



Committee of Advertising Practice
Mid City Place 71 High Holborn London WC1V 6QT
Telephone 020 7492 2200 Fax 020 7404 3404
Textphone 020 7242 8159 Email enquiries@cap.org.uk
Online www.cap.org.uk

Committee of Advertising Practice (Non-broadcast)

Help Note on “No Win, No Fee” Claims

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing (the CAP Code). For advice on the rules for TV or radio commercials, contact Clearcast www.clearcast.co.uk for TV ads or the RACC www.racc.co.uk for radio ads.

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media interpret the CAP Code. They are based on ASA adjudications and neither constitute new rules nor bind the ASA in the event of a complaint about a marketing communication that follows them.

In July 1995, a change to the law allowed for the introduction of conditional fee agreements. Those schemes are commonly known as "No Win, No Fee" but that description could misleadingly imply that "No Win, No Fee" means "No Win, No Cost". Under such schemes, offered by solicitors or claims management companies, clients might be required to pay some costs, such as disbursements, and either take out indemnity insurance or risk having to pay the other side's legal costs if they lose the case. The ASA has upheld complaints against firms claiming "No Win, No Fee" because, unqualified, it implied the client would be liable for no costs whatsoever.

The ASA has ruled not that the description cannot be used but that it should be qualified to make clear the client's liability for certain costs. The Copy Advice team has drawn up a list of suitable qualifying statements. Different statements are suggested according to the conditions imposed by the firm. An acceptable qualifying statement should be included in any marketing communication claiming "No Win, No Fee" although it may appear as a footnote provided it is asterisked to the "No Win, No Fee" claim.

The qualifying statements are suggestions only; marketers might want to use alternative wording or explain the client's obligations. For example, marketers could specify the cost of the insurance policy or describe disbursements in

detail. Charges may be made by marketers or by any firm to whom the client's claim is referred. Marketers should ensure that all such potential charges are taken into account when indicating costs to their client.

Conditions

Suggested Qualification

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| 1. The client is always absolved from the need to pay disbursements and any indemnity insurance is paid for on the client's behalf. The client genuinely has nothing to pay | No qualification needed |
| 2. The indemnity insurance is paid for on the client's behalf but the client has to pay for other costs, such as the cost of disbursements | "Other costs are payable" |
| 3. The client is absolved from the need to pay the cost of disbursements but has to pay for indemnity insurance | "Subject to insurance cost" |
| 4. The client is required to pay for indemnity insurance and other costs such as the cost of disbursements | "Subject to insurance. Other costs are payable" |
| 5. Indemnity insurance is not compulsory but the client is required to pay for other costs such as the cost of disbursements | "Other costs are payable" |
| 6. Indemnity insurance is not compulsory and the client is absolved from the need to pay the cost of disbursement | "Other costs might be payable" |
| 7. The client is required to pay a fee if he or she decides not to pursue the case with the company | "Fee payable if case is not pursued at client's request" |
| 8. A variety of costs apply, dependant on circumstances | "Other costs could be payable" |

Since April 2007, claims management firms have been regulated by the Ministry of Justice (MOJ) under the Compensation Act 2006. The conduct of businesses authorised under the Compensation Act 2006 is governed by the Conduct of Authorised Persons Rules 2007, which require that all non-broadcast advertisements must comply with the CAP Code. For the purposes of the Rules, a business's website is considered as "advertising" and must comply with the CAP Code.

The MOJ has published the Marketing and Advertising Claims Management Services Guidance Note, which provides guidance to authorised businesses on the Rules and other legal requirements and requires claims management businesses using the phrase "No Win, No Fee" to do so in accordance with this Help Note. The Rules and the Guidance Note are available on the <http://www.claimsregulation.gov.uk/> website.

Websites are not normally considered to be in the CAP Code's remit but marketers may seek advice from the Copy Advice team on the content of their websites.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by e-mail on copyadvice@cap.org.uk. The CAP website, www.cap.org.uk, contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code clauses and ASA adjudications.

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