

**THE FINANCIAL SERVICES
PRACTITIONER PANEL**



**Smaller Businesses
Practitioner Panel**

Financial Services Authority

**RESPONSE TO 'CLAIMS MANAGEMENT REGULATION – PROPOSALS
FOR AMENDMENTS TO THE CONDUCT OF AUTHORISED PERSONS
RULES'
03 OCTOBER 2012**

Introduction

The Financial Services Practitioner Panel and the Smaller Businesses Practitioner Panel ('the Panels') have long taken an interest in the regulation of Claims Management Companies ('CMCs').

As the Ministry of Justice is no doubt aware, the financial services industry has become increasingly concerned by the prevalence of poor practice by some CMC firms, including: cold calling consumers, charging customers disproportionate fees, lack of transparency and even encouraging individuals to submit fraudulent and vexatious claims to the Ombudsman Service. Such practices not only cause customer detriment but in time also tarnish the reputation of the financial services industry as a whole by further eroding trust and confidence in the system.

We believe the current regulation of these bodies is insufficient in hindering poor practices. As such, we welcome the intention to reform some of the current regulations applicable to CMCs, although we believe these could go further as per below.

Executive Summary:

- The Panels welcome the intention to reform regulations for CMCs, and the recognition by the regulator in this paper that there is ongoing consumer detriment in this area. However, we believe the proposals as presented do not go far enough in addressing some of the existing weaknesses around CMC regulation

Comments on specific proposals:

- We support proposals to clarify to consumers that they are being charged for the service, and greater transparency on CMC fees
- The Panels further support the CMR Unit working closely with other bodies in tackling issues of cold-calling, but believe there is a question as to whether the regulator should have greater powers over unregulated entities in this area

Other comments:

- We would like to see the introduction of more individual responsibility into regulation, and believe there are compelling reasons to introduce something similar to the FSA's approved persons regime for CMCs. This would address issues where individuals with dubious practices are able to start new companies after regulatory action against a previous firm
- We strongly support the proposal to provide the Legal Ombudsman with the power to consider CMC complaints and award redress, and believe this should be introduced as soon as possible

Detailed response:

1) Do you have any comments on the proposals to amend the Client Specific Rules?

The Panels are supportive of the proposed amendments in this area, especially the changes relating to the pre-contractual information requirements, as we believe current practice in regard to this often evades the spirit of the rules. We believe the changes as proposed to CMC referencing their regulatory status and ensuring the client is aware of changes to claims and progress of costs, as well as any variation or suspension of the business' authorisation status.

3) In relation to Client Specific Rule 11, should CMCs be required, as a condition of authorisation, to publish details of their terms & conditions, fees and any other charges online and as standard?

The Panels would be supportive of introducing such a requirement on CMCs. One of the major causes of consumer detriment (apart from fraudulent behaviour) is the inability of the customer to understand how much and for what they are being charged, and the great difficulty in comparing offerings from different CMCs. This means there is no effective price competition between providers, and consumers cannot gain an idea of whether they are receiving value for money.

We would suggest that the regulator not only introduce the requirement to publish fees and charges online as a condition of authorisation, but that CMCs should also be required to do so in a specified standard format for ease of comparison.

5) In relation to Client Specific Rule 11, should CMCs be required to tell prospective clients, more clearly and explicitly that their fees would be charged irrespective of whether they ultimately receive a 'cash-in-hand' compensation award? *(Under this scenario a CMC would need to make clear to the prospective client that their fee must be paid independently from any compensation award deducted from the original agreement, should that be the case).*

The Panels support the proposal to clarify the fee obligation to consumers. There remains a lack of understanding amongst many consumers that they will be charged and how much. A joint survey by Moneysavingexpert and Which?¹ found that a quarter of those surveyed were unaware that CMCs charged a fee for their service, and less than half were aware that using a CMC would not increase their chances of success with their claim.

Given the lack of clarity that consumers currently have around how/if CMC services are charged for, we believe the regulator should aim to introduce as much transparency as possible in this area.

¹ Source: <http://www.which.co.uk/news/2012/04/one-in-four-consumers-unaware-claims-management-companies-take-cut-of-their-ppi-claim-284282/>

10) Do you have any comments or views regarding the current rules in relation to cold-calling?

The Panels note with concern the CMR Unit's statement that 'As many of the businesses that instigate these types of messages are unauthorised, the CMR Unit has no powers in relation to them'. The Panels appreciate that in general, firms that provide spam e-mails/texts and cold-call fall within the remit of the Information Commissioner's Office.

However, just as the FSA has powers to intervene in the case of unregulated firms operating in the financial services space, so we believe unrequested communication from firms in relation to CMC activities should rightly be in the remit of the CMC regulator. Insofar as the actions of these firms purport to relate to regulated activity, we believe the CMR Unit should have the power to enforce existing rules and fine or prosecute those clearly in breach.

Given the current scale of the problem and the CMR Unit's acknowledgement they lack strong powers to intervene, we are surprised that the paper states that 'adequate powers are already in place to tackle the problem of unsolicited marketing calls and text messages'. In our view, if such powers are already in place, they are clearly not being appropriately utilised by the relevant regulatory body. We are pleased to hear the CMR Unit is working with other bodies to come up with solutions to this ongoing problem, but believe this could go further in considering whether the CMR Unit should have more powers and resources to directly tackle firms operating illegally in a manner similar to that of the FSA.

11) In view of the moratorium that would exempt 'micro-businesses' from any new regulation (including amendments to the Conduct of Authorised Persons Rules) until 2014, do you consider there to be any compelling reasons why the proposed changes should be implemented prior to the end of the moratorium period?

The intention behind the moratorium to exempt micro-businesses from new regulation is to reduce the regulatory burden on the smallest firms during a time of great economic stress. However, it is also worth recognising that many consumers of CMCs will also have experienced significant financial pressure in the current environment. We believe that if there is evidence that micro-businesses are responsible for ongoing consumer detriment in this area, there will be compelling reasons for introducing the proposed changes prior to the end of the moratorium period.

13) Bearing in mind the Government's reducing regulation agenda, moratorium on micro-businesses and the general need to be proportionate in our approach; do you feel that further changes to the rules, not covered in this consultation are required in order to further improve the regulatory regime?

Approved Person's Regime

Individuals who wish to perform controlled functions under the FSA's approved person's regime need to be approved by the FSA, in order to ensure that they are 'fit and proper'. In assessing whether they are fit and proper, the FSA considers honesty, integrity and reputation, as well as competence and capability and financial soundness. Once approved, individuals have to continue to comply with this fit and proper test on an ongoing basis to remain approved.

We believe could be real advantages in instituting a similar scheme for CMCs. One of the strong concerns around the behaviours of this sector is dishonest conduct, and a perception that causes of consumer detriment in this area is not always tackled at the root. For example, at the moment, individuals who run firms in a dishonest manner can simply re-appear under a different guise or firm name if the regulator closes the business. This is a serious concern, and undermines the efficiency of the regulator and the system as a whole.

As such, we would strongly urge the MoJ to consider whether such reforms could be instituted in this area.

Legal Ombudsman

The Panels were very pleased to see the Government's announced proposals that, as of next year, the Legal Ombudsman will consider complaints against CMCs.

In the past, the regulatory structure for CMCs has been weakened by the fact that consumers have not had the right to have their individual grievances considered and appropriately addressed. The Panels' view is that customers of these firms should be able to have recourse to a complaints service in a similar manner to consumers of firms in the financial services industry. The Financial Ombudsman Service, although it handles a large number of claims that originate from CMCs, cannot consider claims *about* CMCs or their treatment of consumers. We recognise that CMCs often operate in a variety of markets in addition to financial services, such as the personal injury market. In essence, the service they provide is similar to that of the legal profession, and as such we believe that the Legal Ombudsman Service should be able to consider complaints about malpractices by CMCs.

Such an approach would allow consumers to complain in cases where they are charged fees which they were unaware of when they entered into contract, or cases where they have been encouraged to pay up-front fees for claims which are subsequently proved to be illegitimate or fraudulent.

As such, we strongly support this proposal, and believe it would be beneficial if this was introduced as soon as possible.