

Guidance

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Solicitors undertaking regulated claims management and immigration activities

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Status

This guidance 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 guidance for?

Solicitors, registered European lawyers (RELs) or registered foreign lawyers (RFLs)

Purpose of this guidance

This guidance answers common questions that we are asked (including by the charity LawWorks) relating to the restrictions introduced under regulations 9.5-9.8 of the SRA Authorisation of Individuals Regulations on solicitors undertaking regulated claims management and immigration activities.

Introduction

The SRA Authorisation of Individuals Regulations (AIRs) relate to the authorisation of individuals as solicitors in terms of admission, and the issuing of practising certificates and REL or RFL registrations. They also set out the effect of our authorisation, which includes:

- how an individual may practise
- the requirements for and how the SRA will decide applications for authorisation
- the conditions that apply during authorisation
- how authorisation may be revoked.

Regulation 9.8 sets out what authorisation entitles you to do in relation to claims management activities. The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

[<https://www.legislation.gov.uk/ukSI/2001/544/contents>] (RAO) specifies in articles 89G-89M which activities are regulated claims management activities under the Financial Services and Markets Act 2000 (FSMA) and include:

- seeking out, referrals and identification of claims or potential claims
- advice, investigation or representation of claims and the investigation of claims.

The above activities are regulated where they relate to certain types of claims, including:

- personal injury
- financial services or products
- housing disrepair
- specified benefit
- criminal injury

The RAO provides an exclusion for claims management activities that are carried on in the ordinary course of legal practice by certain legal professionals, including solicitors and legal executives (article 89N of the RAO). Where a claims management activity falls within an exclusion it means that the activity is not a regulated claims management activity and does not require a person carrying on that activity to be authorised by the Financial Conduct Authority (FCA). However, this exclusion only applies if the legal practitioner concerned carries on the claims management activity pursuant to the professional rules to which that legal practitioner is subject.

Regulation 9.8 means that you can only do regulated claims management activities (or those that would be but for the article 89N exclusion) through a body authorised to carry on reserved legal activities. Or if the activities do not include reserved legal activities, through a body that is authorised by the FCA to carry on regulated claims management activities.

You may also carry on such activities if you are permitted to do so by virtue of an exemption made in or under the FSMA. Examples of such exemptions are those that apply to the Bank of England and the International Monetary Fund.

Any claims management activities which fall within any of the other exclusions in articles 89O-89W of the RAO are not subject to the restriction imposed in regulation 9.8 of the AIRs. These include exclusions for activities carried on by:



- charities or not for profit agencies
- the Motor Insurers' Bureau
- trade unions
- insurance intermediaries.

Where you fall within one of the exclusions in articles 89O-89W you will not be carrying on a regulated claims management activity.

Freelancers

Do I need to be authorised by the FCA to carry out claims management work if I am a freelance solicitor?

Regulation 9.8 means that you can only do regulated claims management activities (or those that would be but for the article 89N exclusion) through a body authorised to carry on reserved legal activities. Or if the activities do not include reserved legal activities, through a body that is authorised by the FCA to carry on regulated claims management activities.

As a freelancer, you will need to be authorised by the FCA if you wish to carry on regulated claims management activities (or those that would be but for the article 89N exclusion).

You will not need FCA authorisation if you fall within any of the exclusions in articles 89O-89W of the RAO. Or if you are permitted to carry on these activities by virtue of an exemption made in or under the FSMA.

Do regulated claims management activities include those relating to employment claims?

Carrying on claims management activities in relation to employment claims on behalf of claimants is specified as a regulated claims management activity in the RAO.

Regulated claims management activities include the following in relation to employment related claims:

1. seeking out, referrals and identification of claims or potential claims
2. advising a claimant or potential claimant
3. investigating a claim and
4. representing a claimant.

Read the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [<https://www.legislation.gov.uk/ukSI/2001/544/contents>]

Can I undertake Immigration work as a freelance solicitor?

Regulations 9.5-9.7C of the AIRs set out how solicitors can carry out immigration work. Solicitors, RELs and RFLs will only be able to undertake immigration work for the public, or a section of the public, where it is undertaken through one of the following:

- a firm that is authorised by the SRA
- a firm that is authorised by another approved regulator under the LSA and is a qualified person under the Immigration and Asylum Act 1999 (IAA)
- a non-commercial advice service that is registered with the Office of the Immigration Services Commissioner or is otherwise a qualified person under the IAA
- a body (other than a non-commercial advice service) that is registered with the Office of the Immigration Services Commissioner

Therefore, you would not be able to undertake immigration work as a freelance solicitor as you would not fall within any of the categories set out above.

These arrangements take account of the fact that solicitors are now able to practise in bodies that are not authorised under the Legal Services Act 2007. They are designed to complement the existing regulatory and legislative frameworks for immigration work carried out in England and Wales.

See our immigration work guidance

[<https://www.sra.org.uk/solicitors/guidance/immigration-work-guidance/>] for more information about undertaking immigration work.

Pro-bono

Do the AIRs stop me carrying on claims management activities when doing so through a charity or a not for profit body? For example, advising on housing disrepair and employment law matters.

Article 89O of the RAO excludes activities from being regulated claims management activities when carried on by a charity or a not for profit agency as defined in that article.

Any activities carried out by a solicitor through these fall within that exclusion. This means they are not regulated claims management activities and are not subject to regulation 9.8 of the AIRs.

The charity or not for profit agency will of course carry out the work through individuals and the exclusion applies to the work that is done through the body by those individuals whether solicitors or anyone else.

If I am a solicitor in an unauthorised firm, can I undertake claims management activity if instructed by a charity or not-for profit agency?

In this situation the exclusion in article 89O for activities carried on by a charity or a not for profit agency would not apply to the work. As, although it is being done for them, it is being conducted by and through the unauthorised firm.

Similarly, you would not be able to rely on the article 89N exclusion of the RAO as regulation 9.8 of the AIRs prevents solicitors from relying on that exclusion in an unauthorised firm.

If you wish to undertake regulated claims management activities (or those that would be but for the article 89N exclusion), then you will need to be authorised by the FCA. That is unless you fall within one of the exclusions in articles 89P-89W of the RAO or are permitted to do so by virtue of an exemption made in or under the FSMA.