

Support for Customers with Road Traffic Injuries: The ABI Code

1 July 2015

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Definitions

For the purposes of this Code of Practice:

- (a) **ABI** means the Association of British Insurers;
- (b) **ABS** means Alternative Business Structures permitted under The Legal Services Act 2007;
- (c) **LASPO** means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
- (d) **CFA** means Conditional Fee Agreement including any Collective Conditional Fee Agreement;
- (e) **Claim** means a claim brought by a Customer for compensation for personal injury resulting from a road traffic accident;
- (f) **Claims Portal** means the electronic portal for road traffic accident personal injury claims up to £25,000.
- (g) **Complying Insurer** means an Insurer who has confirmed in writing to the ABI their commitment to compliance with this Code and who is recorded as compliant at www.abi.org.uk
- (h) **Customer** means an individual who is insured under a policy of motor insurance and/or has a motor legal expenses insurance policy (to include any named or authorised driver or any passenger, where such driver or passenger is entitled to benefits under the policy) with a signatory to this Code and who has suffered a genuine personal injury in a road traffic accident, and the insurer treats them as not at fault for that accident;
 - (i) **DBA** means Damages Based Agreement
 - (j) **FCA** means the Financial Conduct Authority
- (k) **Insurer** means a firm authorised by the FCA to effect and carry out contracts of motor and/or motor legal expenses insurance as principal in the UK and who are members of the ABI;
- (l) **RTA** means a Road Traffic Accident
- (m) **SRA** means the Solicitors Regulation Authority;
- (n) **Third Party** means any person or organisation with whom a Complying Insurer has any arrangement, whether or not recorded in contract, in relation to the provision of any service to Customers in relation to either the reporting, administration, management or pursuance of Claims including, but not limited to those who receive first notification of loss, claims management companies, repair or replacement vehicle providers and legal service providers.

A. Introduction

1. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced the most significant changes to the civil justice system in England and Wales in over a decade. The aim of these changes is to ensure access to justice for injured claimants, but at proportionate cost. The insurance industry is committed to paying fair and reasonable compensation to genuinely injured claimants as quickly as possible.
2. The insurance industry has long campaigned in support of these changes and wants to ensure that both the letter and the spirit of the rules underpinning the reforms are embedded into everyday insurer practice. The changes are designed to assist those who have been injured to claim appropriate compensation in a timely and cost efficient way, and to provide a greater degree of certainty and cost control.
3. As an industry that is constantly innovating, Insurers want to continue to provide as much support to their Customers as possible and some Insurers are now offering legal services, either direct to their Customers or via Third Parties, to help them with their Claims. Insurers are committed to ensuring that any actions they take in this new legal environment lead to a reduction in the number of unmeritorious or inflated personal injury claims, especially for whiplash.
4. This Code aims to ensure that in a fast-changing and regularly-evolving legal environment, the interests of all Customers come first – both in accessing compensation and also in making the system as cost efficient and effective as possible. Complying Insurers want to give Customers and other stakeholders confidence that operating in the new civil justice landscape they are working in the interests of genuinely injured claimants, of the premium paying public and for the wider public good.

B. Application of the Code

5. This Code of Practice concerns interactions between Customers and the providers of motor insurance and motor legal expense insurance in respect of products sold and/or services offered in England and Wales. A list of Complying Insurers from time to time can be accessed at www.abi.org.uk which list will be updated by the ABI as necessary. Complying Insurers will abide by the commitments contained in this Code.
6. This Code sets out the commitments of Complying Insurers when communicating with a Customer about a Claim, whether direct or through Third Parties.
7. These commitments will be followed in addition to any legal or regulatory requirements that may also be relevant.
8. Any signatory to this Code must either:
 - (i) become a Complying Insurer; or
 - (ii) if they are not able to become a Complying Insurer, provide an explanation in writing to the ABI for non-compliance with the Code. Such explanation, which will be published and publicly available at www.abi.org.uk, must set out as clearly as possible (allowing for any constraints of confidentiality or the requirements of compliance with EU and/or UK competition laws), in what

respects and why the signatory is unable to comply with the commitments in the Code.

9. Any Complying Insurer must immediately inform the ABI if it is no longer able to comply with all aspects of the Code and provide a written explanation which will be published as in paragraph 8 above.
10. This Code came into force on 13 February 2014 and will continue until 30 June 2017. The ABI will review the operation of the Code and any changes to the legal environment, and make a recommendation to the General Insurance Committee no later than 1 June 2017 as to whether the Code should continue either in its current or an amended form.
11. This Code does not cover interaction between Complying Insurers and non-Customers. For this information see the ABI's Third Party Assistance Guide.

C. Customers' personal injury claims

(a) Legal and Regulatory Framework

12. Insurers must comply with a number of different legal and regulatory requirements (see part 5 on *Useful Resources* for further information). As well as ensuring that Insurers comply with the law, these commitments aim to protect and promote the best interests of Customers.
13. Complying Insurers agree:
 - (i) To recognise that, in this context, the FCA's requirement to focus on the fair treatment of customers may involve the delivery of support to the Customer as they pursue their Claim;
 - (ii) to bring the terms of this Code to the attention of any Third Party;
 - (iii) to use their best endeavours to require any Third Party to act in accordance with the terms of this Code, recognising that this Code cannot operate to override any regulatory requirement for legal advice to be independent.

(b) Offering Legal Services

14. The Legal Services Act 2007, which aims to improve access to legal services for consumers, allows legal services to be offered in new ways through an ABS. Some Insurers will have an involvement in an ABS which offers such services direct to their Customers to assist them with Claims.
15. Should a Complying Insurer wish to do so, it is appropriate to provide information and support to Customers about their entitlement to make a Claim. However, where a Customer does not wish to make a Claim, they should not face direct or indirect pressure from a Complying Insurer or a Third Party to do so.
16. Complying Insurers agree:
 - (i) To ensure Customers who wish to make a Claim are informed of the options available to them when considering who to instruct as a legal services provider. This should include providing information about:

- (a) options provided by the Complying Insurer and any links the Complying Insurer has to that legal services provider;
 - (b) whether there are any restrictions that may apply under a relevant legal expenses insurance policy around the choice of legal services provider; and
 - (c) the Customer's right to choose their own legal services provider, subject also to explaining the extent to which such choice may be restricted under any legal expenses insurance policy which is in place.
- (ii) Not to apply, or enter into arrangements with Third Parties who they know or believe may apply, pressure on Customers, e.g. by texts, cold calls, offers of inducements or other means, to pursue a Claim, but to respect that Customer's decision not to pursue a Claim;
 - (iii) Once an offer to arrange the provision of legal services to a Customer in relation to a Claim has been refused, not to make further, unsolicited offers to make such arrangements relating to the same road traffic accident; and
 - (iv) Not to share (whether or not for reward) Customers' personal information either with the aim of encouraging, or knowing or believing that the information they share may be used to encourage a Customer to pursue a Claim where that Customer has already expressed their decision not to pursue a claim.

(c) Funding Options

- 17. LASPO introduces a number of new or revised funding arrangements for claimants and their legal services provider. Some of these funding arrangements may involve a claimant contributing to the legal costs of the claim by agreeing to pay part of their damages to the legal services provider.
- 18. The commitments in this part of the Code aim to ensure that Complying Insurers do not direct their Customers towards such arrangements where there might be a more appropriate funding for the legal costs of the Customer's Claim. However, it remains the responsibility of the legal services provider to advise the Customer on funding arrangements that are appropriate for them in accordance with their regulatory obligations as set out in the SRA's Code of Conduct.
- 19. Complying Insurers agree:
 - (i) To ensure that Customers are asked whether they have a legal expenses insurance policy or other funding arrangements available that might cover the legal costs of making a Claim;
 - (ii) To ensure that if they choose to provide Customers with general information about the funding arrangements available to them in pursuing a Claim, that information is clear, fair and not misleading;
 - (iii) where the customer has the benefit of a motor legal expenses insurance policy, not to recommend a legal services provider who will contract with the

Customer under a CFA or a DBA on terms which would involve any deduction being made from the Customer's damages; and

- (iv) in all other cases, where they recommend a legal services provider who will contract with the Customer under a CFA or a DBA on terms which would involve any deduction being made from the Customer's damages, to explain clearly to the Customer at the time of recommendation that such a deduction would be made and that other legal service providers might not seek to make such a deduction.

(d) Claims Process

- 20. The Claims Portal is a product of the insurance industry's efforts to deliver compensation quickly, at a cost which is proportionate to the value and complexity of the claim. Insurers recognise that the Claims Portal is intended to operate for the benefit of claimants, as it facilitates the more expeditious settlement of Claims. Insurers aim to settle as many claims as possible using the efficiencies and cost controls introduced by the Claims Portal process, where it is reasonable and appropriate to do so and where such settlement provides a reasonable level of compensation.
- 21. Practices which add unreasonable or unnecessary time and legal costs to the claims process should be avoided.
- 22. Complying Insurers agree, unless it is in the best interests of the Customer to do otherwise:
 - (i) That the aim should be for Customers to resolve Claims, wherever possible and appropriate, within the Claims Portal, mindful that litigation should be a last resort;
 - (ii) When managing or arranging for the Customers to be represented in Claims, not to create incentives for or otherwise require those Claims to be handled in a way intended to increase legal costs for the at-fault insurer unreasonably or unnecessarily.
 - (iii) To ensure that where they arrange or recommend the services of any Third Party to their Customer, that Third Party has confirmed to the Complying Insurer that they will:
 - (a) not manage those Claims so as to increase legal costs for the at fault insurer unreasonably or unnecessarily; and
 - (b) as part of that commitment, make reasonable endeavours to resolve Claims within the Claims Portal wherever possible, so long as that is consistent with the third party's own regulatory obligations to the Customer.

- 23. Nothing in this Code shall be intended to override the obligations of any Third Party legal services provider to act in the best interests of their client.

D: Enforcement

24. The General Insurance Committee of the ABI shall have the power to decide whether a Complying Insurer has breached the terms of the code, in which case the requirement in clause 8 to provide an explanation shall apply.

E. Useful customer resources

For information about the ABI and its members, including signatories to this Code and the Third Party Assistance Guide

Association of British Insurers, www.abi.org.uk/

For information on the relevant regulators

- Claims Management Regulator, www.justice.gov.uk/claims-regulation
- Financial Conduct Authority, www.fca.org.uk/
- Solicitors Regulation Authority, www.sra.org.uk/

For information about the civil justice system

- Ministry of Justice, www.justice.gov.uk/

For information about the claims process

- Claims Portal, www.claimsportal.org.uk/en/