

## **Warning notice**

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## **Status**

This warning notice provides a reminder of your regulatory responsibilities and obligations when marketing your services to members of the public.

## **Who is this relevant to**

Law firms, solicitors and individuals working under their supervision, particularly those carrying out high-volume consumer claims work.

## **Our concerns**

Solicitors must act with integrity and uphold high professional standards that we and the public expect. We are concerned that law firms or those sourcing claims on their behalf are making unsolicited approaches in breach of our rules. This behaviour, including activities such as cold calling and door knocking, has been particularly evident among some firms or those they are working with when undertaking high-volume consumer claims work. We are also concerned that the risks for consumers associated with 'no win no fee' marketing approaches may not be reflected in promotional material being used. This warning notice focuses on these issues. We are considering other aspects of high-volume consumer claims work, and may address these in future warning notices.

## **Standards and Regulations**

You must comply with the [SRA Principles \[https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/\]](https://higher-rights.sra.org.uk/solicitors/standards-regulations/principles/).

For unsolicited approaches and marketing material this particularly includes:



- Principle 1 – act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice.
- Principle 2 – act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.
- Principle 3 – act with independence
- Principle 5 – act with integrity.
- Principle 7 – act in the best interests of each client.

You must also comply with requirements in the [Code of Conduct for Solicitors, RELs and RFLs](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] and the [Code of Conduct for Firms](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/].

For unsolicited approaches and marketing material, this particularly includes:

### **SRA Code of Conduct for Solicitors, RELs and RFLs:**

**5.1** In respect of any referral of a client by you to another person, or of any third party who introduces business to you or with whom you share your fees, you ensure that:

- e. any client referred by an introducer has not been acquired in a way which would breach the SRA's regulatory arrangements if the person acquiring the client were regulated by the SRA.

**8.8** You ensure that any publicity in relation to your practice is accurate and not misleading, including that relating to your charges and the circumstances in which interest is payable by or to clients.

**8.9** You do not make unsolicited approaches to members of the public, with the exception of current or former clients, in order to advertise legal services provided by you, or your business or employer.

### **SRA Code of Conduct for Firms:**

**2.1** You have effective governance structures, arrangements, systems and controls in place that ensure:

- a. you comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, which apply to you;

**2.2** You keep and maintain records to demonstrate compliance with your obligations under the SRA's regulatory arrangements.

**2.5** You identify, monitor and manage all material risks to your business, including those which may arise from your connected practices.

**7.1** The following paragraphs in the SRA Code of Conduct for Solicitors, RELs and RFLs apply to you in their entirety as though references to 'you' were references to you as a firm:

- a. dispute resolution and proceedings before courts, tribunals and inquiries (2.1 to 2.7)
- b. referrals, introductions and separate businesses (5.1 to 5.3)
- c. standards which apply when providing services to the public or a section of the public, namely client identification (8.1), complaints handling (8.2 to 8.5) and publicity (8.6 to 8.11)

## **Unsolicited approaches**

You cannot market your services by making unsolicited approaches to members of the public, other than current or former clients. This means you should not make unsolicited approaches to members of the public in person, by phone, online or by other means which target them individually, such as cold calling or door knocking. This is prohibited by the SRA. You should also consider your wider obligations under applicable law. Of particular relevance here are the General Data Protection Regulation (UK GDPR) and Privacy and Electronic Communications Regulations.

This prohibition also applies to any client referred to you by a third party, such as a lead generator business or a claims management company. You are under a duty to ensure that any client referred by a third party has not been acquired in a way that would breach the SRA's regulatory arrangements if the person acquiring the client were regulated by the SRA.

You should be satisfied with the extent of informed consent given by a customer via a third party. For example, when customers are approached via 'opt in survey data' you should be satisfied that such opt in consent was lawfully obtained and has specifically granted permission to be contacted for the purposes of being offered legal services. You should be cautious about any use of 're-marketing' techniques where a third party attempts to re-engage customers who initially inquired with them. Any further approaches to them to offer services may still be an unsolicited approach.

Firms should have effective systems and controls in place to ensure that they comply with all SRA regulatory requirements, and firms need to keep and maintain records to demonstrate their compliance with their obligations.

You must be able to demonstrate that a third party who makes a referral to you did not acquire the client through cold calling or door-knocking, or other targeted or unsolicited approaches. You should have arrangements in place to ensure this does not happen. It is not acceptable to say that

the third party was not regulated by the SRA and so not subject to the prohibition on cold calling.

You must make sure any third-party introducer you already, or intend to, engage with understands your regulatory duties and how those duties affect the way they can work. You should satisfy yourself at the point of engagement and make certain thereafter that the third-party's marketing and onboarding techniques do not jeopardise those duties.

You should ensure you understand the process by which your clients have engaged your firm. This should include carrying out regular spot checks on new clients and asking them how, and by whom, they were contacted, to confirm that the approach to them was not unsolicited. If you fail to carry out such checks and it subsequently transpires that the claims management company or lead generator you instructed were engaged in such practices you may be found in breach of your regulatory duties.

## **Inaccurate or misleading publicity or promotional material**

Your publicity and promotional material must be clear, transparent and accurate, including any information about your charges and about costs which a client could become liable for. This also includes any marketing material used by third parties that you work with.

The material should not make misleading or inaccurate statements about:

- the prospects of success of any claim or within any areas of claim
- the level of any award likely to be made
- feedback provided by other claimants about your firm
- awards or other credentials held by your firm
- established ombudsman or compensation schemes that consumers can approach directly themselves for free.

You should regularly obtain and review any publicity or promotional material used by third parties you are engaged with, and make reasonable enquiries of clients to indicate which, if any, publicity or promotional material they saw. You must ensure that clients referred by a third party were not acquired by that third party through misleading publicity or promotional material.

If your marketing material highlights the use of 'no win, no fee' arrangements, it should clearly explain what that means.

There are scenarios where consumers may become liable for costs. For example, if a client decides to discontinue a claim part way through, or if your firm does not fulfil the terms of the after the event insurance

policies and the insurance then does not cover the costs of bringing the claim.

You should consider the position carefully and make sure that a client's liability for any costs is clearly explained. It should not imply that a client would not be liable for any costs where this is not the case.

## Further Information

More information is available in:

- [Unsolicited Approaches - Guidance](https://higher-rights.sra.org.uk/solicitors/guidance/unsolicited-approaches-advertising/) [https://higher-rights.sra.org.uk/solicitors/guidance/unsolicited-approaches-advertising/]
- [Claims Management - Guidance](https://higher-rights.sra.org.uk/solicitors/guidance/claims-management-activity/) [https://higher-rights.sra.org.uk/solicitors/guidance/claims-management-activity/]
- [High volume financial services claims - Warning notice](https://higher-rights.sra.org.uk/solicitors/guidance/high-volume-financial-service-claims/) [https://higher-rights.sra.org.uk/solicitors/guidance/high-volume-financial-service-claims/]
- [Representing clients during claims for financial services or products - Guidance](https://higher-rights.sra.org.uk/solicitors/guidance/representing-clients-during-claims-for-financial-services-or-products/) [https://higher-rights.sra.org.uk/solicitors/guidance/representing-clients-during-claims-for-financial-services-or-products/]

For guidance on any of the above conduct matters, contact the [Professional Ethics helpline](https://higher-rights.sra.org.uk/contact-us/) [https://higher-rights.sra.org.uk/contact-us/]

If you fail to have proper regard to this warning notice, you are at risk of disciplinary action. We can and will act where we find evidence that solicitors, firms and/or their employees contravene our rules. See our [Enforcement Strategy](https://higher-rights.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/?epjprojects=3) [https://higher-rights.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/?epjprojects=3] for information about our approach to taking regulatory action.