Solicitors Regulation Authority

Warning notice
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Payment Protection Insurance claims

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Updated 25 November 2019 (Date first published: 29 August 2017)

Status

This warning notice 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 warning notice relevant to?

This warning notice is relevant to all those we regulate acting in claims for mis-sold payment protection insurance (PPI).

The SRA Standards and Regulations

The principles [https://www.sra.org.uk/solicitors/standards-regulations/principles/] require you to act:

- **Principle 1: in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.**

  You have obligations not only to clients but also to the court and to third parties with whom you have dealings on your clients' behalf.

- **Principle 2: in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons**

  You must behave in a way that maintains the trust the public places in you and in the provision of legal services. Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional practice which undermines this trust damages not only you, but also the reputation of the legal profession and its ability to serve society.

- **Principle 5: with integrity.**

Personal integrity is central to your role as the client's trusted adviser and should characterise all your professional dealings with clients, the court, other lawyers and the public.

- **Principle 7: in the best interests of each client.**

  You should always act in good faith and do your best for each of your clients.

You should have regard to the requirements set out in the SRA Code of Conduct For Solicitors, RELs and RFLs, in particular those highlighted below.

Paragraph 1.2 and you do not abuse your position by taking unfair advantage of clients or others.

Paragraph 5.1(a) and that 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.

Paragraph 8.6 and that clients are given information in a way they can understand. You make sure 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.

You should also have regard to the requirements set out in the SRA Code of Conduct for Firms.

Our concerns

Following our previously issued guidance [https://www.sra.org.uk/solicitors/guidance/mis-sold-payment-protection-insurance/] and engagement with Government departments, lenders and others involved in the handling of PPI, we are concerned that law firms are failing in their duties to act in accordance with the Standards and Regulations [https://www.sra.org.uk/solicitors/standards-regulations-resources/?epiprojects=3] by:

- acting in matters without first investigating whether there is a valid claim
- making claims without knowledge of the policyholder/consumer
- failing to properly identify clients and confirm client instructions
- submitting false claims in the hope of a settlement without further investigation by the defendant
- charging unreasonable costs for a limited amount of work contrary to their fiduciary and regulatory duties.

Law firms who conduct cases which demonstrate one or more of these features may face regulatory action. This may also give us reason to suspect dishonesty by their principals or staff.

Client interests and charges

You should always have regard to the SRA's Principles and requirements set out in the Codes of Conduct. You should make sure that you act in your client's best interest and with integrity, treat your clients fairly and uphold the rule of law.

Your retainer is with your client and you are responsible to your client both under the law and our regulatory requirements. To make sure that you act in your clients' interests and deliver the required quality of service you should have clear instructions from your client and an agreed course of action. Your client should have all the necessary information to make informed decisions on how their matter should be dealt with (see paragraph 8.6 of the code of conduct for solicitors, RELs and RFLs). Unless you have regular contact with your client, you'll be at risk of failing to achieve the required standards.

Unless instructions are confirmed with the client at each stage of the retainer, throughout the life cycle of a case including whether to accept and offer to settle a claim, you'll be at risk of committing serious misconduct.

When agreeing your fees with a client you should make sure they are fair and reasonable (Solicitors (non-contentious business) remuneration order 2009 article 3) having regard to all the circumstances of the case.

The Financial Guidance and Claims Act 2018 [http://www.legislation.gov.uk/ukpga/2018/10/contents/enacted/data.htm] ("the Act") received royal assent on 10 May 2018. The act prohibits fees of more than 20 percent, excluding VAT, being charged for PPI claims and prevents you from charging a client where no award has been recovered.

The cap is effective from 10 July 2018 and continues until permanent rules are made by us.

We expect you to have informed your clients about the fee cap and its effect.

Although legislation sets a fee cap of 20 percent, this does not allow for all clients to be charged at this rate. Our view is that, any fees charged that are greater than 15 percent of a client's damages are unreasonable, unless the work involved and the risk to the firm clearly demands a greater percentage of the damages.

Legal proceedings should not be issued to try to avoid or limit the impact of the fee cap. Proceedings should only be issued when it is in the client's

interests. Attempts to avoid or limit the impact of the fee cap by issuing proceedings are likely to breach the principles and the standards in the Code of Conduct. It is unlikely that you would be acting in your clients' interests or treating them fairly if you have agreed to be paid a percentage of the client's damages that exceed fees that would have been payable had your usual hourly rate been charged.

In all circumstances, any fees you charge should be reasonable and proportionate to the work undertaken. This is particularly the case where the work carried out is limited, for example, to submitting a notice of claim and agreeing settlement. It is important that you do not exaggerate the time or effort involved in submitting a claim.

Claims Management Companies looking to engage with you and form an alternative business structure (ABS) firms will not avoid regulation as fees they charge will also be subject to the interim fee cap and then any permanent rules that we make. All SRA licensed ABSs must comply with the Standards and Regulations and will be subject to regulatory action if issues of professional misconduct are identified.

Cold calling

You must make sure that clients do not come to you through cold calling by your firm or a third party. Some third parties obtain client details illegally and you may be at risk of infringing applicable data protection legislation by the unauthorised use or handling of data. You should make sure the introducer is aware of your duties and you check regularly that their methods of marketing and contact do not put you in breach of the code (see paragraph 5.1(e) of the Code of Conduct for Solicitor RELs and RFLs). You could, for example ask clients how they were first contacted. If you fail to make the position clear you are at risk of non-compliance.

Referral arrangements

All referral arrangements must comply with the required standards set out in 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 the agreement or the relationship with the referrer does not affect your ability to take proper and ongoing instructions from your client, or the way you deal with your client's information or manage you client's matter.

You have duty to:

- make sure that contracts or other arrangements between your client and a referrer are fair; and
- cease dealing with a referrer whose contractual terms or other conduct are contrary to your clients' interests or to the rule of law.

If you rely on an introducer, you should:

- only use the services of claims management companies authorised and regulated by the Financial Conduct Authority
- review your referral arrangements regularly, making sure this one referrer is not your sole source of work, and
- make sure the arrangement or behaviour of the introducer does not put you in breach of your duties.

Fraudulent claims and taking unfair advantage

You should not take unfair advantage of third parties or demand anything for yourself or on behalf of your client, such as compensation for mis-selling that is not legally recoverable.

When taking instructions from a client, as you progress a claim against a third party, you should make sure you have correct details of the client's identity and claim. No claim should have been made on behalf of a client unless you can evidence there is a sound basis for the claim, and you have valid instructions.

If you have issued a claim knowing it is not a valid one or have not investigated the validity of the claim, you will leave yourself open to disciplinary action for breach of the principles and standards expected of you.

You may also leave yourself and your clients open to criminal action for fraudulent claims.

Our expectations

We expect all those regulated by us comply with the principles and the standards expected of you.

Previously issued guidance [https://www.sra.org.uk/solicitors/guidance/mis-sold-payment-protection-insurance/] relating to PPI claims is still relevant and should be read alongside this notice.

Questions and Answers relating to the interim fee cap

On 10 May 2018, the Financial Guidance and Claims Act 2018 [http://www.legislation.gov.uk/ukpga/2018/10/contents/enacted/data.htm] (“the Act”) received Royal Assent. The Act:

- prohibits fees of more than 20%, excluding VAT, being charged for PPI claims, and

- restricts SRA authorised firms and regulated individuals from charging a client where no award has been recovered.

The interim fee cap is effective from 10 July 2018 (two months from the date of Royal Assent).

These questions and answers form have been produced to help firms in understanding the effect of the interim fee cap and detail how we intend to monitor and enforce it.

Open all [#]

Q1. Where is the interim fee cap set out in the Act?

Section 29 of the Act states: More

"PPI claims and charges for claims management services: general

1. This section and sections 30 to 32 make provision for a fee cap to apply in certain circumstances to charges for regulated services provided in connection with a PPI claim.
2. The following provisions explain terms used in those sections.
3. The fee cap applicable to the amount charged for regulated services provided in connection with a PPI claim is 20% of the amount recovered for the claimant in satisfaction of the claim.

Accordingly, where nothing is recovered (whether or not a claim has been made or concluded) the fee cap is zero."

Q2. When does the fee cap come into effect and who does it apply to?

The fee cap comes into effect on 10 July 2018 and applies to all SRA authorised firms and regulated individuals. More

It also applies to Claims Management Companies (CMCs) and persons regulated by the General Council of the Bar or the Chartered Institute of Legal Executives.

Q3. Does the fee cap apply to retainers/fee agreements entered into before 10 July?

No. The fee cap applies only to fee agreements that are entered into with a client from 10 July 2018. More

Agreements which include terms relating to fees that exceed the cap will be unenforceable and the client will be able to recover the excess amount paid from you.

Q4. If the PPI claim is referred from a claims management company or another third party, can all parties charge a fee that does not exceed 20%?

No. More

Firms should make sure that, where the introducer has provided claims management services to the client or the client is referred to a third party to provide services relating to the PPI claim, that the collective fees to do not exceed the 20% fee cap

Q5. Are there specific rules relating to the interim fee cap?

No. The fee cap is set out in primary legislation. More

A firm that charges more than 20% of a client's redress will be in breach of the SRA Standards and Regulations.

Q6. Does the fee cap of 20% include VAT?

No. More

the 20% cap is exclusive of VAT

Q7. Does the fee cap apply if hourly charging rates are applied?

Yes. If a client is charged fees at an hourly rate, firms will still be required to comply with the interim fee cap. More

The total of fees that are charged on your hourly rate must therefore, not amount to more than 20% excluding VAT of the total amount of redress awarded.

Q8. Does this cap mean charging 20% in all cases is acceptable?

No. More

All firms have a regulatory duty to act in their client’s best interests, which means all charges must be justifiable and equate to the level of work undertaken. If we find evidence a firms' charges are unjustified, even if they are below the cap, we may still take potential action.

Since many PPI claims can be handled in a straightforward manner by members of the public themselves, without attracting a fee, we would also expect solicitors to always advise their clients accordingly in all such cases.

Q9. Does the interim fee cap apply to claims if legal proceedings have been issued?

"Regulated claims management services" do not include any reserved legal activities mentioned in section 12(1) (a) or (b) of the Legal Services Act 2007 (exercise of a right of audience or the conduct of litigation). More

This means that the interim fee cap does not apply to charges for work carried out in taking formal steps in proceedings which have been issued.

The 'Conduct of litigation' however, does not include any steps taken prior to the commencement of litigation; i.e. before proceedings are issued or to work carried out after the issue of proceedings which are not formal steps. Therefore, the fee cap will apply to charges for work done prior to the commencement of proceedings and to work done after other than charges for steps taken in the actual proceedings such as filing court documents.

Attempts to avoid the fee cap by issuing proceedings are likely to breach the SRA Standards and Regulations. Firms should also have regard to Andrew & Ors v Barclays Bank plc [2012] EWHC B13 (Mercantile). Proceedings should only be issued if it is in the client's best interests.

Q10. How will the interim fee cap be enforced?

Decisions about what action we take are decided on a case by case basis and will depend on for example, intent, harm caused, patterns of behaviour and vulnerability of the client. More

Firms have an obligation to make sure that all fees are fair and reasonable and to uphold the rule of law.

Q11.When does the interim fee cap come to an end?

Section 33 of the Act requires us to make rules which will prohibit SRA authorised firms and regulated individuals from charging fees above a specified amount in relation to all relevant claims management agreements, and services provided in connection with all relevant claims management activities, which concern claims in relation to financial products or services. More

The interim fee cap will continue until those rules are made and come into force.

Further help

Previously issued guidance on acting in PPI matters [https://www.sra.org.uk/solicitors/guidance/payment-protection-insurance-ppi-claims/?epiprojects=3] .

If you require further assistance, please contact the Professional Ethics helpline [https://www.sra.org.uk/contactus] .