properly arguable (paragraph 2.4 of the Code of Conduct for Solicitors, RELs and RFLs)
- You only act for clients on instructions from the client, or from someone properly authorised to provide instructions on their behalf. If you have reason to suspect that the instructions do not represent your client's wishes, you do not act unless you have satisfied yourself that they do. (paragraph 3.1 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 4.1 of the Code of Conduct for Firms)
- You consider and take account of your client's attributes, needs and circumstances (paragraph 3.4 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 4.2 of the Code of Conduct for Firms)
- Where you supervise or manage others providing legal services: (paragraph 3.5 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 4.4 of the Code of Conduct for Firms)
    - you remain accountable for the work carried out through them; and
    - you effectively supervise work being done for clients
- In respect of any referral of a client by you to another person, or of any third party who introduces business to you or with whom you share your fees, you ensure that (paragraph 5.1 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 7.1(b) of the Code of Conduct for Firms):
    - clients are informed of any financial or other interest which you or your business or employer has in referring the client to another person for which an introducer has in referring the client to you
    - any client referred by an introducer has not been acquired in a way which would breach our regulatory arrangements if the person acquiring the client were regulated by us
- You co-operate with us, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services (paragraph 7.3 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 3.2 of the Code of Conduct for Firms)
- You give clients information in a way they can understand. You ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them. (paragraph 8.6 of the Code of Conduct for Solicitors, RELs and RFLs)
- You ensure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred (paragraph 8.7 of

the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 7.1(c) of the Code of Conduct for Firms)
- You ensure that any publicity in relation to your practice is accurate and not misleading, including that relating to your charges and the circumstances in which interest is payable by or to clients. (paragraph 8.8 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 7.1(c) of the Code of Conduct for Firms)
- You do not make unsolicited approaches to members of the public, with the exception of current or former clients, in order to advertise legal services provided by you, or your business or employer (paragraph 8.9 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 7.1(c) of the Code of Conduct for Firms)

The SRA Code of Conduct for Firms also requires firms to have effective governance structures, arrangements, systems and controls in place that make sure they comply with all our regulatory arrangements, as well as other regulatory and legislative requirements which apply to them.

Undertaking claims management activity

There are risks and areas of concern you should pay particular attention to when you undertake claims management activity.

Understanding your client's circumstances

You are responsible and accountable to your client under the law and through your regulatory duties. You must always:

- have clear instructions from them alongside an agreed course of action for their claim
- be certain your client has the necessary information they need to make informed decisions about their claim at any relevant stage

If you do not have regular, meaningful contact with each client throughout the different stages of their claims, you might fail to meet your regulatory duties.

You need to consider and take account of your client's attributes, needs and circumstances throughout their claim to meet your duties in both Codes of Conduct. This might include consideration of the claim's circumstances and the potential, or actual, impacts for your client. If a client has specific communication needs or preferences – such as lacking strong spoken English - you should consider how best to make sure you respond to these and make certain your client receives information from you about their claim in ways that they can clearly understand.

Client authority and instructions

Before you start work you must have proper authority to do so from your client. For claims management activity, this includes being satisfied that the package of representation you are offering to them and the potential costs have been properly explained to that client and reflect their instructions to you.

You should confirm their authority to instruct you and their instructions at each distinct stage of their claim, including if you will be making, accepting or rejecting settlement offers on their behalf. Failing to do so may contravene your regulatory duties at paragraph 3.1 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 4.1 of the Code of Conduct for Firms.

It might also expose you to other risks. For example, if you proceed to litigate a claim without clear instruction to do so from the client, you may be wasting the court's time and fail to meet your duty at paragraph 2.6 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 7.1(a) of the Code of Conduct for Firms. If the case does not then proceed and you have acted without clear instruction from your client, the defendant may argue your actions caused them unnecessary cost and they may seek a wasted costs order.

To provide meaningful authority your client must have firstly been advised on the merits, costs and risks of their claim, and about your potential representation. Your advice to each individual client must take into account any prior response to relevant correspondence received, for example, from potential defendants or from compensation scheme operators. This is important to make certain you provide accurate advice to clients – including at pre-contract stages - when they may still be deciding whether to be represented by you. You need to give full consideration to the relevant circumstances of their claim.

Example – representation on a personal injury claim

To understand your client's circumstances during an injury claim, you might require suitable medical evidence before progressing. If you fail to do so you may fail to meet your duty to your client, as without that evidence you could not be certain of your client's prognosis and extent of injury. It then follows that you would not be in a position to advise them accordingly about the liability of potential defendants, the merits of the claim, or the claim's value.

You should also satisfy yourself that any expert reports your client's matter is reliant on are independent and credible. For example, you might take steps to review expert reports to assess information they contain and check underlying facts directly with your client. If you are concerned about the honesty or competence of expert witnesses, or the reliability of

their reports, you should carefully consider next steps. In this example you might decide to stop using the expert and instead seek alternative expert testimony.

Before you accept, reject or take further action regarding a settlement offer or a statutory decision made to your client you should make sure the client has received and understood necessary information to make informed decisions about the offer or decision. If you fail to do so you may fail to meet your regulatory duty at paragraph 8.6 of the Code of Conduct for Solicitors, RELs and RFLs.

You must obtain client instructions, and consent to proceed, for each single claim. This applies equally to circumstances where you have represented the same client before or are representing someone on multiple separate claims. In some areas of high-volume claims, such as financial services, you might make subject access requests (SARs) to potential defendants. You must only submit a SAR if you have instructions from the client to whom the SAR relates to do so. A SAR might reveal a client has, or had, multiple financial services provided by, or products held with, a defendant, in addition to the financial service or product that you are advising the client about. You must have clear instructions and authority from the client before progressing any claims related to additional products.

Please also see the 'Engaging with third parties [#engaging] ' section of this guidance.

Financially accounting to your clients

If you receive damages, compensation or other amounts on a client's behalf as part of your representation during a claim, you must pay this promptly to them unless you have genuine, valid reason to act differently.

If you fail to make prompt payments to your client, you may fail to meet your regulatory duties, including the SRA Accounts Rules. It might also create difficulties in contacting or locating the client if time passes and they have then moved location or changed their contact details.

If you agree with your client to make payments from damages or other amounts received on behalf of the clients, you should review our warning notice 'Improper use of a client account as a banking facility' [https://rules.sra.org.uk/solicitors/guidance/improper-client-account-banking-facility/] . There are particular risks to be aware of, including managing concerns that your client is attempting to avoid valid liabilities such as a bank overdrafts or loans, or benefits claw-back.

If you undertake claims management activity for large numbers of clients, you must make certain your systems are adequate for processing payments to clients in ways that are compliant with SRA Accounts Rules.

You must maintain individual client ledgers so that clients are kept informed about the progress of their claims and payments they might receive.

Engaging with third parties

Referral arrangements

Introducers and lead-generator businesses are active in some areas of claims. If you engage with those businesses, you must make sure you comply with our standards, including paragraphs 5.1 to 5.3 in the Code of Conduct for Solicitors, RELs and RFLs. You must be satisfied - and be able to evidence - that agreements or relationships with any referrer do not adversely affect:

- your ability to take proper, ongoing instructions from your client
- your regulatory duties when finding and onboarding new clients, as some, approaches, including cold calling and door knocking are not permitted
- approaches you take to manage your client's information or stages of their claim.

You must make sure contracts or any other arrangements between your client and a third-party referrer you engage with are fair. If you conclude a referrer's contracts, or their conduct, are in some way contrary to your client's best interests or the wider rule of law, you must not engage with them. You should review your firm's referral arrangements regularly and avoid relying on a single referrer as your sole source of new claim clients.

If you plan to receive introductions to new clients from an organisation purporting to be a claims management company (CMC) you should verify that the organisation is authorised and regulated as such by the FCA.

You must inform your clients about any fee-sharing agreements you have and have those agreements available in writing. Clients must be informed about any financial or other interest, either in referrals made to you, or by you to others. This includes where you may make a referral to another body - for example, to an insurer to secure after-the-event insurance for a client - which has any owners in common with your firm.

In you provide representation on personal injury claims, you must not enter any referral arrangements that are contrary to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). It falls to you to evidence that a payment is not a referral fee if it appears to us that it is - see paragraph 5.2 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 7.1 of the Code of Conduct for Firms. You can find more information in our Q&As on personal injury referral fees [https://rules.sra.org.uk/solicitors/guidance/ban-personal-injury-referral-fees/] .

Information provided to you by third-parties

You must only act on valid instructions from genuine clients, which means only taking instructions from - or checking them directly with – clients. Failing to do so may lead to you failing to meet your duty at paragraph 3.1 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 4.1 of the Code of Conduct for Firms. This requirement is ongoing at all stages a claim may go through.

If you engage with third parties to be introduced to new potential clients, you might receive information about those clients and you may refer to this information to understand their claim requirements and their instructions to you. You must be satisfied there is no conflict between the interests of the client and the person or organisation providing instructions. Above all, your client must give free and informed consent to being represented by you.

In these circumstances you should always consider additional due diligence checks that might be required on information provided to you by third parties. This is important to make sure client instructions provided to you through third parties are legitimate, and the commercial interests of referrer businesses, including CMCs, are important to have in mind. You should take steps to assure yourself about approaches taken by referrers to find and onboard potential claimants and satisfy yourself it is appropriate to rely on the client information they provide.

In some circumstances, you will need to undertake specific additional checks on referred client instructions and other pieces of information, including for example:

- if there is a risk the client might not themselves have provided authority for you to act, such as where instructions appear to have been provided by a member of the client's family. In this case you must assess the instructions received, and determine if you need to contact the client directly (if possible) to verify referred instructions.
- if a third party provides copy documentation to you on a prospective client's behalf, such as a photocopy of a passport. In this case you must make sure the client confirms its authenticity or otherwise directly to you.

Taking over live claims from other firms

If you intend to take over responsibility for existing, live claim cases from other law firms or CMCs, you should firstly carry out due diligence checks on those claims. This includes making sure you have clear understanding of:

- progress made to date on all of those claims
- imminent deadlines or milestones for clients

- the status of insurance cover being relied on by clients to cover charges and other costs they may incur
- the status of any expert or technical input that has been provided, or that is still required, as part of the client's claim
- any next steps you will need to take on your client's behalf and information the client will need to understand and have from you.

You should take care not to jeopardise the confidentiality of information previously provided by the client to any existing representative before you formally agree and accept to take over the operation of their claim. You need to be satisfied that the proposed transfer of any personal or confidential data to you is legal and permissible under data protection law, and also compliant with your regulatory duties on client confidentiality - see paragraph 6.3 of SRA Code of Conduct for Solicitors, RELs and RFLs. In practice this might mean securing informed consent from the client to transfer their personal information to you.

You should not take on live claims where you, or any people who you might supervise when undertaking claims management activity, do not have the necessary skills, experience and resource to provide the expected standard of representation to the clients.

If you agree to still take-on live claims following your due diligence checks, your duties to the clients of those claims begin as soon as files are transferred to your firm. Clients may have questions about the transfer, about you and your firm, and about the status and next steps for their claim. You should update your client and respond to any questions they may have promptly and as soon as possible following the transfer of their claim to your firm.

During no win, no fee claims you should assure yourself and the client of any live claim you take-over that relevant and sufficient insurance remains in place, and that the insurer understands the transfer of responsibility to your firm. You should make certain the insurer is kept updated about the status of the claim. If it is required, or otherwise in the client's best interests, to secure new insurance you should clearly explain this to the client, and explain the terms, limitations, and risks of doing so (please see also the section in this guide on ATE insurance).

As you continue to review their claim and its circumstances, you must update clients promptly if you have cause to disagree with the previous firm's assessment of the merits of their claim and if as a result you recommend an alternative course of action in their best interests – including ending the claim process.

Claims management activity charges

Any publicity and information you provide about your charges for claims management activities must be clear, transparent and accurate. You

must make sure that your clients receive the best possible information about how your representation on their claim will be priced, both up front when you first meet a new client and throughout the course of their claim - see paragraph 8.7 of the Code of Conduct for Solicitors, RELs and RFLs [https://rules.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] . Some claims run over prolonged periods of time and you must update your client appropriately, and at relevant intervals, about your charges as their claim progresses.

Example – no win, no fee

If you offer to represent clients on a no win, no fee basis you should make sure you clearly explain the ways in which your charging arrangements operate and should then keep your client informed at relevant stages of their claim. For example, you should provide clear explanations of:

- whether VAT is included or excluded in percentage amounts you quote to clients, and that you intend to charge from any monetary award successfully recovered on their behalf
- sums that are written-off, offset against existing loans, or otherwise settled by defendants during a claim, and that will be factored into your final calculation of your charges
- any other costs that might become payable if a claim is unsuccessful.

You should consider the best approaches to provide information about your charges to each individual client. While you may provide written records about your charges to clients at the outset of their claim it is good practice to also discuss this directly with clients. You should take extra care if you are being instructed by vulnerable people, and people with specific communication needs, to make sure they understand your charges and can make an informed decision about them as part of their claim journey.

When you are agreeing your charges with any client, you should make sure they are fair and reasonable. If they are not, you may breach your regulatory duty to not take advantage of clients - see paragraph 1.2 of the Code of Conduct for Solicitors, RELs and RFLs. Unfair or unreasonable charges may also be considered by the Legal Ombudsman as a potential failure in your service.

If you represent clients during claims relating to financial services or products you must also make sure you meet the requirements of the SRA Claims Management Fees Rules 2024 [https://rules.sra.org.uk/solicitors/standards-regulations/claims-management-fees-rules/] . This includes not exceeding maximum charges specified by those Rules during certain claims.

Explaining claim options

To act in the best interests of a client during a claim you should explain to each client during your pre-contract stage about any other potential routes that may be available to them to progress their claim. This includes making certain your client has been informed about, and has understood, that an established industry ombudsman or public compensation scheme exists (as relevant to that specific area of claim) and that they can approach those schemes directly themselves and without professional assistance, or incurring charges for the cost of that assistance.

After-the-event insurance

There are risks associated with the use of ATE insurance that you should communicate to your clients clearly, and at the outset of any discussion with them about a 'no win, no fee' arrangement. You should explain risks that insurance terms are amended or that policies are withdrawn, and any potential circumstances where, despite being covered by ATE, the client might still be liable for any costs. It is important that clients understand the different outcomes that might then occur with their claim and their potential liability for any defendant costs. This is an important part of your duty to act in your client's best interests.

You should make sure each client understands the terms and limitations of ATE insurance that they are reliant on. This is irrespective of whether you make arrangements to secure ATE cover on their behalf, or if the client themselves secures the cover as part of their claim. It is good practice to request and store written consent from your client to confirm their understanding of the cover, and any limitations and risks, and their approval for their claim to then be progressed with reliance on the cover.

You should consider whether it is appropriate to routinely require the purchase of after-the-event (ATE) insurance for all claims upon initial instruction. Insurance needs may vary case by case, and failing to consider and tailor insurance requirements to individual clients may mean you fail to act in the best interests of each client. It may also mean that your client is exposed to liabilities if ATE insurance cover is insufficient, and if they are then underinsured for costs sought by defendants if their claim is unsuccessful.

Marketing your claim services

You must not seek new claimants through cold calling, or 'door knocking', exercises. This includes whether those exercises are undertaken directly by you or any other person employed by your firm, but also by any third party that you might engage with to find new claimants.

You must make sure any third-party introducer you already, or intend to, engage with understands your regulatory duties. You should make regular checks to make certain the third-party's marketing and onboarding techniques do not jeopardise those duties - see paragraph 5.1(e) of the Code of Conduct for Solicitor RELs and RFLs. It is good practice to ask all new clients how, and by whom, they were first contacted, and to make sure each client's onboarding experience is consistent with your regulatory duties. If you fail to do so you risk failing to meet those duties.

Any publicity about your claim representation and other services, whether provided directly by you or through a third party, must not be inaccurate or misleading - see paragraph 8.8 of the code of conduct for Solicitors, RELs and RFLs and paragraph 7.1(c) of the Code of Conduct for Firms. This includes not making unsupported or unrealistic statements about:

- the prospects of success of any claim or within any areas of claim
- feedback provided by other claimants about your firm
- awards or other credentials held by your firm.

There is more information available in these guidance resource:

- Guidance on unsolicited approaches (advertising) to members of the public [https://rules.sra.org.uk/solicitors/guidance/unsolicited-approaches-advertising/]
- Guidance on offering inducements to potential clients or clients [https://rules.sra.org.uk/solicitors/guidance/offering-inducements-potential-clients-clients/]

Taking unfair advantage of third parties, misleading the court, and fraudulent claims

You must not mislead, or attempt to mislead, your clients, the court or others, either by your own acts or omissions or by allowing or being complicit in the acts or omissions of others - including your client (see paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs).

When you undertake claims management activities this includes taking care not to mislead defendants, Ombudsman services or other schemes.

You must not take unfair advantage of third parties during claims. During high-volume claims processes this could include escalating mass numbers of complaints through to a statutory redress scheme or a financial service provider at a single point in time and making unreasonable or inappropriate demands for those complaints to be reviewed and/or determined. While you are acting in your client's best interests you should not try to take advantage of, or unduly pressurise, any third party in the pursuit of your client's interests.

You must not demand anything for yourself or on behalf of your client, such as compensation for mis-sold financial services, if those demands relate to amounts that are not legally recoverable. If you are relying on client instructions received from a third party, you should also take steps to make certain you do not mislead others.

Example – personal injury claims

Injury claims subject to the pre-action protocol, and submitted through the Claims Portal [https://www.claimsportal.org.uk/] , require legal representatives to confirm their clients instructions to make a claim. If you complete the portal's submission when you do not have, or have not verified, instructions from your client you are at risk of legal and disciplinary action. You should take appropriate steps to confirm your client's instructions with them directly, rather than relying on the accuracy and authenticity of instructions provided to you by a third party.

In exceptional circumstances you may decide it is appropriate still to act on third party instructions, and that doing so would not heighten risks of misleading courts or others. One example may be acting for a minor. Another might be deciding to act on behalf of a client who does not have sufficient capacity. There might also be circumstances where you determine it is appropriate to act based on the implied authority of the client to issue claim proceedings. This may be where the client has provided clear instructions to act but is justifiably uncontactable immediately prior to issuing proceedings and you are then unable to confirm their detailed instructions. In these circumstances make sure you can justify your position by evidencing your actions and be aware of the risks inherent in going ahead.

Securing and assessing evidence

You should not progress a claim on your client's behalf if you cannot evidence a sound basis for that claim. If you do you risk misleading courts or other public authorities and are likely to fail to meet your regulatory duties.

If you are progressing a claim through litigation, you must inform clients of their duty to preserve evidence and to allow you to review it fully and impartially. This is a critical duty to the administration of justice in ensuring unmeritorious claims are not made, and you must be rigorous in storing, retrieving, analysing and acting on evidence, including seeking and making appropriate disclosure. Our guidance on conduct in disputes [https://rules.sra.org.uk/solicitors/guidance/conduct-disputes/] sets out more information about our expectations during litigation.

You also must not:

- misuse or tamper with evidence or attempt to do so
- seek to influence the substance of evidence, including generating false evidence or persuading witnesses to change their evidence
- provide or offer to provide any benefit to witnesses dependent upon the nature of their evidence or the outcome of the case.

(see paragraphs 2.1- 2.3 of the Code of Conduct for Solicitors, RELs and RFLs).

Where evidence suggests any element of a claim, including the client's identity, is false or dubious in some way you must not act for them. You must not launch or progress claims if you have serious concern about the honesty or reliability of relevant evidence (see paragraphs 2.2, 2.4 and 2.6 of the Code of Conduct for Solicitors, RELs and RFLs, and 7.1(a) of the Code of Conduct for Firms).

> **Example – 'cash for crash' claims**
>
> In some claims there are allegations that an accident had been staged, or co-ordinated by organised criminals, and that your client might be aware or involved. You cannot simply ignore allegations like these, or simply assert they are unproven or unfounded. During a claim with these types of circumstances, you must engage properly with allegations and keep in mind your duty to the administration of justice.

The extent to which you should verify your clients' testimonies and circumstances that underpin their claims is risk specific. However, you should review relevant caselaw and other sources of feedback on the quality of claims submitted where prior claims have failed to properly assess all relevant evidence before submitting new claims.

If you use templates, processes, algorithms or other technology to streamline your services to clients, you should take steps to ensure those systems do not impact on evidence or the quality of advice you then give to the client. Examples might include:

- a client onboarding process via a website which features misleading material about the prospects of claims succeeding
- a templated approach which influences the substance of the evidence of a prospective claimant, or fails to ensure that evidence provided in response by possible defendants is properly taken into account
- a filtering system which still allows claims to be progressed and put before possible defendants without adequate scrutiny.

Good quality systems may support - but are not a replacement for - adequate supervision and direction of case handlers. Circumstances in

which you, your firm, and people who work there, may breach your duties include:

- failing to properly identify clients and confirm their instructions
- making claims without knowledge of the policyholder/consumer
- bringing a claim without first investigating whether it is valid
- failing to objectively assess and investigate adverse evidence
- influencing the substance of evidence, including generating false evidence or persuading witnesses to change their evidence
- failing to properly advise clients about what is expected of them when making a claim
- submitting false or dubious claims in the hope of a settlement without further investigation by the defendant
- making unreasonable requests for disclosure from the defendant or their lawyers
- seeking unreasonable costs – either from the client or the defendant

If you issue a claim when you know it is not valid or have not adequately considered the validity of a claim or your client's testimony, you will leave yourself open to disciplinary action. You might also expose yourself and your clients to criminal action for bringing fraudulent claims.

Merits of claims

Claims should not be filed until your client has been properly advised. This includes about the merits of their case, and, after your client is sufficiently informed to provide their instructions and authority, whether they wish for you to continue pursuing their claim or not. If, after assessment of the facts and available evidence, you have advised a client that you don't think their claim has sufficient merits and they still ask that you represent them on that claim, you must not act further.

You must engage properly with all the merits of your clients' claim. This includes taking reasonable steps to acquire essential information which should be in your client's possession before corresponding with any third parties about the claim. The best information on the facts and consequences of the event are highly likely to rest with the client.

If there are factors within a claim that concern you, you must not ignore them. You must properly engage with the issues and assess objectively if the claim can properly be pursued.

Making subject access requests

Investigating claim evidence might involve making subject access requests (SARs) on behalf of clients to third parties. In high-volume work, these are sometimes aggregated and sent in bulk to possible defendants. However, SARs should not be sent indiscriminately, or without firstly undertaking your own due diligence checks about the legitimacy of client

details and the necessity for a potential claim given the information obtainable from each claimant.

SARs should not be made to defendants without adequate client authority to do so, and from every client referenced if a claim is being made as part of a high-volume claim process. Doing so may be unfairly oppressive on the receiving parties. SARs made must also comply with parameters accepted by the Information Commissioners' Office [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/#socialmedia] in order to be legitimate.

Standards of work and supervision

Your service to your clients during claims must be competent and delivered in a timely manner - see paragraph 3.2 of the Code of Conduct for Solicitors, RELs and RFLs. You need to consider whether other people in your firm who deal in any way with claims are competent to carry out their role - see paragraphs 3.5 and 3.6 of the Code of Conduct for Solicitors, RELs and RFLs.

You are accountable for compliance with our regulatory arrangements where you undertake claims management activities through others. This includes managers and people within your firm, individuals you may supervise to work on client matters during claims - see paragraph 4.4 of the Code of Conduct for Firms - or others you employ or contract with - see paragraph 2.3 of the Code of Conduct for Firms. If you identify or are made aware of practices that are inconsistent with your regulatory duties by people you might be supervising to undertake work on claims files, or others working in your firm, you should investigate and take appropriate action.

You must make sure that you have effective governance structures, arrangements, systems and controls in place that ensure you comply with our regulatory arrangements, as well as with other regulatory and legislative requirements, which apply to you - see paragraph 2.1(a) of the Code of Conduct for Firms.

Before undertaking any claims management activity on behalf of clients you should have:

- well trained staff who are in a position to offer a proper standard of service to clients.
- systems in place to ensure that matters are triaged effectively by those who have experience in and an understanding of the litigation process, and that support your staff to understand when to escalate a claim to a supervising solicitor
- systems that allow for the diarising of limitation periods and court timetables.

- training that is reviewed regularly to make sure skills and knowledge are updated.
- full and proper supervision of staff where work is overseen, and support and further expertise is available to fee earners and case workers.

See our effective supervision guidance [https://rules.sra.org.uk/solicitors/guidance/effective-supervision-guidance/] for more detail.

Freelancers and claims management activity

Solicitors, RELs and RFLs may only undertake claims management activities through a body authorised to carry on reserved legal activities, or (if not providing reserved legal activities) through a body suitably authorised by the FCA. Freelancer solicitors providing legal services outside of such bodies may not undertake claims management activities.

See our guidance on solicitors undertaking regulated claims management and immigration activities [https://rules.sra.org.uk/solicitors/guidance/undertaking-regulated-claims-management-immigration-activities/] for more information.

Consumer complaints

Handling complaints

You must inform clients in writing at the outset of their claim about their right to complain and how to go about it (see paragraph 8.3 of the Code of Conduct for Solicitors, RELs and RFLs and the SRA Transparency Rules [https://rules.sra.org.uk/solicitors/standards-regulations/transparency-rules/]).

You must publish your complaints process on your firm's website, if it has one. Again, you should be mindful of any language barriers, and make sure you put in place measures to make sure your clients are aware of this information and that they can understand it.

Further help

If you require further assistance, please contact the Professional Ethics helpline [https://rules.sra.org.uk/home/contact-us/].