



ABI CODE OF PRACTICE: THIRD PARTY ASSISTANCE

| Introduction | This code provides guidance for the procedures to be adopted by an insurer when they provide, or offer to provide, assistance directly to a person who has had an accident with the insurer's policy holder, and may be entitled to a compensation payment for personal injury and associated vehicle repair and hire. The person will hereafter be referred to in the code as the 'unrepresented claimant'. | | | | | | | | | | | | | | |
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| Purpose | The purpose of the code is to set out how insurers engage with unrepresented claimants to ensure that they are treated fairly. | | | | | | | | | | | | | | |
| Scope | The code covers claims which relate to road traffic accidents, an accident at work, a trip or slip or other public liability accident claim, which involve an element of personal injury. This code of practice applies to insurers who transact business in the United Kingdom. | | | | | | | | | | | | | | |
| Status of code | The code is a voluntary good practice guide for insurers. The code is intended to strengthen existing practice in the area, but is not a definitive guide. The FSA's Principles for Business and, where relevant, the claim handling rules in Chapter 8 of the FSA's Insurance: Conduct of Business Sourcebook (ICOBS) should form the basis of all interactions with the unrepresented claimant. A current list of member signatories will appear on the ABI website. | | | | | | | | | | | | | | |
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Contacting Unrepresented Claimants

| <p>Introduction</p> | <p>This section explains how insurers will initially engage with unrepresented claimants, outlines responsibilities of insurers and provides definitions.</p> | | | | | | | | | |
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| <p>General Policy - Contacting the Unrepresented Claimant</p> | <p>Initial contact with an unrepresented claimant should only be by:</p> <ul style="list-style-type: none"> - telephone (including text message) - email or - letter. <p>In each method, the claimant should be informed of their right to seek independent legal advice, and of the other options available to them to help resolve their claim</p> <p>Insurers will not make unsolicited visits to an unrepresented claimant at their current address, including hospitals.</p> <p>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 and no further contact made.</p> <p>In each method:</p> <table border="1" data-bbox="550 1126 1401 2027"> <thead> <tr> <th data-bbox="550 1126 772 1227">If initial contact is made by...</th> <th data-bbox="777 1126 1401 1227">Then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="550 1234 772 1933">E-mail</td> <td data-bbox="777 1234 1401 1933"> <p>The email will:</p> <ul style="list-style-type: none"> - state who the insurer represents, and why they are being contacted - explain the services being offered, and that the unrepresented claimant does not have to pay for the cost of the services - advise that the person's data will not be disclosed to another party without consent - state that the unrepresented claimant has the right to seek independent legal advice - provide information as to where the unrepresented claimant might find such advice, e.g. Law Society, Citizen's Advice Bureau. -advise of the other options available to resolve the claim e.g. the small claims track - Provide the ABI consumer guide or own-brand guide on third party assistance programmes in soft copy (the own -brand guide must cover the same areas as the ABI guide) </td> </tr> <tr> <td data-bbox="550 1939 772 1968">Letter</td> <td data-bbox="777 1939 1401 1968">As per email requirements.</td> </tr> <tr> <td data-bbox="550 1975 772 2027">Telephone</td> <td data-bbox="777 1975 1401 2027"> <p>The insurer will:</p> <ul style="list-style-type: none"> -Explain who they represent and why they are </td> </tr> </tbody> </table> | | If initial contact is made by... | Then... | E-mail | <p>The email will:</p> <ul style="list-style-type: none"> - state who the insurer represents, and why they are being contacted - explain the services being offered, and that the unrepresented claimant does not have to pay for the cost of the services - advise that the person's data will not be disclosed to another party without consent - state that the unrepresented claimant has the right to seek independent legal advice - provide information as to where the unrepresented claimant might find such advice, e.g. Law Society, Citizen's Advice Bureau. -advise of the other options available to resolve the claim e.g. the small claims track - Provide the ABI consumer guide or own-brand guide on third party assistance programmes in soft copy (the own -brand guide must cover the same areas as the ABI guide) | Letter | As per email requirements. | Telephone | <p>The insurer will:</p> <ul style="list-style-type: none"> -Explain who they represent and why they are |
| If initial contact is made by... | Then... | | | | | | | | | |
| E-mail | <p>The email will:</p> <ul style="list-style-type: none"> - state who the insurer represents, and why they are being contacted - explain the services being offered, and that the unrepresented claimant does not have to pay for the cost of the services - advise that the person's data will not be disclosed to another party without consent - state that the unrepresented claimant has the right to seek independent legal advice - provide information as to where the unrepresented claimant might find such advice, e.g. Law Society, Citizen's Advice Bureau. -advise of the other options available to resolve the claim e.g. the small claims track - Provide the ABI consumer guide or own-brand guide on third party assistance programmes in soft copy (the own -brand guide must cover the same areas as the ABI guide) | | | | | | | | | |
| Letter | As per email requirements. | | | | | | | | | |
| Telephone | <p>The insurer will:</p> <ul style="list-style-type: none"> -Explain who they represent and why they are | | | | | | | | | |

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| | | <p>being contacted</p> <ul style="list-style-type: none"> -explain the services being offered, and that they will not have to pay -advise the unrepresented claimant that their personal data will not be disclosed to another party without consent -advise of the right to seek independent legal advice - undertake to follow-up in writing to the unrepresented claimant covering what was discussed on the phone and reiterating the right to seek legal advice. |
| | Text Message | <p>The insurer will:</p> <ul style="list-style-type: none"> -Explain who they represent and why they are being contacted -request a call back to discuss - send only one text message in absence of response |
| Definition 'Unrepresented Claimant' | A person who has a legal right to pursue a claim against a insurance company's policy holder for compensation, and is pursuing the claim in person. | |
| Definition 'Insurer' | The insurance company who represents the other side's policy holder or, in the case of an uninsured driver, the Motor Insurers Bureau. | |

Offers of Assistance

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| Introduction | This section sets out the types of assistance that insurers may offer to unrepresented claimants, and covers the situations where legal advice is strongly recommended, or where the insurer will not deal with a claimant without legal representation. |
| General Policy | <p>The insurer should:</p> <ul style="list-style-type: none"> - check whether the unrepresented claimant has chosen not to proceed under a legal expenses policy, or other existing cover (e.g. within trade union membership). - follow up all verbal offers of assistance and agreements with the unrepresented claimant in writing. - Explain the costs of the services offered where appropriate, for example the cost of vehicle hire, and that these costs will all be borne by the insurer. |
| Cases where legal advice is strongly recommended | <p>While insurers wish to have this process open to most people, under this code insurers will strongly recommend that independent legal advice is sought in certain situations, for example:</p> <ul style="list-style-type: none"> • Minors • Where there is complexity over who was at fault • Those who have a limited understanding of English • Where the injury requires more than one medical report (see pages 6/7, 'Medical Treatment'), or has a degree of complication, persistence or permanence |

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| | <ul style="list-style-type: none"> • Where there are possible fraud issues (see p 8, 'Evidence of Fraud') • Where there are causation issues (see p 8, 'Medical Evidence suggests no Causation') |
| Cases where the claimant will require independent legal advice | Insurers will require that minors who have a claim valued above £1000 have independent legal advice. |
| Personal Injury | <p>Where there is an entitlement to claim for personal injury, the insurer should explain and notify in writing the following to the unrepresented claimant:</p> <ul style="list-style-type: none"> • That the insurer will register the claim with the Compensation Recovery Unit (CRU), and advise that the unrepresented claimant will receive a copy of the Certificate directly from CRU. • Where medical records are required, to explain why and provide a standard consent form to the unrepresented claimant.¹ • Where a medical examination is required, why the examination is needed. • Where necessary, the use of medical expert, the expert's discipline and where appropriate, the medical agency to be appointed. • Details of any rehabilitation assistance offered |
| Vehicle Repair and Hire | <p>An insurer may offer the following services:</p> <ul style="list-style-type: none"> - arrange inspection of the unrepresented claimant's vehicle - arrange repairs at one of the insurer's approved repairers - arrange repairs at a non-approved repairer - Provide a replacement vehicle suitable for the claimant's needs - Transport the vehicle salvage into alternative storage - Disposal of the salvage - 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. - 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, if the timescales for repairs will lead to a substantial ongoing hire charges being incurred. |
| Interim Payments | <p>Insurers should offer interim payments to unrepresented claimants for special damages.</p> <p>Interim payments on account should be considered in the event of financial hardship.</p> <p>Whenever offered, the insurer should clearly explain the purpose of interim payments to the unrepresented claimant and explain</p> |

¹ See page 7 for further guidance on when medical records are required.

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| | <p>how they are offset against final settlements. The insurer should ask the unrepresented claimant about any out of pocket expenses suffered.</p> |
| No obligation to take up the services offered | <p>The insurer should make clear to the unrepresented claimant that there is no obligation to accept any or all of the services offered. However, in the case of additional claims for vehicle repair and hire, the insurer should inform the unrepresented claimant of their responsibility to mitigate their losses with respect to vehicle repair and/or hire, under law.</p> |
| Advice on Timescales | <p>The insurer should provide the unrepresented claimant with clear timescales and processes involved, with each type of service offered. Compensation offers should be made within judicial timescales.</p> |
| Checking the claim on insurance databases | <p>The insurer should advise the unrepresented claimant that they may check claims details on fraud databases where they are permitted to do so under law.</p> |

Managing the Relationship

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| Introduction | <p>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 represented.</p> |
| General Policy | <p>The unrepresented claimant should be treated fairly and managed with due regard to their interests. The FSA's Principles for Business and, where relevant, the claim handling rules in Chapter 8 of the FSA's Insurance: Conduct of Business Sourcebook (ICOBS) should form the basis of all interactions with the unrepresented claimant. Insurers should also ensure that they are acting in accordance with the expectations set out in the FSA factsheet on third party assistance.²</p> <p>In particular, insurers should ensure that they have appropriately audited their processes and procedures, as well as recording settlement amounts, in order to satisfy FSA that they have acted in accordance with the FSA guidelines and the related regulation.</p> <p>Written confirmation of the agreement to provide services should be provided to the unrepresented claimant. This should include:</p> <ul style="list-style-type: none"> • Details of the agreed services, estimated timescales and of the frequency in which updates will be provided – these should match or beat the timescales under the pre-action protocols (or equivalent) in the relevant jurisdiction where appropriate. • Advise who to contact if the unrepresented claimant wishes to make a complaint. • Clearly state the right of the unrepresented claimant to |

² http://www.fsa.gov.uk/pubs/other/third_party_capture.pdf

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| | <p>seek independent legal advice at any time.</p> <ul style="list-style-type: none"> • Clearly state the alternatives to dealing directly with the insurer • Attach either the ABI consumer guide or own-brand consumer guide which summarises the rights of the unrepresented claimant. • Where liability enquiries are ongoing, keep the claimant informed and adhere to pre-action protocols (or equivalent) time scales. |
| Information provided by insurers to unrepresented claimants | All information provided by the insurer to the unrepresented claimant should be impartial and transparent, in accordance with the principles of treating the 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 procedure under 'Referral to Legal Advice' (p 8). Where an unrepresented claimant advises that they are now legally represented, the insurer should ask for the contact details of the representative. When the insurer has been advised of the contact details of the legal representative, the insurer should send all the documentation to the legal representative, with the consent of the unrepresented claimant, without delay. The focus should be to allow the solicitor to get up to speed as quickly and easily as possible. |

Arranging Medical Treatment and Vehicle Repair and/or Hire

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| Introduction | This section sets out how insurers arrange medical treatments, assessments, and any other actions in respect of the unrepresented claimant's injuries, including rehabilitation. The section also sets out how insurers arrange vehicle repair and hire. |
| General Policy | <p>Where there is a need to arrange medical treatment, including rehabilitation, medical reports and/or vehicle repair/hire, then the insurer should explain:</p> <ul style="list-style-type: none"> • Who the service provider is, if the provider is approved by the insurer – the provider should be local to the unrepresented claimant. • 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 medico-legal reports, that it helps to assess the nature, cause, extent and impact of the injuries and therefore the value of the claim. |

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| | <p>This includes rehabilitation reports, where they are used to assess the value of the claim.</p> <ul style="list-style-type: none"> • In the case of medico-legal reports, that the report will be without reference to past medical notes except where requested by a medical expert. • In the case of medical assessments for a medico-legal report, that the medico-legal report will be sent to the unrepresented claimant as well as the insurer. • The unrepresented claimant has the opportunity to check the medico-legal report for any errors. • In the case of rehabilitation, whether and why rehabilitation is being offered. • What the timescales are in terms of valuing the compensation. <p>As a matter of best practice, the medico-legal report should cover the same areas as the medical report form for the Ministry of Justice claims process for Road Traffic Accidents between £1,000 and £10,000.</p> <p>Normally, medical records or notes will not be required on low-value claims. However, consent from the 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 record to make an assessment. Where the notes or records are requested, the insurer should explain to the claimant that it helps to assess the nature, cause, extent and impact of the injuries and therefore the value of the claim.³</p> |
| <p>Responsibilities of the insurer when dealing with personal injury</p> | <p>The insurer should:</p> <ul style="list-style-type: none"> • Provide a written explanation of progress including where rehabilitation and or a medical expert has been engaged. • Where further medical information or evidence, including the instruction of additional experts, is required after an initial report because injury prognosis is uncertain, explain this to the unrepresented claimant. In such circumstances, the insurer should also recommend that the unrepresented claimant instruct a legal representative.⁴ • If contact with the unrepresented claimant is shortly after the accident and the injuries are clearly persisting, offer regular telephone reviews about the injury, typically once per month. Independent legal advice should be strongly recommended. Where appropriate, rehabilitation should be offered in the meantime. • Seek medical evidence where it is not immediately clear |

³ See consent form at Annex A

⁴ This is not required where the medical practitioner has merely requested medical notes or records for additional information.



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| | <p>what the extent of the unrepresented claimant's injuries are.</p> <ul style="list-style-type: none"> • Give a reminder of the right to seek independent medical and/or legal advice at any time |
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Offers and Settlements

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| Introduction | This section sets out the requirements for making an offer to the unrepresented claimant. |
| General Policy | <p>All offers should be fair and reasonable and based on appropriate evidence. The insurer should always advise the unrepresented claimant what they are entitled to and offer compensation for the appropriate heads of damage associated with that claim.</p> <p>All offers to settle the claim should be discussed with the unrepresented claimant, and followed up in writing. The offer should outline the reasons for the offer and provide relevant documentation.</p> <p>The documentation should include:</p> <ul style="list-style-type: none"> • Medico-legal reports, records and prognosis, where relevant • A reminder of right to seek independent legal advice • A claimant feedback form • An undertaking to send settlement payment within a certain timeframe, in an agreed way • An explanation of how the acceptance of the offer affects the unrepresented claimant's rights with regard to the claim • An explanation of how any interim payments will affect the final compensation payment <p>Where a settlement is reached, the compensation payment should be paid as soon as possible and be made within judicial timeframes and in accordance with the FSA Principles for Business.</p> <p>The insurer should not withdraw any offer made; however may follow up with the claimant after a suitable time period where there has been no response to the offer.</p> |
| Offers on low value injuries | <p>Where the injury 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.</p> <p>The insurer should, however, obtain medical evidence (relevant reports and/or records) on a low value injury if:</p> <ul style="list-style-type: none"> • The claimant does not consider that the injury is minor or low value • The claimant wishes to have a medical examination |
| Medical report | Where a medical report shows that there is no connection between the |



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| suggests no causation | injury and the event in question, the insurer should immediately recommend that the unrepresented claimant seek legal advice and explain the reason why. |
| Evidence of Fraud | Where there is evidence of fraud 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. |

Decline of Assistance or Offer

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| 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 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 should acknowledge this in writing and note what assistance was turned down. |
| Referral to independent legal advice | <p>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 Citizen's Advice Bureau, or the person's trade union. See also the procedure under 'Unrepresented Claimant becomes Represented', p 5.</p> <p>Where the insurer has a relationship with claimant solicitors, they may refer them to this solicitor. The insurer or solicitor should explain to the unrepresented claimant if they will receive a fee for referring the unrepresented claimant to the solicitor.</p> |

ANNEX A TO THE ABI CODE OF PRACTICE: THIRD PARTY ASSISTANCE
ACCESS TO HEALTH RECORDS UNDER THE DATA PROTECTION ACT 1998
(SUBJECT ACCESS REQUEST)

Claimant's authority consent form for release of health records

About this form



The insurer dealing with your claim may need to see your medical notes or records to assist in assessing the nature, cause, extent and impact of your injuries and therefore the value of your claim. Past medical history is often relevant to a claim for compensation.

To: (please provide GP name and address or consultant name, hospital and department and, if appropriate, details of other health professional(s) e.g. osteopath, chiropractor, physiotherapist, etc)

Your identity

Full name:

Former name(s):

Current address:

Former address (with dates of change):

Date of birth:

NHS number (if known):

Contact telephone number (including area code):

Email address (optional):

Your declaration and signature

Please see "notes for the claimant" on page 2 before you sign this form.

I understand that filling in and signing this form gives you, the health professional, permission to give copies of all my health records to the insurer whose details are given below. Please give the insurer copies of my health records, in line with the Data Protection Act 1998, within 40 days.

Your signature: _____
____ / ____

Date: ____ /

Insurer's declaration and signature (for insurer use only)

I confirm that I need the full health records of the above named claimant.

Insurer's firm/company name: _____



Claim handler's signature: _____

Date: ____ /

____ / ____

Notes for the claimant

- By signing the patient's authority consent form, you are agreeing to the insurer dealing with your claim receiving copies of your health records held by the health professional named on the form.
- Your health records may be used by the insurer to investigate and assess your claim.
- Your health records will contain information from most or all consultations you have had with health professionals.
- The information the health records contain are likely to include details of why you saw health professionals, details of medical diagnoses, decisions made about your care and treatment, and details of action taken and the outcomes. Please note that this list is not exhaustive.
- You do not have to give permission for your health records to be released but, if you don't, the court may not let you go ahead with your claim.
- For more guidance, please read the leaflet entitled "Third Party Assistance Claimant Guide" attached.

[Insert Heading]