

Director Redundancy Claims

Compliance Guidance for
Insolvency Practitioners

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Redundancy Claims UK

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COMPLIANCE



 **REDUNDANCY CLAIMS UK**
for Company Directors

Introduction

The Insolvency Service has formally instructed Insolvency Practitioners that they need to conform to the provisions of the Compensation Act 2006.* This Act makes it a criminal offence to carry out a regulated claims management service unless you are authorised to do so or are exempt from authorisation. The regulatory regime transitioned to the Financial Conduct Authority (“FCA”) and the Financial Services and Markets Act on the 1 April 2019 and 2018 respectively. It is believed that the FCA’s regulatory regime is more developed, better resourced and more intensive than the original Ministry of Justice regime. The FCA has already indicated they will be targeting unauthorised trading and the use of Introducers.

IPs often identify directors of companies who request or may benefit from seeking support in making a claim to the Redundancy Payments Service (“RPS”) and are able to recommend RCUK’s services in full compliance with the Financial Services and Markets Act 2000. This Guide explains the necessary steps that we have implemented to ensure that you operate in a fully compliant manner.

Exempt Introducers

Businesses do not require authorisation from the FCA if they are classed as Exempt Introducers, however they must satisfy set criteria.

The requirements are set out in detail in the The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 but, in practice, apply as set out below.

A business may refer claims and will not require authorisation where:

- they provide no other regulated claims management activity, including advertising or seeking out persons who may have a cause for a claim, or advising on a potential claim;
- the way they come across the case for referral is incidental to their main business i.e. the claim must arise as a result or consequence of the business being carried out by the introducer – not a separate feature of the business;
- the referral is made to an authorised claims management business or legal practitioner;
- the business is paid for no more than 25 referrals per calendar quarter; and
- in obtaining and referring the client details, has complied with the provisions of the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (EU) of the European Parliament and of the Council 2016/679 and the Consumer Protection from Unfair Trading Regulations 2008.

* The Insolvency Service ‘Dear IP’ Issue 81, chapter 11, article 94

RCUK **do not** pay any fees to IPs for referring clients to us or to IPs making a recommendation to clients to contact us about the services we offer. The benefit of making a referral to us is based on RCUK's standard working practices assisting the IP to remain compliant within its own regulatory framework. A good example of this is supporting the IP in compliance with SIP2 i.e. that it has the appropriate books and records required to support the submission of the RP14 and RP14A.

In most cases the IPs working with RCUK will automatically establish **Exempt Introducer** status based on the fact they **do not** receive remuneration for the referral or recommendation. We have however developed due diligence processes to ensure that the **Exempt Introducer** status is both established and maintained.

RCUK Due Diligence

RCUK carry out initial background checks on all IP Introducers and welcome similar checks being made by you in relation to RCUK and the services it offers.

RCUK and IPs will enter into fully compliant written terms of business detailing the expectations of both parties on an **Exclusive Introducer** basis.

The IP may identify during its course of dealings with insolvent companies that the directors may require assistance but **must not** advertise or seek out claims to the RPS through any form of marketing. The identification of a possible claim **must be** incidental to your normal course of business.

The IP **must not** provide advice to directors on the making of a claim to the RPS other than providing information that those that can establish employment status have statutory entitlements which may be payable by the RPS.

Any client data passed to RCUK **must** comply with the provisions of the General Data Protection Regulations 2018. In order to verify that the client has given consent to their personal data being passed to RCUK. We require that the IP confirms that consent has been given using either the consent form supplied by RCUK or alternative proof of consent such as an email from the director confirming they request that RCUK may contact them and the requested method of communication e.g. telephone, email or SMS.

The consent form if used includes:

- RCUK full company details including legal entity;
- The purpose of the referral
- RCUK website address;

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- RCUK e mail and telephone numbers;
 - Client preferred contact method e.g. telephone, email or SMS; and
 - Client signature

For your convenience a template Consent Form can be downloaded from:

<https://www.redundancyclaim.co.uk/files/pdf/rcuk-consent-form-v10.pdf>

In addition, the IP must comply Consumer Protection from Unfair Trading Regulations 2008 in relation to the provision of any information to ensure any information that is provided, including the nature of the services RCUK provide, is not misleading.

In the event that an IP does not wish to enter into an **Exclusive Introducer** arrangement with RCUK or where the IP makes recommendations or referrals to other authorised businesses or legal practitioners for regulated claims management services, for example Business PPI claims, additional reporting requirements will be implemented. This will include:

- RCUK and IPs will enter into fully compliant written terms of business detailing the expectations of both parties on a **Non-Exclusive Introducer** basis;
- The IP will identify on a quarterly basis the number of third-party referrals or recommendations and the basis of these referrals or recommendations specifically any fees or remuneration received by the IP; and
- The quarterly reporting may be extended to monthly if the number of referrals or recommendations are likely to exceed 25 in any rolling quarter. This is to protect the IP against breaching their **Exempt Introducer** status and to ensure that RCUK operates within its regulatory framework.

All clients will be asked a series of questions about the referral or recommendation to RCUK during the initial assessment of their circumstances as part of our ongoing due diligence and quality controls. The questions will seek to identify what information has already been provided to them by the IP.

The importance of compliance and a business's adherence to its own code of ethics and other regulatory frameworks cannot be underestimated. This can only improve the service to our clients and the industry's reputation as a whole. This Guide to Compliance sets out RCUK's stance on establishing compliance and quality control in this industry and the team at RCUK are here to support you.