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Claims Management Regulation
Ministry of Justice
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3 October 2012

Dear Sirs

Claims Management Regulation: Proposals for amendments to the Conduct of Authorised Persons Rules

This is the Financial Services Consumer Panel's response to the Ministry of Justice consultation to amend the regulations which apply to Claims Management Companies (CMCs).

The Financial Services Consumer Panel (the Panel) is an independent statutory body, set up to represent the interests of consumers in the development of policy for the regulation of financial services. We have seen the poor practices of CMCs in relation to financial services complaints and have therefore focused on this area of CMC business in our response.

Overview

The Panel has long been concerned about the poor practices of many CMCs. This includes CMCs misrepresenting the cost of their service; misleading consumers with their advertisements; using high pressure selling tactics and bombarding people with unsolicited calls and text messages. While we recognise the Ministry of Justice has taken steps to address some of these objectionable practices, we believe further focus on this sector is needed to ensure CMCs treat their customers fairly.

The Panel broadly supports the proposed changes to the Conduct of Authorised Persons Rules which regulate CMCs. However, we feel there should be greater scrutiny and focus on the incentive structures employed within CMCs. We believe inappropriate reward mechanisms for frontline CMC staff are creating detriment and leading to many CMCs mis-selling their services to consumers.

The Panel also believes there needs to be a strong and visible enforcement of the rules, with action brought against any CMC which fails to meet the necessary standards. Indeed, we feel many of the current failures are caused by firms failing to meet the existing requirements or knowingly ignoring the rules rather than a failure of the rules themselves. Allocating additional and more appropriate resource to the CMC unit would, we feel, provide much improved protection for consumers.

As the Ministry of Justice will be aware, the Panel ultimately believes the new Financial Conduct Authority (FCA) should regulate CMCs for financial services

complaints. We feel this would provide a consistent regulatory approach for all areas of financial services complaints handling. We recognise that any such change will not be introduced in the short-term. It is therefore critically important for the Government and Ministry of Justice to ensure sufficient resources are allocated to maintaining standards in this sector in the interim.

Response to the consultation questions

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

The Panel supports the proposed changes and has no additional comments.

2) In relation to Client Specific Rule 6 (d), should the proposed amendment go further and prohibit CMCs from stating, during any marketing calls, that they are regulated unless specifically asked by a prospective client?

As we set out in our overview to this response, the Panel feels there needs to be a stronger and more visible approach to enforcing the Conduct of Authorised Persons Rules. Given existing weaknesses in the approach to monitoring CMC behaviours, we agree it is important to minimise the potential for CMCs to mis-represent their status or service they provide. We therefore feel it would be appropriate to prohibit CMCs from stating they are regulated in marketing calls unless specifically asked by the consumer.

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 Panel supports the proposal to require CMCs to publish details of their terms, conditions and charges on their websites. We also feel it would be appropriate to include this in any marketing material. Although enhanced disclosure alone cannot change consumer behaviours, this is a useful tool to help people understand the service a CMC offers and the conditions attached.

However, the Panel believes the conduct rules should go further than simply requiring information about a CMC's service to be published. It is essential that the information is presented in a meaningful way that is clear, fair and not misleading. We feel the Ministry of Justice should specify how this information (including charges) should be presented, helping to set good standards of practice across the industry. This would also help consumers compare the service offered by different CMCs.

Question 4 - In relation to Client Specific Rule 11, do you have any alternative proposals that could address the issues regarding fees charged by some CMCs? For example, could a ban on CMCs levying fees on anything other than a 'cash in hand' compensation award paid to a consumer be effective? (This would mean that a CMC could not charge a consumer a fee if the compensation awarded was deducted from the outstanding balance of a loan

or other type of credit agreement where the consumer does not receive the award directly).

And

Question 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 Panel feels the fees charged by a number of CMCs are unclear and excessive. This can significantly reduce the amount of compensation a consumer receives, particularly as these fees are liable to VAT. Increasing the transparency around how and when the consumer will be charged, plus an indication of the likely cost, is therefore essential. This will ensure a consumer is clear about any costs incurred before entering into a contract.

The Panel supports the principle underpinning the proposed ban on CMCs levying a fee on anything other than a 'cash in hand' basis. Indeed, we are aware that a number of consumers have been left unable to meet the cost of a CMC's service as the redress paid was offset against existing debt. These consumers were left with the unacceptable choice of taking a further loan to pay the CMC or rejecting the compensation awarded.

However, we are equally concerned that this ban could restrict consumers' ability to get the help they need to pursue a complaint. The Panel understands that banks and other creditors are legally entitled to offset any compensation payable against monies they are owed by the consumer.¹ This would prevent a CMC taking its 'cut' of the redress payable and will likely mean CMCs would be unwilling to help these consumers. The Panel therefore urges the Ministry of Justice to fully consider the unintended consequences of a ban on CMCs levying a fee on anything other than a 'cash in hand' basis before introducing such a rule.

We have no additional comments in response to questions 6 to 9.

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

The Panel feels many issues in the CMC sector stem from the tactics employed by firms to attract business. This includes bombarding people with unsolicited calls and text messages; and making misleading promises about the compensation they could get for the consumer.

While the current Conduct of Authorised Persons Rules cite numerous codes which CMC advertising, marketing and other soliciting of business should comply with, this has not stopped some firms using high pressure selling tactics. In response to this,

¹ This is established by the legal right of set-off in English Law, which allows litigating parties to set off claims so that when it comes to judgment of those claims the corresponding judgment sums will reduce the net judgment debt.

we believe the Ministry of Justice should reconsider its approach to this section of the rules. Greater emphasis should be placed on a firm's responsibility to treat prospective clients fairly. This includes communicating key information clearly and concisely before entering into a contract with a consumer such as:

- their right to complain directly to their financial services provider without using the CMC;
- how they will be charged for the CMC's service; and
- the cooling-off period where they can step away from the contract without incurring any charges.

The Panel recognises that some leads generated for 'authorised' CMCs come from a third party company which, as set out in the consultation, has reduced the Ministry of Justice's ability to tackle the poor practices of these firms. We believe this could be tackled more effectively by placing an obligation on regulated persons to have a responsibility for the actions of any third parties they use to generate leads. If authorised CMCs only pursue leads generated by firms which meet the regulatory standards set by the conduct rules, the third parties that do not meet these standards will be forced to change their practices or go out of business. For this approach to be successful, it must be accompanied by effective enforcement, with action brought against any regulated CMC which uses a third party to generate leads that does not comply with the conduct rules.

Question 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 Panel fully appreciates the Government's motivation for establishing a moratorium for micro-businesses from any new regulations. However, complaints management is a potentially lucrative business which, to a large extent, can be built on an automated process. It is therefore possible to run a sizeable CMC with less than 10 members of staff.

The Panel feels the Ministry of Justice should look at the CMC firms it regulates to determine what proportion operate with fewer than 10 people and whether these firms have previously been identified as employing poor practices. This will allow for an objective assessment of the risks involved with exempting micro-businesses from the proposed rule changes.

Question 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?

As indicated in our *overview* to this response, while the Panel supports the attempts to refine the conduct rules which govern CMCs, we feel these changes will only tackle the worst behaviours and areas of potential consumer detriment if they are enforced effectively. The Panel feels that many of the worst practices among CMCs contravene the general principles set out in the existing Conduct of Authorised Persons Rules. To ensure the proposed rule changes deliver a step change in

standards within the CMC sector, we believe these must be accompanied by strong and visible enforcement action.

We also believe there should be greater focus on the incentive structures employed within CMCs to ensure these are appropriate. Inappropriate reward mechanisms motivate frontline staff to mis-lead or mis-sell a CMC's service to the detriment of consumers.

Yours sincerely,

Kay Blair
Vice Chair, Financial Services Consumer Panel