HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Claims Management Companies

By Timothy Edmonds

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Summary

This note outlines the regulatory structure surrounding claims management companies. Concern has been expressed about their activities, especially in the context of motor insurance claims. Examples of individuals receiving unsolicited invitations to make false, or exaggerated claims, have led to concern about the impact of such activity on premium levels.

A review of CMC regulation was announced In the Summer Budget 2015. Its conclusion was that regulation for the sector should be passed to the Financial Conduct Authority (FCA). The Chancellor accepted this recommendation in the Budget 2016 and was given effect by the *Financial Guidance and Claims Act 2018*.

In June 2018, the FCA published its proposals as to how it would be regulating the sector when it takes over in July 2019.

1. The industry

The role of claims managers has been described as follows:

> Claims managers gather cases either by advertising or direct approach. The claims manager then either acts for the client to pursue a claim or as an intermediary between the claimant and the lawyers who may represent them. Claims managers make money from several sources - referral fees from solicitors, commission on auxiliary services, after the event insurance and sometimes from loans to the client.[1]

The Government estimated in 2006 that there were approximately 500 companies operating in the claims management sector and that the number would decline significantly once new regulations were introduced.[2]

The Better Regulation Taskforce's report, *Better Routes to Redress*, commented on the effect on claims management companies of the removal of public funding for most personal injury claims:

> Although there were a few claims management companies around before 2000, the Access to Justice reforms shifted the burden of funding personal injury claims from the public to the private sector therefore increasing significantly the demand on private sector providers. This change, combined with the relatively slow response of solicitors' firms to respond to the new market opportunities, created the conditions for a rapid growth in the claims management sector.
>
> In essence, a system was created where the client perceived no risk because their arrangements with the lawyer were "no win no fee" and their opponent's costs would be covered by funding, and if they won, the defendant would pay their costs. Neither is there any incentive for the claimant to keep their own costs down. Claims management companies take advantage of this system by gathering accident cases by advertising or direct marketing, administering the cases, and then farming them out to solicitors up and down the country. The companies earn their money by non transparent and complex systems of referral fees and charges. The losing side ultimately picks up their costs.[3]

Figures on regulation activity by the Regulator are shown below:[4]

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1 Department for Constitutional Affairs, *Regulation of Claims Management Companies Policy Statement*, 2 March 2006, p4, http://www.dca.gov.uk/legist/policy_statement.pdf
2 *Ibid*
3 May 2004, http://www.brc.gov.uk/downloads/pdf/betterroutes.pdf
4 MoJ, Claims Management Regulation Report 2013/14,

Claims Management Regulator activity

	2009/10	2012/13	2015/16	2016/17
Number of authorised CMCs	3,367	2,693	1,610	1,388
Applications refused	7	4	7	7
Authorisation cancelled	35	211	66	69
Authorisation surrendered	448	677	266	242
Financial penalties (number)	na	na	4	7
Warnings issued	140	285	247	196
Audits conducted	na	129	306	369
Advisory visits	na	na	1,172	942

Source: Claims Management Regulation Annual Reports various

The number of CMCs has clearly not declined since the 2006 estimate although there does seem to be a downward trend now from 3,300 in 2010, to under 1,500 now. Some of these individual registrations may be part of a group of companies so it is difficult to be precise about the real number, however, the expectation that the 2006 Act would dramatically reduce them does not appear to have come about.

Within this population, as the table shows there are a large number of inflows of new companies as well as outflows – most companies surrendering their licences rather than being forcibly removed. The number of businesses also responds to emerging case judgements and issues; for example, successive 'scandals' have encouraged the growth of CMCs within financial services. However, it is the personal injury sector that has seen most growth in numbers. The 2014/15 Report included the following table which represents the relative importance of the different sectors:

Claims management industry turnover, by sector

	Financial products and services		Personal injury		Employment	Housing disrepair, industrial & criminal injuries	Total
	£millions	%	£millions	%	£millions		
2016/17	540.6	74%	182	25%	0.4	2.9	726
2015/16	532	71%	215	29%	2.0	2.6	752
2014/15	458	59%	310	40%	2.7	1.5	772
2013/14	453	65%	238	34%	3.8	3.3	698
2012/13	653	65%	354	35%	4.0	3.1	1007

Source: Claims Management Regulation Annual Report 2016/17

The impact of a ban on referral fees was noted in the previous (2013/14) Annual Report. It noted:

> In April 2013 a ban on referral fees paid between CMCs, lawyers, insurers and others for personal injury claims was introduced. This had a significant impact on the personal injury claims market, with over 1,000 CMCs who were unable to adapt or change their business models to comply with the ban, leaving that sector. This shrinkage made the personal injury sector comparable in size to

> the financial products and services sector for the first time since regulation began.[5]

By the time of the 2014/15 Review the industry had clearly begun to adapt to the new rules:

> The characteristics of the sector have also remained polarised with a small number of the very largest CMCs featuring prominently in the personal injury claims sector. Despite the ongoing consolidation of the sector, a large number of small and locally operated CMCs have worked with solicitors to try and adapt their business models to make them compliant with the referral fee ban.
>
> For many of these CMCs, the main focus of their business is on providing services ancillary to personal injury. Other accident management activity including vehicle recovery, storage, repair and hire, has been proving more profitable than injury claim services. Some CMCs have actively diversified into these areas while those CMCs which are already doing so have seen these services become the primary income source.[6]

Up to date information about developments in the CMC regulatory sphere can be found in the MOJ's regular Claims Management Regulation Bulletins. These can be found via the Gov.UK website.

5 MoJ, Claims Management Regulation Report 2013/14
6 MoJ, Claims Management Regulation Report 2014/15

2. Regulation

2.1 Introduction

The regulation of CMCs is about to pass from the Ministry of Justice to the Financial Conduct Authority (FCA) by virtue of Part 2 of the *Financial Claims and Guidance Act 2018*.

In the Summer Budget 2015 the Government announced a review of CMC regulation and the possibility of a charge 'cap' on fees for work that would be decided by the Financial Ombudsman.

In the Spring Budget 2016 the Chancellor announced:

> **1.206** The government is clamping down on the rogue claims management companies (CMCs) that provide bad service and bombard customers with nuisance calls. Alongside action to cap the amount that CMCs charge, **Budget 2016 announces that the government accepts the recommendations of the independent review into the regulation of CMCs.** The new regime will be tougher and will ensure CMC managers can be held personally accountable for the actions of their businesses. In order to ensure that the new regulatory regime is implemented effectively, the government intends to transfer responsibility for regulating CMCs to the Financial Conduct Authority.[7]

The next section includes a brief summary of the existing regulation and what is known of its future.

2.2 Current regulation

Part 2 of the 2006 *Compensation Act* established the broad regulatory framework for CMCs, supplemented, where applicable, by other consumer protection legislation and, depending on the activity, FCA Rules. The framework applies to England & Wales, there is no equivalent for Scotland.

The framework is summarised in a MoJ guidance note as follows:

> Summary
>
> Regulation applies to claims made for compensation in relation to personal injury, criminal injuries compensation, Industrial Injuries Disablement Benefit, employment, housing disrepair and financial products and services.
>
> Almost any activity in relation to claims, from simply referring claims through to representing clients, is covered. The aim is to target those who provide the regulated services for commercial gain.
>
> […]
>
> Sectors
>
> The Act covers claims in six sectors –
>
> (a) Personal injury, including work-related injury, disease or disability;
>
> (b) Criminal injuries compensation;

[7] HM Treasury; Budget 2016; HC 901

(c) Industrial Injuries Disablement Benefit;

(d) Employment;

(e) Housing disrepair; and

(f) Financial products and services.

Services

Specifically, the following services are covered –

(a) advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action;

(b) advising a claimant or potential claimant in relation to his claim or cause of action;

(c) referring details of a claim or claimant, or a cause of action or potential claimant, to another person, including a person having the right to conduct litigation (but not if it is not undertaken for or in expectation of a fee, gain or reward);

(d) investigating, or commissioning the investigation of, the circumstances, merits or foundation of a claim, with a view to the use of the results in pursuing the claim;

(e) representation of a claimant (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representation is made).

Exemptions

The following are exempt from the need for authorisation -

(a) Legal practitioners

(b) Persons providing claims management services that are already regulated activities under the Financial Services and Markets Act or who are exempt from the need to be authorised under that Act. This includes insurance companies.

(c) Charities.

(d) An individual acting otherwise than in the course of business […] provided it is not done for reward.

(e) Trade unions certified as independent,

(f) Independent complaints reviewers.

(g) Student unions.

(h) The Motor Insurers Bureau, the Medical Protection Society and medical defence unions.[8]

The regulator under the *Compensation Act* is the Ministry of Justice (MoJ) but regulation is delivered by the Claims Management Regulation (CMR) Unit. The CMR Unit is responsible for managing the operation of the regulatory system, which includes handling applications and complaints, monitoring compliance, investigating malpractice and taking enforcement action. The main CM rule book can be found in the Claims Management Regulation Conduct of Authorised Persons Rules 2018.

8 Ministry of Justice, Who needs to be authorised under the Compensation Act 2006 Guidance note

Following the passing of the *Financial Services (Banking Reform) Act 2013* The CMR was given new powers to fine CMCs. Originally the government had argued that CMCs were not best placed to be regulated within the financial sector, it just happened that that was where there were most active now.

Section 139 of the 2013 Act gave the CMR the power to levy fines. This was an amendment introduced on Report in the Lords. Announcing the change of view the Minister said:

> Turning first to the government amendments on CMCs, it is clear that bad practice by certain claims management companies operating in the financial services sector has created poor outcomes for both consumers and businesses. As the scale of potential claims for PPI compensation has become clear, CMCs have become particularly active in this market. Unfortunately, this increase in activity has in some cases been accompanied by an unacceptable fall in standards. CMCs have a legitimate role to play in helping consumers claim compensation. However, a minority have been acting irresponsibly. Some CMCs submitted illegitimate claims which clog up the system. This poor behaviour has led to delays in receiving compensation for consumers who have legitimate claims and has increased costs for defendant financial services firms where claims are unsubstantiated. This issue is most prevalent in, but not limited to, the financial services sector and the PPI claims market in particular. Despite the threat of the suspension or cancellation of authorisation, some CMCs act speculatively which can impose unnecessary costs on defendant businesses and ultimately on consumers.
>
> These amendments enable the Secretary of State to make regulations giving the claims management regulator the power to impose financial penalties on those CMCs guilty of misconduct, which will lead to tighter regulation of the industry and better outcomes for consumers and businesses. They also make a number of consequential amendments, ensuring that the provisions of the Bill on secondary legislation, including the power to make incidental or transitional provision, are extended to apply to the Secretary of State as well as the Treasury; that the commencement power applies to these provisions; and that providers of claims management services are referred to in the Long Title of the Bill.
>
> Bolstering the claims management regulator's enforcement toolkit by giving it a power to fine those engaged in malpractice provides an additional means to deter speculative activity. Further, a power to fine could serve as a useful alternative penalty in cases where it can be disproportionate to vary, suspend or cancel the authorisation of a CMC despite it not being compliant. Where a CMC's authorisation is suspended or cancelled, for example, it can no longer act on behalf of its clients and this can lead to further consumer detriment. We can ensure that these CMCs go on to work in the best interests of consumers by making sure that they adhere to the codes of practice and *Conduct of Authorised Persons Rules* issued by the claims management regulator. These rules require CMCs to conduct themselves with honesty and integrity, including requirements to not make speculative claims, to not use misleading advertising, and to not partake in high-pressure selling. I apologise for that stream of split infinitives.
>
> Not only will those who break these rules be subject to fines, the claims management regulator is also currently consulting on these

> rules in parallel to this amendment to further strengthen the consumer, business and third-party protections they offer. This ability to impose a financial penalty will be implemented by secondary legislation. It will be done by way of amendments to the existing regulations—the Compensation (Claims Management Services) Regulations 2006. A public consultation regarding the detail of the necessary changes to facilitate a claims management regulation financial penalty scheme will be launched in early 2014. Also, any changes to these regulations, including the measure of the financial penalties to be imposed, will be subject to the affirmative procedure, allowing for necessary scrutiny of the detail of the proposals in Parliament. It is critical that we tackle poor practice in this sector. These amendments, giving the Secretary of State power to permit the claims management regulator to fine claims management companies will mean that those non-compliant CMCs will have to pay the price of their poor behaviour.[9]

The CMR produces an Annual Report on its Activities. The 2016/17 Report can be found here. Full details, and other publications, can be found on its website: Claims Management Regulator.

2.3 Review

In the Summer 2015 Budget Red Book, the Government made the following announcement:

> 1.207 The government remains committed to ensuring customers can purchase insurance at a fair price. The cost of home contents insurance has fallen by 8% since last year, and the cost of comprehensive private motor insurance has fallen by 10% in the last 3 years. The government will reform the regulation of the claims management sector to help to drive out further unnecessary costs from insurance premiums. This Budget announces a fundamental review of the regulation of claims management companies (CMCs), led by the Chairman of the Chartered Trading Standard Institute Board Carol Brady, which will report to HM Treasury and the Ministry of Justice in early 2016.
>
> In addition, there is also a case for reform of the fees that CMCs charge consumers, particularly in those instances where consumer complaints fall within the remit of the Financial Ombudsman Service. Therefore, the government will bring forward proposals for the introduction of a cap on the charges that CMCs can apply to their customers, and will consult on how this will work in practice.[10]

The announcement was broadly welcomed by legal bodies. A publication relevant to the proposal on a fee 'cap' was jointly published by the Financial Ombudsman, the Ministry of Justice, the FCA and the Financial Services Compensation Scheme (FSCS). It advises:

> There is no need to use a CMC to reclaim mis-sold PPI. It is straightforward to complain to financial firms directly, and if necessary to the ombudsman service or FSCS, without using a

9 HL Deb 27 November 2013 c1476
10 HM Treasury Summer Budget 2015

> CMC. Complaining yourself is free, and you will keep any compensation you receive without any fees being deducted.

And

> Your complaint won't be decided any differently by either the ombudsman service or FSCS if it reaches them. Under FCA rules financial firms should investigate your complaint fully, whether or not a CMC is involved. The CMC cannot increase your compensation or speed up how quickly your complaint will be looked at by the ombudsman service or FSCS.[11]

In the Spring Budget 2016 the Chancellor announced:

> **1.206** The government is clamping down on the rogue claims management companies (CMCs) that provide bad service and bombard customers with nuisance calls. Alongside action to cap the amount that CMCs charge, **Budget 2016 announces that the government accepts the recommendations of the independent review into the regulation of CMCs.** The new regime will be tougher and will ensure CMC managers can be held personally accountable for the actions of their businesses. In order to ensure that the new regulatory regime is implemented effectively, the government intends to transfer responsibility for regulating CMCs to the Financial Conduct Authority.[12]

Regulation of CMCs was passed to the Financial Conduct Authority (FCA) by virtue of Part 2 of the *Financial Claims and Guidance Act 2018*.

2.4 New FCA regime

If history is a guide, when the responsibility for regulation of consumer credit passed to the FCA the regime was generally thought to be more intrusive and conduct focussed and 'hard' rather than simply being an extension of a licensing system under the previous OFT.

The main change to the regulations that CMCs will face under the new regime under the FCA is that there will be a cap on the charges which they can levy. The FCA will be responsible to devising this scheme.

Ahead of this, the *Financial Guidance and Claims Act* imposes, directly, an interim cap on fees (20% exc VAT) which will apply to PPI claims from July 2018, ahead of the 2019 PPI claims deadline. Information about this interim cap can be found in a CMC publication here.

Another difference in regime will be that it will, for the first time apply to Scotland too.

Information about expectations of conduct by CMCs can be found in a joint document produced with the MOJ here.

On 5 June 2018, the FCA published its proposals for how to regulate the sector. Announcing its finding the FCA said in a press release that:

> The Financial Conduct Authority (FCA) has today published draft rules outlining how it will regulate claims management companies (CMCs) when regulation passes to the FCA on 1 April 2019.

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11 *Claims Management Companies and Financial Services Complaints*; Ministry of Justice; FCA et al.

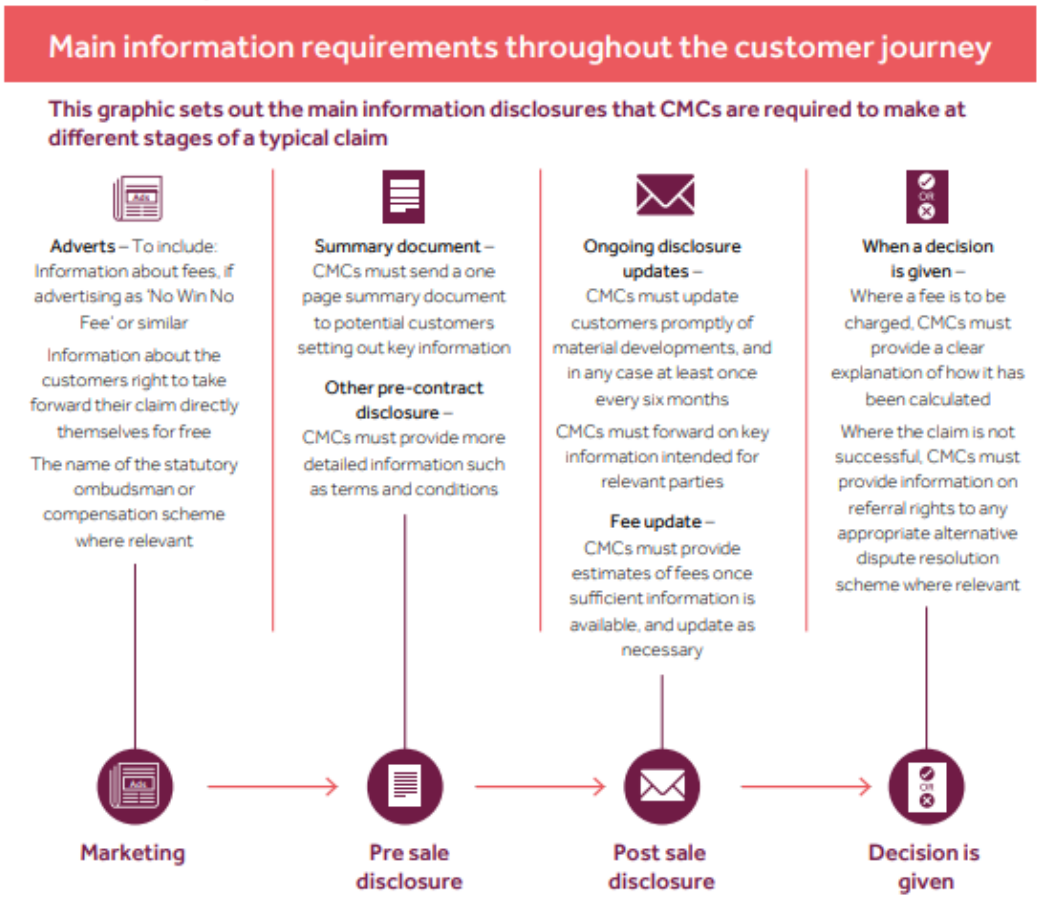
12 HM Treasury; Budget 2016; HC 901

> Following a review of CMC regulation commissioned in 2015, the Government announced that the FCA would take over regulation of CMCs. Regulation will extend to Scotland, where firms are currently unregulated. The FCA has today set out how it proposes to authorise and supervise firms and the steps it will take should CMCs breach FCA rules.
>
> Andrew Bailey, Chief Executive of the FCA said:
>
> > "A well-functioning claims management sector can help to provide justice and redress to people who have suffered harm. But the market doesn't always work as it should and poor conduct persists across the sector.
> >
> > "We want CMCs to be trusted providers of high quality, good value services that can truly help consumers. A key element of our approach to regulation will be ensuring that consumers are both protected and treated fairly. The proposals we have outlined today are integral to achieving that aim."
>
> The FCA's proposals will require CMCs to provide a potential customer with a short summary document containing important information such as an illustration of fees charged and an overview of the services the CMC will provide. This document will need to be provided before any contract is agreed.
>
> CMCs will also need to highlight any free alternatives to using the CMC, such as ombudsmen schemes, in marketing material and pre-contract disclosures.
>
> CMCs that buy so-called 'lead lists' from third parties will be required to carry out due diligence to ensure that the leads have been obtained legally and to keep records of this. The FCA is also proposing that CMCs will have to record and keep all calls with customers for at least 12 months.
>
> Other requirements on firms will include a requirement for firms to hold capital linked to the type of business they undertake and further new requirements to protect any money firms hold on behalf of clients.[13]

The full proposals can be found in Consultation Paper 18/15. According to the Summary CP, many of the existing rules will continue, and not all the new ones will apply straight away. The document includes a diagrammatic representation of what will be the typical 'customer journey':

[13] FCA Press Release 5 June 2018

Diagram 1: summary of the main information requirements throughout the customer journey



Other reforms will cover the prudential stability of firms and protections for clients' money.

The FCA also plan to extend the Senior Managers and Certification Regime (which allocates personal responsibility for an authorised firms actions) to CMCs although this proposal will be consulted upon separately.

3. Specific complaints

3.1 Unsolicited text messages

Several Members have had letters from constituents complaining about having been sent text messages encouraging them to claim for fictitious injuries with the promise of easy and substantial compensation awards. In a separate document the MoJ stated that:

> Text messaging We are targeting the sending of unsolicited text messages and the businesses which appear to be involved in such practices. As part of this exercise we are working closely with the Direct Marketing Businesses Association, Information Commissioners' Office, other regulators and the mobile marketing Ombudsman (FOS).industry to share knowledge and skills to tackle the malpractice.[14]

The Direct Marketing Association Code of Practice mentioned above includes the following section about unsolicited text messages:

> Unless the customer exemption principle applies, members must not send or instigate the sending of unsolicited commercial communications via SMS unless:
>
> (Communications with consent)
>
> The recipient of the SMS has previously notified the member that they consent, for the time being, to receive such communications, for example by having ticked an opt in box
>
> The member has clearly stated its identity or, where the member is acting as a data processor by sending out an SMS marketing communication at the instigation of the data controller, the identity of the data controller. The recipient of the SMS communication must be able to clearly identify that the SMS message is a marketing communication and identify the data controller on receipt of the SMS so they may delete the communication without having to open it, and
>
> The member has provided the recipient with valid address details where requests can be sent for such SMS communications to stop. Members must provide an unsubscribe mechanism, such as a text back STOP facility, a website address or a local rate telephone number or a postal address where unsubscribe requests may be sent. Premium rate or national rate numbers are not acceptable. (NB: because of the 160 character limit members can provide an alternative mechanism, such as a website address or standard rate local rate telephone number, through which an individual can send an unsubscribe request).
>
> (Unsolicited SMS communications without consent)
>
> Members may send or instigate the sending of unsolicited commercial communications via SMS without the explicit consent of individuals where:
>
> The member has obtained the mobile telephone number in the course of selling or negotiating to sell products or services to the individual (i.e. the individual is a customer of the member), and
>
> The commercial communication only relates to similar products or services sold by the member only, and

[14] MoJ, CM Regulation bulletin 12

> The member provides a simple means of enabling the individual, without charge, (other than the cost of transmitting the refusal), to refuse the use of their mobile number for such purposes, both at the time the number was first collected (i.e. an opt out box) and, where the individual initially allows the use of their mobile number for such purposes, in each subsequent mobile communication (i.e. a return unsubscribe mechanism using for example "STOP" to a valid short code, which does not incur a premium rate charge and an abbreviated name), and
>
> The member has clearly stated its identity or where the member is acting as a data processor by sending out a mobile marketing campaign at the instigation of the data controller, the identity of the data controller on whose behalf the communication is sent.[15]

3.2 Cold calling

Many of the complaints received by Members about CMCs relate to 'cold calling' communications. The ways that CMCs market themselves and attract custom are governed by the Conduct of Authorised Persons Rules published in 2007. The following section is most relevant.

> Advertising, marketing and soliciting business
>
> 2. All advertising, marketing and other soliciting of business must conform to the relevant code –
>
> The British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code)
>
> The BCAP Television Advertising Standards Code
>
> The BCAP Radio Advertising Standards code
>
> The BCAP Code for Text Services.
>
> These codes are accessible at www.cap.org.uk/cap/codes/.
>
> For the purposes of this rule a business's website shall be deemed to constitute advertising, and must comply with the CAP Code.
>
> 3. A business must not engage in high pressure selling.
>
> 4. Cold calling in person is prohibited. Any other cold calling (by telephone, email, fax or text) shall be in accordance with the Direct Marketing Association's Direct Marketing Code of Practice.
>
> 5. Business must not be solicited in any way, including leaflets and advertising, in medical facilities or public buildings without the approval of the management of the facility or building.
>
> 6. In soliciting business through advertising, marketing and other means a business must –
>
> a) Clearly identify the name of the advertiser.
>
> b) Not offer an immediate cash payment or a similar benefit as an inducement for making a claim.
>
> c) Not promote the idea that it is appropriate that compensation may be used in a way that is not consistent with the cause of the claim.
>
> d) Not imply that the business is approved by the Government or is connected with any government agency or any regulator. (If a business wishes to mention in advertising and marketing material

[15] Direct Marketing Association, Code of Practice, 4th Ed June 2011, p130

that it is authorised it may use only the following words which must be used in their entirety: "Regulated by the Ministry of Justice in respect of regulated claims management activities".)

7. Use of the expression "no win no fee" must be in accordance with the CAP HelpNote on "No Win No Fee claims".

8. Where business is introduced to a solicitor, the business must not act in a way that puts the solicitor in breach of the rules governing solicitors' conduct.

9. A business must seek to ensure that any publicity for its services issued by a third party and which is intended to solicit business for it complies with these rules.[16]

[16] Conduct of Business Rules, Ministry of Justice, May 2007

4. Complaining about a CMC

All authorised businesses in England & Wales are required to operate a complaints handling scheme in accordance with the Complaints Handling Rules. Under these rules, if a consumer complains about the service received, the business is given the opportunity to remedy matters. If a consumer is unhappy with how their complaint has been handled they have two routes to complain.

They can complain to the Claims Management Regulator if the complaint is about the conduct of a CMC. This could include:

- breaking the conduct rules for claims companies
- unsolicited calls or texts - find out how to stop or reduce them
- not being registered on the Authorised Business Register

Reviews involve a full re-examination of the facts and in some circumstances require further investigation and discussions with the business concerned. If a complaint is upheld the Regulator has powers to direct a business to apologise, re-do work and in some limited circumstances provide a partial or full refund of fees paid. According to the MoJ "The number of complaints escalated in this way continues to account for only a very small proportion of the total number of complaints received".

The Claims Management Regulator can be contacted on 0333 200 011 or at

Claims Management Regulation Unit
Monitoring and Compliance Office
57-60 High Street
Burton on Trent
Staffordshire
DE14 1JS

Alternatively, consumers can complain to the Legal Ombudsman if the complaint is about the service received from a claims company, e.g. the results of the claim or the level of fees charged.

This was brought in by commencement of section 161 of the *Legal Services Act*, following an amendment in the 2013 *Banking Reform Act*.

How the Legal Ombudsman operates is set out on their website here. Their contact details are cmc@legalombudsman.org.uk or telephone: 0300 555 0333.

With respect to complaints in Scotland, according to the CMC regulator:

there is not a regulator for claims management companies based in Scotland. We usually advise consumers to report any concerns about a claims management company in Scotland to their local Trading Standards and to seek further advice from the Citizens Advice Bureau.

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