

## Association of British Insurers: Third Party Assistance Code

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| Introduction   | The Code provides recommendations for the practices and procedures to be adopted by an insurer when they provide, or offer to provide, assistance directly to a person who has had an accident involving the insurer's policy holder or an insured and may be entitled to a compensation payment for personal injury and/or associated vehicle damage and hire, or other losses claim. The person will be referred to in the Code as the ' <b>unrepresented claimant</b> '.   |
| Purpose        | The purpose of the Code is to set out how insurers may engage with unrepresented claimants to ensure that they are treated fairly.  |
| Scope          | <p><b>(1)</b> The Code covers claims which relate to road traffic accidents, an accident at work, a trip or slip or other public liability accident claims where an unrepresented claimant wishes to bring a claim for compensation for personal injury and/or other losses suffered. This Code is a voluntary good practice guide for insurers who transact business in the United Kingdom.</p> <p><b>(2)</b> OICP exclusion: the Code does not apply to any claim for compensation which consists of a claim for personal injury arising out of a road traffic accident in England and Wales occurring on or after 31<sup>st</sup> May 2021 and which should be pursued using the Official Injury Claim process and online portal and to which the Pre-Action Protocol for Personal injury Claims below the Small Claims Limit in Road Traffic Accidents applies.</p> |
| Status of Code | The Code is intended to strengthen existing practice in the area, but is not a definitive Guide. The FCA's Principles for Business and, where relevant, the claim handling rules in Chapter 8 of the FCA's Insurance: Conduct of Business Sourcebook (ICOBS) should form the basis of all interactions with the unrepresented claimant, in so far as they do not contravene Rules, Practice Directions or any applicable Pre-Action Protocol provided for in the Civil Procedure Rules.   |

## Definitions

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| “Data Protection Legislation” | Means the General Data Protection Regulation and the Data Protection Act (2018) and all further relevant regulations relating to the processing of Personal Data and privacy, including the Privacy and Electronic Communications (EC Directive) Regulations 2003 and where applicable the guidance and codes of practice issued by the Information Commissioner.  |
| “Legal Representative”        | Authorised person regulated by the Law Society, the Chartered Institute of Legal Executives, or the General Council of the Bar.  |
| “Minor”                       | A child under the age of 18 in England, Wales and Northern Ireland. A child under the age of 16 in Scotland.   |
| “Primary Limitation Period”   | The period within which a person who has a right to claim against another person must start court proceedings to establish that right.   |
| “Protected Party”             | A party, or an intended party, who lacks capacity (as defined in the Mental Capacity Act 2005) to conduct the proceedings.   |
| “Unrepresented Claimant”      | An individual who has a legal right to pursue a claim against an insurance company’s policy holder or insured for compensation, who is pursuing the claim in person and is not represented by an authorised person regulated by the Law Society, the Chartered Institute of Legal Executives, or the General Council of the Bar.   |
| “Whiplash injury claim”       | A claim for compensation for personal injury that is subject to Section 3 of the Civil Liability Act 2018. (Section 3(1) (b) applies to the whiplash injury or any of the whiplash injuries that (i) does not exceed, or is not likely to exceed, two years, or (ii) would not have exceeded, or would not be likely to exceed, two years but for the claimant’s failure to take reasonable steps to mitigate its effect.) |
| Hire Claim                    | A claim for the cost of a temporary replacement vehicle of appropriate size and specification for a reasonable period, provided during the period within which the unrepresented claimant is without the use of their own vehicle as a consequence of the accident.  |
| Vehicle Damage Claim          | A claim for vehicle damages remedied by repair, total loss or cash in lieu of settlement.  |

## Contents of this Code

This Code contains the following sections:

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## A. Contacting unrepresented claimants

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| Introduction:   | This section explains how insurers may initially engage with unrepresented claimants, outlines responsibilities of insurers and provides definitions.  |
| General Policy -<br>Contacting<br>the<br>unrepresented<br>claimant: | <ol style="list-style-type: none"> <li>1. Initial contact with an unrepresented claimant should be by telephone (including text message) email, letter or other messaging avenues connected to the unrepresented claimant's contact number.</li> <li>2. If initial contact is made through messages, then the insurer must explain who they are, why they are contacting the Unrepresented Claimant and request a call back to discuss.</li> <li>3. Any contact made initially or subsequently by telephone may be followed up in writing covering items discussed, including those listed at 4 below where the third party has accepted such services.</li> <li>4. The insurer may deal with the following issues when dealing by telephone, email or letter:             <ol style="list-style-type: none"> <li>i. state who the insurer is, and why the unrepresented claimant is being contacted.</li> <li>ii. explain the services being offered.</li> <li>iii. explain that the unrepresented claimant should not have to pay for, arrange or manage the direct services offered.</li> <li>iv. advise that the unrepresented claimant's personal data is subject to the privacy policy detailed by the insurer and provide a copy of the same.</li> <li>v. state that the unrepresented claimant has the right to seek independent legal advice at any time during the course of dealings with the insurer in respect of the presented claim for compensation.</li> <li>vi. provide information as to where the unrepresented claimant might find such advice, e.g. Law Society, Citizens Advice, Find a Legal Advisor, Gov.UK or via an online search engine.</li> <li>vii. advise of the other options available to resolve the claim e.g. the Civil Courts.</li> <li>viii. advise the unrepresented claimant that the claim is subject to a statutory primary limitation period and that court proceedings must normally be started no later than three years for a claim for personal injury and six years for a claim for non-personal injury (e.g. vehicle damage) from the date of the accident and that if the unrepresented claimant does not start court proceedings within these time limits they may lose the right to bring the claim.</li> <li>ix. advise the unrepresented claimant that the Financial Ombudsman Service has no jurisdiction to consider complaints against the insurer.</li> <li>x. advise the unrepresented claimant that claims are subject to validation and the offer may change if information comes to light which suggests the claim should not be paid.</li> </ol> </li> <li>5. Insurers should not make unsolicited visits to an unrepresented</li> </ol> |

claimant or any other known address and/or residence, including hospitals or any other care or nursing establishment.

6. If upon initial contact the unrepresented claimant makes it clear that they do not wish to deal directly with the insurer, this must be respected.

## B. Offers of assistance

Introduction:

This section deals with:

1. Situations where an insurer should either not deal with a claim for compensation presented by an unrepresented claimant, or alternatively, where they should be strongly advised to seek independent legal advice.
2. The types of assistance that insurers may offer to unrepresented claimants which are relevant to the claim for compensation presented.

General Policy

The insurer should:

1. Consider the status of the unrepresented claimant at all times during the claim and whether it continues to be appropriate for the insurer to assist the claimant whilst unrepresented.
2. Enquire of the unrepresented claimant whether there is any appropriate funding policy or other cover (such as legal expenses insurance or within a trade union membership) which would reasonably remedy the claim and if so that the unrepresented claimant is aware of the same and has chosen not to proceed with or claim against the same, and to confirm the same to the unrepresented claimant in writing.
3. Follow up all verbal offers of assistance and agreements with the unrepresented claimant in writing (if requested) where contact details are available.
4. Explain the costs of the services offered where appropriate, for example the cost of a temporary replacement vehicle, mobility alternatives, repair handling, total loss settlement or cash in lieu of damage remedy or rehabilitation treatment, and that these costs will be paid by the insurer and not by the unrepresented claimant.

Situations where an insurer should either:

1. Not deal with an unrepresented Claimant; or
2. Strongly recommend legal advice

1. Situations where an insurer should not deal with an unrepresented Claimant:
  - a. The unrepresented claimant is a protected party as defined by the Civil Procedure Rules.
  - b. Where the primary statutory limitation period will expire within less than 6 months.
2. Situations where the obtaining of advice is strongly recommended:
  - a. Where the unrepresented claimant is a minor.
  - b. Where there is a dispute over primary liability or allegations of contributory negligence and the insurer cannot agree to deal with the claim on a without prejudice basis.
  - c. Where the unrepresented claimant has a limited understanding of English and does not have access to anyone who can assist with translation.
  - d. Where the injury requires more than one medical report or has a degree of complication, persistence or permanence.
  - e. Where there are possible fraud issues or issues of fundamental dishonesty.
  - f. Where there are causation issues.

The types of assistance that insurers may offer to unrepresented claimants

1. Personal Injury

NB: See "Scope" and OIC portal claims exclusion (page 1).

Where there is an entitlement to claim for personal injury compensation the insurer should explain and notify in writing the following to the unrepresented claimant:

- i. CRU. That the insurer will register the claim with the Compensation Recovery Unit (CRU), and advise the unrepresented claimant that they will receive a copy of the Certificate of Recoverable Benefits directly from CRU and explain how and why there may be a deduction from certain financial losses claimed for benefits received by the unrepresented claimant in consequence of the accident.
- ii. Where medical records are required explain why and provide an appropriate consent form to the unrepresented claimant.
- iii. Where a medical examination is required explain:
  - a. why the examination is needed either remotely (under any active industry protocol) or in person.
  - b. the expert's discipline.
  - c. the medical agency to be appointed to arrange the medical examination by the medical expert.
  - d. details of any rehabilitation treatment offered including the identity of the rehabilitation agency to be appointed to arrange the treatment.
- iv. That the unrepresented claimant does not have to pay for the cost of any of these services.

2. Non- Personal  
Injury Claim  
Elements

- An insurer may provide assistance such as (but not limited to):
- a. Arranging for inspection of the unrepresented claimant's vehicle.
  - b. Vehicle repairs at one of the insurer's approved repairers.
  - c. Vehicle repairs at a non-approved repairer.
  - d. Provision of a replacement vehicle suitable for the unrepresented claimant's needs.
  - e. Transportation of the vehicle salvage into alternative storage.
  - f. Disposal of the salvage.
  - g. Make an offer in settlement, if the vehicle is a total loss, either net of the salvage value if it is the unrepresented claimant's preference to retain the salvage, or gross if the unrepresented claimant wishes the insurer to dispose of the salvage.
  - h. To deal on a total loss basis (i.e. where repair costs will approach or exceed the pre-accident market value of the vehicle), even if economically repairable, and/or if the timescales for repairs will lead to substantial ongoing hire charges being incurred.
  - i. To deal with any other non-injury claim elements not covered above, for example but not limited to personal possessions, loss of earnings etc.

*(The above services and offers can be made by the insurer irrespective of an injury claim being pursued by an unrepresented claimant that must be brought under the OIC Portal. An online User Guide to Making a Claim is available to navigate the unrepresented claimant through that process.)*

3. Interim Payments

- a. Insurers might as good practice consider voluntary interim payments, particularly in order to assist the unrepresented claimant to mitigate their loss.
- b. Interim payments, on account of compensation generally should be considered in the event of financial hardship; such payments to be agreed between the insurer and the unrepresented claimant.
- c. Whenever offered, the insurer should clearly explain the purpose of interim payments to the unrepresented claimant and explain how they are offset against final agreed compensation for the claim.
- d. Where appropriate deductions are to be made for the Compensation Recovery Unit (CRU) where any relevant benefits received have been paid in consequence of the accident, such deductions must be explained.

4. No obligation to  
take up the services  
offered

- a. The insurer should make clear to the unrepresented claimant in writing that there is no obligation to accept any or all of the services offered.
- b. In the case of claims for vehicle damage and hire, the insurer should inform the unrepresented claimant in writing of their responsibility to mitigate their losses under law.

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| 5. Advice on timescales and pre-action protocol compliance | <ul style="list-style-type: none"> <li>a. The insurer should provide the unrepresented claimant with clear information concerning the processes involved with each type of service offered and relevant timescales (if known).</li> <li>b. It is best practice for Insurers to ensure compliance with all relevant pre-action protocols at all times.</li> </ul> |
| 6. Checking the claim on insurance databases               | The insurer should advise the unrepresented claimant in writing that they may check claims details on fraud databases where they are permitted to do so under law or provide details of their privacy policy where it covers the same.   |

## C. Managing the Relationship

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| Introduction       | This section sets out how the insurer will manage the relationship with the unrepresented claimant where they have agreed on a provision of services and covers where a claimant goes from unrepresented to legally represented status.  |
| General Policy     | The unrepresented claimant should be treated fairly and managed with due regard to their interests. The FCA's Principles for Business and, where relevant, the claim handling rules in Chapter 8 of the FCA's Insurance: Conduct of Business Sourcebook (ICOBS) should form the basis of all interactions with the unrepresented claimant in so far as they do not contravene Rules, Practice Directions or any applicable Pre-Action Protocol provided for or embedded in the Civil Procedure Rules.  |
| Audit              | Insurers should ensure that they have appropriately audited their processes and procedures, as well as recording settlement amounts, in order to satisfy the FCA that they have acted in accordance with the FCA Guidelines and the related regulation.  |
| Terms of agreement | <p>Written confirmation of the agreement to provide services should be provided to the unrepresented claimant.</p> <p>This should include:</p> <ul style="list-style-type: none"> <li>a. Details of the estimated timescales for the agreed services, where possible, and of the frequency at which updates will be provided and in what format unless the unrepresented claimant has access to digital updates. These should match or beat the timescales under the pre-action protocols (or equivalent) in the relevant jurisdiction where appropriate.</li> </ul> |

- b. Advise as to who to contact if the unrepresented claimant wishes to make a complaint.
- c. Confirmation of the right of the unrepresented claimant to seek independent legal advice at any time during the course of the claim for compensation.
- d. Clearly state the alternatives to dealing directly with the insurer (see page 5, B Offers of assistance: General Policy 2).
- e. Advise where the unrepresented claimant can read the ABI Third Party Assistance Claimant guide or provide a copy if necessary.
- f. Where liability enquiries are ongoing, keep the claimant informed and adhere to relevant pre-action protocols (or equivalent) time scales.

Information provided by insurers to unrepresented claimants

All information provided by the insurer to an unrepresented claimant should be transparent and in accordance with the principles of treating the unrepresented claimant fairly and with due regard to their interests.

Unrepresented claimant becomes legally represented

Where an unrepresented claimant advises that they wish to have legal advice the insurer should follow the following procedure:

1. The insurer should ask for the contact details of the legal representative and confirm in writing that they will now deal with the legal representative direct.
2. Once advised of the contact details of the legal representative the insurer should send them all the documentation without delay and all effort should be made to allow the legal representative to get up to speed as quickly and easily as possible.

## D. Arranging Medical Treatment/Assessments and/or Vehicle Repair and/or Hire

Introduction

This section sets out how:

1. Insurers arrange medical treatments, assessments, and any other actions in respect of the unrepresented claimant's injuries, including rehabilitation treatment; and
2. Insurers arrange vehicle repair and hire.

**NB: See "Scope" and OIC portal claims exclusion (page 1).**

General Policy

Where there is a need to arrange medical treatment, including rehabilitation treatment, medical reports and/or vehicle repair/hire, then the insurer should explain in writing:

- Who the service provider is, if the provider is approved by the insurer; the provider should be local to the unrepresented claimant where possible.

- In the case of vehicle hire, the notional hire rates incurred by the insurer, which the unrepresented claimant does not have to pay.
- In the case of vehicle hire and repair that the unrepresented claimant has the responsibility under law to mitigate their losses with respect to vehicle repair and hire.
- In the case of obtaining relevant medical reports, that it helps to assess the nature, cause, extent and impact of the injuries and therefore the value of the claim. This includes rehabilitation treatment and recommended services and reports, where they are used to assess the value of the claim.
- That normally only one medical report will need to be obtained to assess the amount of compensation.
- Normally, medical records or notes will not be required on low-value claims. However, consent from the unrepresented claimant must be sought where the medical expert and/or insurer has any doubts or questions on the causation of the injury and requires the relevant sections of the medical records to make an assessment. Where the notes or records are requested, the insurer should explain to the unrepresented claimant that it helps to assess the nature, cause, extent and impact of the injuries and therefore the value of the claim.
- In the case of a medical report(s) obtained to assess the amount of compensation, the report(s) will be sent firstly to the unrepresented claimant and must not be sent to the insurer until the claimant has authorised its release. Alternatively provided the claimant agrees in advance to waive their right to privilege, the report can be sent to both parties at the same time or to the insurer first.
- The unrepresented claimant must have the opportunity to check the medical report(s) for any factual errors but not the recovery period.
- In the case of rehabilitation treatment, whether and why rehabilitation treatment is being offered.
- What the timescales are in terms of valuing the compensation and making an offer to settle the claim.

Responsibilities of the insurer when dealing with a claim for compensation for personal injury

The insurer should:

- Provide a written explanation of progress including where rehabilitation treatment and or a medical expert has been engaged.
- Where further medical investigations such as obtaining relevant medical records or other medical evidence, including the instruction of additional medical experts is required after an initial report because injury prognosis is uncertain or for any other agreed reason, explain this to the unrepresented claimant. In such circumstances, the insurer should also recommend in writing that the unrepresented claimant seek independent advice as to the value of their claim and whether to instruct a legal representative<sup>1</sup>.
- If contact with the unrepresented claimant is shortly after the accident and the injury/injuries are clearly persisting, offer regular telephone reviews or email exchanges to establish the present position in respect of recovery, typically once per month. Rehabilitation treatment should be offered and if not appropriate at that time, the provision of the same kept under review by the insurer.
- Where the nature and extent of the unrepresented claimant's injury/injuries remains uncertain arrange a medical report and/or facilitate the provision of relevant medical records to assist in clarifying the same.
- Give a reminder of the right to seek independent medical and/or legal advice at any time.

## E. Offers and Settlements

Introduction

This section sets out the requirements for making an offer of compensation to the unrepresented claimant.

General Policy

All offers should be fair and reasonable and appropriate documentary evidence consulted.

An offer in respect of a “**whiplash injury claim**” (as defined above) cannot be made without appropriate medical evidence<sup>2</sup>.

The insurer should always advise the unrepresented claimant what they are entitled to and offer compensation for the appropriate heads of loss associated with that claim.

All offers to settle the claim should be discussed with the unrepresented claimant and confirmed and set out in writing. The offer should outline the reasons for the offer, the basis of the calculation for the offer, and provide relevant documentation in support of the offer (see below).

<sup>1</sup> This is not required where the medical practitioner has merely requested medical notes or records for additional information.

<sup>2</sup> “Appropriate medical evidence” is defined by the 2021 Whiplash Regulations.

The documentation should include:

- Medical reports, records and prognosis, where relevant.
- Vehicle damage repair documents and/or vehicle hire documentation.
- A reminder of the right to seek independent legal advice.
- An unrepresented claimant feedback form.
- Agreement to send compensation payment(s) within a determined timeframe with the method of payment to be agreed.
- An explanation of how acceptance of the offer affects the unrepresented claimant's rights with regard to the claim such as acceptance is in full and final settlement of the claim for compensation arising out of the accident.
- An explanation of how any interim payments will affect the final compensation payment with a calculation in support.
- The tariff where applicable for any offer in respect of a "whiplash injury claim".
- Relevant CRU deductions and a copy certificate.

Where settlement is reached, the compensation payment should be made in accordance with any timescale agreed with the unrepresented claimant or in the absence of the same no later than 28 business days and in compliance with the FCA Principles for Business.

The insurer should follow up with the claimant after a suitable time period (21 business days from the date the offer was made in writing is recommended) where there has been no response to the offer.

Any withdrawal of an offer should normally be subject to a time period during which the offer can be accepted and cannot be withdrawn until that time period has expired.

Withdrawal of an offer must be done in writing by the insurer with an explanation as to why the offer has been withdrawn.

Offers: Rules against settlement before medical report for a "whiplash injury" under section 6 of the Civil Liability Act 2018 and section 4 of the Whiplash Injury Regulations 2021

This section deals with an insurer's obligations in terms of any offer of compensation for a whiplash injury claim (recovery prognosis <24 months from the injury) which is part of a global claim that may or may not include claims for vehicle damage and consequential financial losses such as credit hire, that fall outside of the OIC process.

Where the insurer:

- knows or has reason to suspect that a *whiplash injury claim* is being made by an unrepresented claimant; and
- considers that the value of the overall personal injury claim is likely to be more than £5,000; and
- that the claim is out of scope of the Pre-Action Protocol for

Personal Injury Claims below the Small Claims limit in Road Traffic Accidents and does not need to be presented through the Official Injury Claim online portal, then

an invitation to the unrepresented claimant to offer a compensation payment or an offer of a compensation payment or the making of a compensation payment for the *whiplash injury claim* element cannot be made without the *appropriate evidence*.

*Appropriate evidence* is defined as:

- where the unrepresented claimant lives or chooses to be medically examined in England and Wales a fixed cost medical report from a MedCo accredited medical expert.
- where the unrepresented claimant has suffered a separate injury/injuries at the same time as the whiplash injury and a medical report has been obtained in respect of the separate injury from a doctor listed on the General Medical Council's Specialist Register which identifies that injury/injuries as more serious than the whiplash injury.
- in any other case where the unrepresented claimant lives outside England and Wales evidence of a whiplash injury in a medical report obtained from a medical expert having the appropriate qualifications for the purposes of diagnosis and prognosis of a whiplash injury.

*Tariff damages for "whiplash injury claims":*

Any offer and payment of compensation in respect of a whiplash injury claim must not be less than the tariff damages for whiplash (including linked minor psychological injury) as prescribed by the Lord Chancellor, save only for any agreed discount for liability.

Offers on low value injuries (but outside of the OIC portal)

Where the personal injury (unless it is a "whiplash injury claim") is low value, i.e. typically only a few days in duration, insurers may offer to settle a claim without medical evidence. However, should the injury later become more serious than anticipated, and the outcome is different to that on which the offer is based, the unrepresented claimant has the right to revert to the insurer to renegotiate the offer. At this stage the unrepresented claimant should be reminded of the right to seek independent legal advice.

The insurer must, however, obtain medical evidence (relevant reports and/or records) on a low value injury if:

- a. The claimant does not consider that the injury is minor or low value
- b. The claimant wishes to have a medical examination.
- c. The personal injury claim for compensation includes a whiplash injury claim.

Offers: medical report suggests no causation

Where a medical report shows that there is no connection between the injury and the event in question, the insurer should immediately recommend that the unrepresented claimant seek legal advice and explain the reason why.

Offers: evidence of Fraud / Fundamental Dishonesty

Where there is evidence of suspected fraud and / or fundamental dishonesty at any stage of the claim, the Code of Practice will cease to apply, and the unrepresented claimant should be advised to seek independent legal advice immediately.

## F. Decline of Assistance or Offer

Introduction

This section sets out what the insurer should do where the unrepresented claimant declines assistance, or feels the compensation offered is inadequate.

General Policy

Where the unrepresented claimant either declines assistance or declines to accept the offer, the insurer should respect the wishes of the claimant. The insurer should inform the unrepresented claimant of their responsibility to mitigate their losses with respect to vehicle repair and/or hire. In the case of decline of offer, the insurer may wish to reconsider the offer, or otherwise recommend that the unrepresented claimant seeks independent legal advice.

Decline of Assistance

Where the unrepresented claimant does not wish to take up the offer of assistance from the insurer, or declines to accept an offer of compensation, the insurer may acknowledge this in writing.

Referral to independent legal advice

If the unrepresented claimant indicates they wish to be referred to a legal service at any stage, then the insurer should direct them to their legal expenses insurer (if applicable), the Law Society, the local Citizens Advice, Find a Legal Advisor, Gov.UK, or the person's trade union. See also the procedure under 'Unrepresented claimant becomes legally represented', page 9.

Where the insurer has a relationship with a legal representative, they may refer them and the legal representative or the insurer should explain to the unrepresented claimant if they will receive a fee for the referral.

## G. Data Protection Compliance

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| Introduction   | This section sets out the requirements for ensuring compliance with the Data Protection Legislation when utilising this Code and engaging with an unrepresented claimant.  |
| General Policy | <p>The insurer shall be responsible for ensuring its compliance with the Data Protection Legislation when utilising the Code.</p> <p>Prior to commencing activity under the Code the insurer shall:</p> <ul data-bbox="606 526 1394 672" style="list-style-type: none"><li>• Conduct an appropriate Data Privacy Impact Assessment.</li><li>• Implement all actions and mitigations arising from such Data Privacy Impact Assessment.</li><li>• Update its Privacy Policy and Privacy Notices, as necessary.</li></ul> <p>The insurer shall comply with the obligations set out in the Code with regard to referring the unrepresented claimant to its Privacy Policy.</p> <p>The insurer shall otherwise ensure that it implements relevant and proportionate technological and operational measures to ensure compliance with the Data Protection Legislation with regard to the processing of personal data/special category data in accordance with the Code and when engaging with an unrepresented claimant.</p> |