

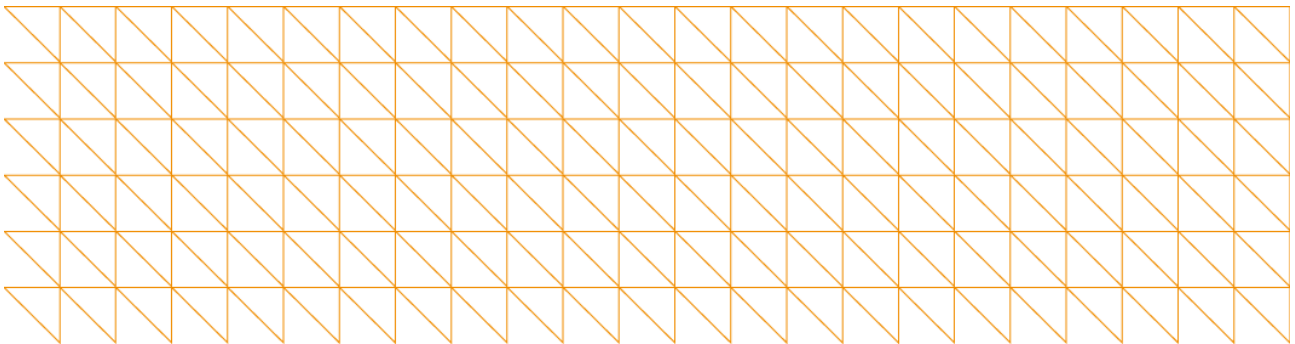


Ministry
of Justice

Claims Management Regulation Response to Consultation

Proposals for amendments to the Conduct of Authorised Persons Rules

Response to Consultation CP(R) 15/2012
This response is published on 8 April 2013





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of Justice

Claims Management Regulation Response to Consultation

Proposals for amendments to the
Conduct of Authorised Persons Rules

Response to consultation carried out by the Ministry of Justice.

This information is also available on the Ministry of Justice website: www.justice.gov.uk

About this consultation

To: All Claims Management Businesses throughout England and Wales
The Regulatory Consultative Group (RCG)
Any other party with an interest in claims management matters

Duration: From 22/08/2012 to 03/10/2012

Enquiries (including requests for the paper in an alternative format) to: Claims Management Regulation – HQ Office Enquiries Team
Ministry of Justice
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Proposals for amendments to the Conduct of Authorised Persons Rules

Summary of responses

Introduction and contact details

This document is the post-consultation report for the consultation paper, 'Claims Management Regulation – Proposals for amendments to the Conduct of Authorised Persons Rules [CP15/2012]'

It will cover:

- the background to the report
- a summary of the responses to the report
- a summary of the responses to the questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting the Claims Management Regulation Unit (CMR Unit) HQ Enquiry Team at the address below:

Claims Management Regulation – HQ Office
Ministry of Justice
102 Petty France
London SW1H 9AJ

Telephone: 020 3334 6396 / 3173

Email: claimsmanagementregulation@justice.gsi.gov.uk

This report is also available on the Ministry's website: www.justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process, you should contact the Ministry of Justice at the above address.

Executive Summary

1. Since the inception of Claims Management Regulation (CMR) in 2007, we have made good progress in driving out most of the bad practices that were prevalent in the industry prior to regulation. It is clear however that more can be done to improve the current conditions as the claims management industry continues to evolve. We are ensuring that we keep pace by working with other relevant organisations such as the Information Commissioner's Office (ICO) to tackle the emerging issues seen within the regulated claims management sector.
2. Since the start of regulation, over 900 CMCs have had their licences removed. More recently over 350 CMCs were shut down, suspended or warned regarding bad practices between July and December 2012. We will continue to take robust action against those proven to be in breach of the conduct rules as appropriate and necessary moving forwards.
3. More action is required in order to improve the conduct of CMCs generally and also strengthen consumer protections across the various claims management sectors. We are therefore, in particular, improving consumer protection by amending the Conduct of Authorised Rules under the provisions of Regulation 25 of the Compensation (Claims Management Services) Regulations 2006.
4. On 1 April 2013, a ban on the offering of financial rewards or similar benefits as an inducement to make a claim was brought into force. The ban applies to all regulated CMCs. This response to consultation document sets out the following additional key measures that will come into force from **8 July 2013** to improve the regime even further:

- CMCs will only be permitted to refer to being regulated by 'The Claims Management Regulator'.
- Requirement for CMCs that also represent clients in making a claim to obtain a client signature before a contract can be agreed. In addition, pre-contractual information sent to a client prior to the agreement of a contract must be clear and also reproduced prominently on the business's website (*where a CMC operates a website*).
- Requirement for CMCs to inform their client base of any suspension or variation to the business's authorisation within 14 days of the imposition of such action.

5. The key proposals set out in this response are intended to increase consumer protection and awareness for those wishing to use the services of a regulated CMC. We will continue to monitor the effectiveness of the rules and will consult on any further proposals deemed necessary in future.

Background

The consultation paper '*Claims Management Regulation – Proposals for amendments to the Conduct of Authorised Persons Rules [CP15/2012]*' was published on 22 August 2012 and ran until 3 October 2012. It invited comments on proposals to amend the Conduct of Authorised Persons Rules.

Following a review of the rules, key amendments were proposed in the following areas:

- **Claims Management Companies (CMCs) referencing of their regulatory status** – *Proposed removal of the Ministry of Justice (MoJ) brand from the regulatory statement.*
- **Pre-contractual information requirements** – *Proposed requirement that contracts can only be agreed in writing and before any fees are taken.*
- **Client Updates** – *Proposed requirement that CMCs must inform their clients of any enforcement action resulting in the variation or suspension of authorisation to provide regulated claims management services.*

The consultation paper also indicated our intention to consider other key issues such as whether restrictions are required on fees charged to consumers by CMCs where the redress awarded is a non 'cash in hand' compensation award, cold calling and also other general matters. Views were also invited on whether more transparency is required overall and whether this would be assisted by a requirement for CMCs to publish their contractual terms and conditions on their websites as standard.

The consultation period closed on 3 October 2012 and this report summarises the responses, including how the consultation process influenced the final proposals. A list of respondents is at annex A

The Impact Assessment accompanying the consultation was updated to take account of the evidence provided by stakeholders during the consultation period and can be found at annex C.

General Summary of responses

6. A total of 81 responses to the consultation paper were received. Of these, approximately 50% of the responses were from regulated CMCs with the remaining 50% of the responses coming from stakeholders, financial services providers, solicitors and other organisations.
7. The responses to consultation were analysed for evidence of the potential impact of the proposals on business; general levels of support and feedback on how the proposed changes may potentially be improved. The majority of responses to the consultation agreed with the general direction of the proposed amendments and signalled support for any efforts to improve regulation, provide increased protection for consumers and improve the reputation of the industry.
8. As the majority of the industry works in accordance with the conditions of authorisation, support for the proposals was also received from the majority of the CMCs that responded. The majority of stakeholders and other organisations in general also agreed with the direction of the proposals in light of the foreseen benefits to consumers and the industry overall.

Regulatory Statement

9. 60% of the responses agreed with the proposal to remove the MoJ brand from the regulatory statement. Those in support agreed that the current regulatory statement can in some cases engender a false sense of security in consumers, who believe that a regulated business is endorsed or recommended by the MoJ, even if used in the prescribed way.
10. 20% of the responses however, did not agree with the proposal. Some of these responses stated that it could create more confusion, with some consumers being less likely to understand who they should complain to should they wish to report a CMC for malpractice or potential breaches of the rules. The remaining 20% of responses did not indicate any clear opinion on the proposal. Some responses however did suggest that the proposed change was merely an attempt by the MoJ to distance itself from what is deemed by some to be a problematic and controversial industry in general.

Signed Contract Requirement

11. 60% of the responses agreed with the proposed requirement for signed contracts where a CMC also represents a client in making a claim. It was also apparent from the responses received that many CMCs already use signed contracts and that any requirement in this regard would therefore be welcomed in order to bring the rest of the industry into line. Responses in agreement suggested that a requirement for signed contracts would increase trust between CMCs and consumers in general and provide better protection for consumers, particularly those in dispute with a CMC. It was also stated by some that not only will consumers be protected but that this also better protects the CMCs from disputes arising over an agreement. It became clear from the responses that it is mainly those operating in the financial products and services sector that do not use signed contracts and that verbal contracts are not

12. 15% of the responses did not agree with the proposal and the remaining 25% of the responses did not provide any clear agreement or disagreement with the proposal

Client Updates

13. 55% of the responses welcomed the proposed requirement for CMCs to inform their clients of any variation or suspension of their authorisation. It was clear from the responses that a minimum level of customer service should be maintained and that this would include informing clients of any regulatory action imposed on the business. It was suggested by some that in order for the rule to be truly effective, CMCs would need to update their clients within a specified timeframe to ensure that clients can assess their options as necessary and as soon as possible. The remaining 45% of responses did not provide an opinion on the proposal.

Other Considerations

14. Views were sought on whether further restrictions are required on fees charged by CMCs where the ultimate compensation award is not given to the consumer as a 'cash-in-hand' payment, but rather as a reduction in arrears or monthly payments on a financial agreement.
15. Generally, support was low for any possible restriction or ban on fees being charged by CMCs where the redress awarded is not a 'cash-in-hand' payment to the client. Responses from across various claims sectors and stakeholders suggested that the issue here was the need for further transparency around the fees that may be charged by CMCs rather than any real need for further restrictions in this area.
16. Views were also sought on the current rules around cold calling and whether any changes were needed to the current requirements. We are aware that concerns exist regarding the level of cold calling seen generally and reference to this was also seen in some of the responses to consultation.
17. Although some responses acknowledged the work we have been doing with the lead regulator in this area, the Information Commissioner's Office (ICO), some responders outlined their view that more could be done. In particular, the Citizen's Advice Service and consumer group Which? have been campaigning for some time for a complete ban on all cold calling in the industry and reaffirmed their views on this in their responses to consultation.

Responses to consultation questions

18. The consultation asked a number of specific questions regarding each of the proposed changes as well as some more general questions. A full list of all questions asked is contained at annex B. Detailed information regarding specific responses to the consultation however is set out below.

Client Specific Rule 6 (d) – Proposed removal of the MoJ brand from the regulatory statement

Level of Support

19. **Support for the proposed amendment was received in 52 of the 81 responses. A further 9 responses indicated a disagreement with the proposal and the remaining responses did not signal any clear support or opposition but provided general observations.**
20. The Solicitors Regulation Authority (SRA) took the view that practitioners should take all steps so as to ensure that their publicity is not misleading and is sufficiently informative to ensure that consumers and others can make informed choices.
21. Consumer group Which? and the Civil Justice Council (CJC) also supported the proposal. In addition, The Law Society reported that they are aware that the regulatory statements have caused confusion amongst some consumers and would welcome the proposal.
22. Other responses indicated a clear disagreement with the proposed change. The IFR Group stated that the proposal would not have the intended effect and would make no difference to the public perception. Missold Interest Only Ltd believed that the proposal was an attempt by Government to disassociate itself from the industry.

Business impact

23. Most responses suggested that the proposal would create little to no costs to business. These responses also agreed with this view on the basis that a sufficient transitional or grace period would allow CMCs to adapt to the changes.
24. National Accident Helpline (NAH) stated that they did not object to the proposal in principle but suggested that an appropriate transitional period of 6 months be put in place for the industry to adapt. Assured Money Solutions stated that there would undoubtedly be a modest cost to CMCs in implementation but that this would be reduced if a grace or lead in period was allowed.
25. Although very little monetisation of the costs to transition were provided overall, general indications were provided in some instances. Some smaller CMCs appeared to suggest that the costs to transition could range from between £100 to £1000. Some larger businesses involved with marketing on a bigger scale provided estimates of £1000 - £3000. One business reported that without a long grace period, costs could be significant and conservatively estimated that the change could cost up to £10,000 regardless of any grace period applied.

Other issues for consideration

26. The consultation also asked for further comments on whether the proposal should go further and prohibit CMCs from stating, during any marketing calls, that they are regulated unless specifically asked by a prospective client.
27. Some responses suggested that the proposal should not go further in this regard. Hayward Marsh LLP stated that a simple qualification would be sensible and helpful to explain that a business is regulated by the MoJ but that this does not imply that they are endorsed by the MoJ or wider Government.
28. Some responses however suggested that the rule could go further. The Finance and Leasing Association (FLA) stated that the statement should also include wording that outlines that regulation is not an endorsement and who to go to for complaints. Consumer group Which? held the view that the rule should go further as they could not see any reason why a CMC would need to mention regulation at all. Which? stated that they are concerned that even the mention of regulation could give consumers an incorrect impression of a business being approved or recommended by the Claims Management Regulation Unit (CMR Unit).
29. We Fight Any Claim (WFAC) held the view that CMCs should not be prevented from using such phraseology but not as an indication in any way that they are endorsed by the MoJ. WFAC went on to state that it is important that CMCs are allowed to distinguish between themselves as a regulated CMC and those that are either exempt or are simply trading unregulated.

Client Specific Rule 11 – Proposed requirement for signed contracts between CMCs and a client where the CMC also represents a client in making a claim

Level of support

30. **Support for the proposed amendment was received in 53 responses to the consultation. A further 4 responses indicated a disagreement with the proposal and the remaining responses did not signal any clear support or opposition but provided general observations.**
31. The Legal Ombudsman (LeO) indicated that they supported the principle of ensuring that consumers are fully informed of the relationship they are entering into and were encouraged by the proposed changes. LeO also suggested that the rule could be improved further by requiring all pre-contractual information to be clear and concise rather than just comprehensive.
32. The CSC Financial Services Group fully endorsed the change and reported that they had already incorporated the proposed wording within their own code of practice. MoneySavingExpert.com (MSE) stated that the main advantages they see to the proposals overall are the requirements for signed contracts prior to any fees being taken. MSE believed that this would hopefully ensure that those consumers who actively choose to use a CMC understand the services and costs involved before agreeing a contract.
33. Some responders however disagreed with the proposal. ACM URL Ltd stated that the proposal requires further consideration and that they did not see how the amendment

would add value. The Claims Guys Ltd commented that future technological advances will enable differing methods of agreeing a contract and that the proposal could impact on that and should be considered.

Business Impact

34. Most responses to the consultation suggested that financial impacts of the proposals would be negligible and that the proposal is largely beneficial to the industry overall.
35. Release Money Group Ltd believed that signed contracts would demonstrate a commitment on both parties and would have no impact on business volumes. Assured Money Solutions stated that there are benefits to be seen in the proposal for those that do not currently use signed contracts and that the impact of this rule should increase business volumes as the trust level between the prospective customer and the CMC should increase.
36. The FLA stated that good CMCs are already meeting these additional requirements and for those that are not, the consumer benefits would outweigh the potential implementation costs to businesses. Refresh My Credit Ltd did not see any negative impact and suggested that the proposal would help clarify whether a client has already entered into a contract as they would hopefully know if they have signed documents with another CMC. Refresh My Credit Ltd went on to state that the proposal would ultimately improve the reputation of the CMC market.
37. Some responses however suggested that the effects of the proposed change would be negative. Auto Assist Direct Ltd indicated that there would be costs to draw up a contract and send to a client which could delay a claim. In addition, Auto Assist Direct Ltd stated that people do not like extra administration and that this is a barrier to access to justice.

Other Issues for consideration

Publication of contractual terms and conditions online

38. The consultation asked for feedback on whether the proposal should go further to require that all terms and conditions of a contract are published online in order to assist consumers.
39. **Support for a requirement to publish contractual terms and conditions online was received in 38 responses to the consultation. A further 4 responses indicated a disagreement with the remainder providing general observations or no opinion.**
40. NBR Financial Ltd suggested that CMCs should be required to publish terms and conditions online as CMCs should be open and transparent with clients. Hall & Co also agreed that CMCs should publish the terms and conditions of their contracts online for transparency. Assured Money Solutions Ltd held the view that from both a commercial and regulatory point of view, it must be beneficial to both the CMC and the prospective customer that their terms and conditions of business are published online and that this should be mandated within Client Specific Rule 11.
41. Some responses did not support the publication of terms and conditions online. The Association of Regulated Claims Management Companies (ARC) stated that it was

not appropriate for what is clearly commercially sensitive information to be forced to be produced on websites. ARC went on to state that should CMCs wish to provide this information, whether as a sales technique or otherwise, then that is a matter for them. The Access to Justice Action Group (AJAG) stated that CMCs should not be required to publish their terms and conditions online as this would be of great assistance to competitors and a requirement in this regard would be anti-competitive. AJAG went on to suggest that as long as the consumer is aware of the terms and conditions, then this should be sufficient.

42. Some general comments were also received. The Building Societies Association (BSA) held the view that whilst websites were a useful source of information, not all consumers have internet access and /or use electronic channels for personal financial business so CMCs would need to provide information on costs and other matters through alternative means as well.

Restrictions on fees charged by CMCs where the ultimate redress is not given in the form of a 'cash-in-hand' award

43. Consultees were asked whether further restrictions were required in relation to the fees CMCs are able to charge to consumers where the final redress is not paid to the consumer as a cash award but by a reduction in arrears or repayments on a financial agreement. The consultation also asked whether CMCs should be required to make clearer to a consumer prior to the agreement of a contract, the manner in which any fees are charged, making it clear that the consumer could be expected to pay a fee even if they do not receive a cash in hand payment as redress.
44. **Support for a move to ban CMCs from charging a fee where final redress is not given to a consumer as a cash award was received in 7 responses to the consultation. A further 36 responses were not in favour and the remainder either offered general comments or no opinion.**
45. Most responses to consultation did not support a move to ban fees charged on non 'cash-in-hand' compensation awards. EMC Advisory Services Ltd responded by saying that a ban in this area would reduce innovation and support for consumers across other product areas such as pensions where compensation would usually take the form of either a cash award or a top-up to a client's pension pot. Consumer group Legal Beagles believed that a ban in this area would be counterproductive to consumers as there would be no incentive for CMCs to act for these claimants which would reduce consumer choice.
46. Resources in Insurance Group PLC questioned whether, when taking on a case, a CMC would know that the outcome could be a non cash settlement. They stated that the onus should be on the CMC to make it clear to the customer that in the event of a non cash settlement that a fee would be payable and should state the amount upfront. WFAC held the view that a ban would not be effective or fair on reputable CMCs who undertake work for consumers in recovering compensation. WFAC went on to state that in situations where this occurs, CMCs should work with the consumer to agree fair and affordable means of repayment to ensure that they are not unduly financially burdened.
47. The Civil Justice Council suggested that a balance must be struck between the CMC and its client and that ban would not provide for this. The CJC outlined their view that the fees agreed between the parties should be protected by a contract. Investor

Investor Compensation Ltd felt that a ban would be subject to abuse by vendors who may seek to provide redress in non-cash forms to the detriment of the sustainability of the CMC sector and the valuable service CMCs provide to the public who do not want or feel able to pursue redress claims themselves. Investor Compensation Ltd believes that all CMCs should be required to tell prospective clients more clearly and explicitly that their fees would be charged irrespective of the form of any final compensation award.

48. The Financial Services Practitioner Panel and Smaller Businesses Practitioner Panel stated that there should be more clarification on fees but no ban. In addition, the panel recommended that any publication of fees should be in a specified format.
49. The Citizen's Advice Service however suggested that charges should only be levied against actual monetary compensation rather than against any other restitution such as restructuring of a consumer's PPI package or credit agreement. The Finance and Leasing Association commented that there should be a ban on fees charged where redress is not 'cash-in-hand' and that there should be more transparency with all other fees. It was Personal Reclaims Ltd's view that there should be a ban on fees charged on non cash-in-hand awards.

Client Specific Rule 18 – Proposed requirement that CMCs must inform their clients of any variation or suspension of authorisation to provide regulated claims management services

Level of Support

50. **39 responses indicated support for the proposed amendment with no responses indicating any opposition. Some responses did not indicate an opinion but provided general comments on the subject.**
51. The Trading Standards Institute stated in their response that the proposal is clearly right and proper. Consumer group Which? indicated their support of the proposal stating that they feel it is unacceptable that consumers are being kept in the dark as to the progress of their claim and that if there are to be significant changes to costs, the client must be informed immediately so that they can decide if they want to pursue other means of redress.
52. LeO held the view that CMCs should also be required to provide guidance as to the effects of the suspension or variation on that particular customer or circumstance. The Direct Marketing Association suggested that a time frame in which the update must be given should also be set out.

Business Impact

53. Responses to the consultation did not raise any issues with regards to the potential impacts on business regarding the proposed change. The Claims Guys stated that it is difficult to tell at this time whether there will be any general impact on business volumes. Wyvern Claims Management also indicated their view that no impact on business volumes could be foreseen at this stage.

General Consultation Questions

54. In addition to the more focused questions around the proposals, the consultation asked for more general views on the package of reforms as a whole, bearing in mind the need to be proportionate and the Government's reducing regulation agenda.
55. Generally, the proposed changes to the rules were supported by most responses. The Association of Regulated Claims Management Companies (ARC) stated that their members believe that the proposed changes are at the appropriate level. ARC went on to state that the sooner the changes are implemented the better as it would help to portray CMCs in a better light to the wider legal community, in terms of proper regulation, proper processes and better service standards in general for consumers dealing with CMCs.
56. Zurich Insurance PLC stated in their response that the proposals are welcome and necessary to drive better CMC behaviour and discourage spurious claims. Zurich went on to state that the proposals are also fundamental in driving better outcomes for the consumer and appear both proportionate and prudent.
57. Some responses to the consultation suggested although the review of the conduct rules was a step in the right direction, not enough was being done to improve the industry. The Citizen's Advice Service (CAS) stated that their overall verdict was that the package of reforms was "*ok as far as it goes, but not enough*". CAS suggested that the problems need to be addressed in the sector robustly and that there needs to be a change of culture both in CMCs practices and the sector's relationship to regulation, which it seems habitually able to work around. CAS stated that this may involve looking again at the whole legal and institutional structure of regulation rather than just the specific licence rules.

Overall costs to business

58. Questions were set out within the consultation relating to the potential transitional or other costs of the proposals in addition to a question on whether a grace period would be required for businesses to transition to any new requirements. Respondees were also asked to outline any potential benefits to business more generally.
59. Overall, responses to these questions suggested that the costs to business as a result of the proposed amendments would be minimal so long as a sufficient transitional or grace period was put in place to assist the transition to the new framework. Views were also received in relation to some of the potential benefits of the proposals.
60. The Access to Justice Action Group (AJAG) stated that with an appropriate transitional period arrangement, there will be some minor costs incurred but that these would not be excessive and could be absorbed. AJAG suggested a 6 month grace period to allow CMCs to adapt and that with an appropriate transitional arrangement, the changes would not impact either way on well run CMCs.
61. Release Money Group Ltd stated that there appeared to be very little financial costs involved, other than amending sales processes and back office functions. Release Money Group suggested that a grace period would not necessarily be required, however; a specific date for implementing would be required in order to amend procedures in time.

62. A number of responses were also received that highlighted some of the general benefits of the proposals. The Civil Justice Council (CJC) stated that the benefits to the consumer are the biggest benefits of the proposals overall. CJC stated that, for the way the industry has developed over the last few years, it is clear to see that stricter regulation is required which the proposed changes go a long way to achieving. In addition to these comments, the CJC also stated that some CMCs will incur an administrative cost but with a reasonable implementation time, this cost will not be excessive and is more than proportionate in comparison to the benefit to the consumer.

Cold Calling

63. Although no proposals for amendment to the rules regarding cold calling were made as part of this particular exercise, those consulted were asked to provide their observations on the current rules regarding cold calling.
64. Views were received from various sectors on the current rules and issues related to cold calling within the claims management industry. EMC Advisory Services Ltd stated that they believe that cold calling is indispensable as it allows awareness of the fact that consumers have been misled to, to be greater. It is their view that the ICO should take the lead where non-compliance is identified.
65. MSE stated that, although outside the scope of this consultation, they welcomed the joined up work that is being done to investigate unsolicited cold calling and SMS text messaging, such as the industry working group of which the CMR Unit is a part of. MSE did however state that they believed that the current rules could go further to ensure that CMCs are held accountable for the actions of all third parties and not just exempt introducers whether based overseas or in the UK.
66. Consumer group Which? also stated that it is their view that the current rules regarding cold calling are insufficient and that they would like to see consumers who choose to use a CMC make this decision based on relevant information and awareness of other routes for redress. Which? highlighted their concerns that many consumers are unaware that they may have a legitimate claim and that more should be done to ensure that consumers are aware of their rights to reclaim mis-sold PPI. Which? went on to state that this information gap should not be filled by private companies who have a vested interest in pursuing these claims.
67. The Citizen's Advice Service stated that current protections around cold calling are too weak and highlighted their disappointment at a lack of proposed changes in this area. The CAS indicated their preference for a complete and unambiguous ban on cold calling. It was their view that this had clearly emerged as a key problem in the industry and that it operated a key channel by which claims management companies get away with providing a "shoddy" service without consumers receiving the relevant information, or benefiting from existing consumer protections provided by the rules.
68. The Motor Accident Solicitors Society (MASS) stated in their response that they also feel that the current cold calling rules are insufficient. MASS noted that we are working with Ofcom but would like to see the rules go further so that consumers can contact the company in question to opt out of any further communication.

Moratorium for 'Micro' business and implementation of new regulation

69. Consultees were asked to provide views on the moratorium that exempts micro-businesses from any new regulations implemented as well as views on whether there are any compelling reasons why the proposed changes should be implemented in advance of 2014.
70. Responses suggested that an exemption from the moratorium would be necessary for the proposals. The Trades Union Congress (TUC) believed that the changes should come into effect for all CMCs even if they are micro-businesses and stated that without such action, the changes would not be effective. The TUC also referred to figures set out in the impact assessment which indicated that 89% of CMCs were classed as micro-businesses stating that this meant that there was certainly a compelling reason to protect consumers by the waiving the moratorium in place on this occasion.
71. The Association of Mortgage Intermediaries (AMI) suggested that consideration should be given to the potential detriment suffered by consumers on the basis of the proposals not being implemented until 2014.
72. Consumer group Legal Beagles did not believe that micro-businesses should enjoy any moratorium from new regulation and went on to state that that the size of a business is irrelevant to the level of consumer protection that everyone should have a right to.

Equality Impacts

73. No significant issues with regards to equality were identified. However, consultees were asked to provide their views in light of the proposed changes.
74. The vast majority of responses to the consultation did not raise any issues with regards to equality however, some general observations were received. The Association of Professional Debt Solution Intermediaries stated that there should be consideration for those with mental health issues as it is likely to be important when considering the conduct of a business in dealing with clients that may have this type of vulnerability. APSDI went on to state that plain English and a client's ability to understand the consequences of a client agreement are important and their subsequent rights under the agreement, such as a cooling off period.

CMCs responding to consultation

75. CMCs were asked to indicate whether they were classed as a micro business. 36 regulated CMCs responded to the consultation in total with 12 CMCs indicating that they are classed as micro businesses.

Conclusion – Final Proposals and next steps

76. The fundamental aim of the conduct rules review is to provide better protections for consumers wishing to use the services of a CMC. We fully appreciate that there are a number of issues and concerns relating to the claims management industry as whole that are also linked to other industries. This particular exercise has however been focused on the specific rules that govern the operation of regulated claims management companies and ensuring that the framework provides a clearer route of enforcement for us where problems have been identified with the current provisions.
77. It is important that we provide a regulatory framework that is not only comprehensively effective but appropriate for all sectors of the claims management industry.

Responses to consultation and the formulation of the final changes

78. All views and responses received have been taken into consideration and the final proposals have been assisted by the input from stakeholders and organisations across the board. This has enabled us to formulate the final proposed changes, which we feel will also be able to address the issues raised appropriately. The final proposed changes are outlined below.

Client Specific Rule 6 (d) – Regulatory Statement

79. There is too much scope for the current statement to be misused and therefore we feel that change in this area is required. We have reached the conclusion that CMCs should not be prohibited from mentioning their regulatory status when making contact with potential clients by phone, if they wish to do so. This should, at the very least, enable a consumer to identify that they are being contacted by a regulated business, where the CMC chooses to use the statement in a marketing call. This however, is so long as the statement is used *exactly* as set out by the rules. We are of the view that the proposed amendment would also enable a much clearer route of enforcement regarding breaches of the rule in particular.
80. It is important to note that although CMCs are obliged to provide the regulatory statement to consumers in pre-contractual information that must be provided under Client Specific Rule 11; there is no explicit requirement for the statement to be used outside of that in any advertising or marketing material. However, should a CMC wish to refer to regulation in their advertising or marketing, it must only be used in the prescribed manner.

Final Proposal

81. The final proposed changed to Client Specific Rule 6(d) will see the removal of the MoJ brand from the regulatory statement with more focus being placed on the CMR Unit in particular. The regulatory statement will be amended so that it must only read as follows:
- “Regulated by the Claims Management Regulator in respect of regulated claims management services”**

Client Specific Rule 11

Manner in which a contract can be agreed

82. It is unacceptable that some consumers are not fully aware that a contract has been agreed between them and a CMC, particularly if an upfront fee is taken in order to initiate a claim. Our aim is to ensure that a contract can only be agreed where a clear and conscious decision to go ahead and use a CMC has been made by the consumer. We want consumers to be in a better position to understand the implications of any agreement regardless of the manner in which they may have been contacted by a CMC in the first instance.
83. We feel that if a client is required to formally sign a contract to confirm their agreement, they will have the opportunity and may be more inclined to read the terms and conditions of a contract more thoroughly beforehand. It is also clear that a requirement in this regard would enable us to ascertain, unequivocally, whether or not an agreement has in fact been made between a CMC and a consumer. This would also offer more security to both parties in case of any disputes over the terms of an agreement.
84. The wider benefits to be gained from this amendment far outweigh any need to enable an agreement to be reached more quickly without a required signature. We aim to enable more consumers to take a more proactive and considered approach to pursuing a claim whether that be on their own or via a CMC or solicitor. This proposal will help to provide better conditions within the industry to enable this to happen and reduce the level of unauthorised taking of upfront fees from consumers.

Format of pre-contractual information provided and publication of terms and conditions

85. Whilst it is important that consumers are given the requisite pre-contractual information prior to agreeing a contract, it is also important that the information provided is easily understood by the consumer and clear so that they can make an informed choice about the manner in which they proceed with a claim.
86. We aim to create a more transparent environment for consumers wishing to use the services of a CMC. Client Specific Rule 12 currently requires a business to make explicit to a client that a client has the right to seek further advice or to shop around, subject to any time limits within which a claim must be made. To compliment this rule and to create a more open and competitive environment, pre-contractual information that must already be supplied to consumers prior to the agreement of a contract under Client Specific Rule 11 should also be reproduced prominently online for the benefit of consumers, where a CMC also operates a website. This will enable consumers proactively looking to use a CMC to compare and seek out a CMC that operates under terms that may be most appropriate for them.
87. Some responses to the consultation suggested that pre-contractual information should not be reproduced on websites as this would contain commercially sensitive information and could be seen as anti-competitive. We believe however that the position is in fact, quite the opposite.
88. Firstly, pre-contractual information must be provided to a consumer under Client Specific Rule 11 before a contract can be agreed. This means that CMCs are already

providing this information to the public as a condition of authorisation. Therefore, the information is already in the public domain and can freely be obtained by anybody making contact with a regulated CMC and who may wish to use the services of a regulated CMC.

89. Secondly, if CMCs are more transparent about their terms of service and consumers are more aware of the choices available to them, this will encourage CMCs to compete within the industry better and potentially offer more competitive terms to their customers, where applicable. If pre-contractual information is published online, this would enable better conditions for consumers to proactively shop around for the best deal for them and their circumstances. This enables consumers to consider and compare potential fees and services being offered by different firms across the industry and promotes competition; particularly where fees are charged by CMCs for any services provided whether a fee is an upfront or back-end fee.

Final Proposal

90. The final proposed changes to Client Specific Rule 11 will see 2 new fundamental requirements as follows:

- **For CMCs that also represent their clients in pursuing a claim: Contracts must be signed by a client prior to any fees being taken and before a contract can be agreed.**
- **For CMCs that operate websites: pre-contractual information that is currently sent to consumers prior to the agreement of a contract as a condition of authorisation, must also be reproduced prominently on the business's website and must be clear.**

91. Client Specific Rule 11 specifically relates to contracts made in order for a regulated claims management service to be conducted (as opposed to any other type of unregulated or other activity that may be carried out by a business on behalf of a consumer such as vehicle recovery or other similar services). In addition, this rule only applies to CMCs that also represent a client in making claim and does not apply where a CMC refers a case on to a solicitor or other business to pursue. The opening line to Client Specific Rule 11 is to be amended so that it reads:

“A contract between a business and a client must be signed by the client, and the business may not take any payment from the client until the contract is signed. The standard terms and conditions of any contract must be clear and also published prominently on the business's website (where a business operates a website). The business must provide the following information in writing or electronically before a contract is signed:

Client Specific Rules 11 a) – l)”

Client Specific Rule 18

Client Updates

92. Some consumers have waited a considerable amount of time for updates on their claims from CMCs only to subsequently contact us for advice and find out that enforcement action has already been taken against the business. In some cases, this means that a consumer is likely to need to pursue their case using other means whether that is via their own means or with the assistance of another CMC.

93. It is important that consumers are given timely updates and with regards to the notification of enforcement action, it will be important that this is done within a certain timescale to enable consumers to pursue other avenues for redress as soon as possible, should they wish to do so.
94. Client Specific Rule 18 is to be amended so that it reads:
- “A business must keep the client informed of the progress of the claim, including any significant changes to costs that the client may have to meet, and must inform the client of any suspension or variation of the business’s authorisation within 14 days of the imposition of such action. It must forward any relevant information received from the client without delay.”**

Additional Technical Amendments to the rules

95. General observations and suggestions were also received in relation to some of the proposed technical amendments and updates and these have also been taken into consideration. The finalised list of all technical amendments and updates as well as confirmation of the key rule amendments is at annex D.

Fees charged on non ‘cash-in-hand-awards’

96. It is important that we continue to work towards creating a more transparent environment under which consumers can make decisions. As part of our drive towards a more transparent industry, we feel that this would be better served by enabling CMCs to offer a service for a fee – as long as consumers are fully aware of the implications of agreeing a contract and the potential costs, in advance of any agreement being reached.
97. The main issues in this area are that many consumers are either not aware that they may be liable to pay a fee at some stage or that they may pursue a claim themselves without using a CMC. Responses to the consultation also highlighted the fact that many CMCs would not be aware of the form of any final compensation award until much later in process and could not therefore predict whether or not they would be able to charge a fee for their work. It is clear that under these circumstances there is potential for CMCs to refuse to undertake work where a non ‘cash-in-hand’ award may be the outcome and that this could reduce the number of consumers able to pursue such claims via CMCs where desired.
98. It is accepted that although the services of a CMC are not necessarily required to pursue a claim, some consumers may not have the time or desire to pursue a claim on their own. What we want to see is an environment where consumers are making more informed decisions about whether to use a CMC rather than unduly restricting the industry from charging for work completed on behalf of their customers. We will not be making any changes in this area but further guidance regarding how information on fees should be set out will be issued in order to ensure compliance with current requirements.

Cold Calling

99. We will not be making any changes to the current conduct rules regarding cold calling as part of this particular exercise. The conduct rules in this area clearly set out that a business must not engage in high pressure selling or cold call in person and that all

other cold calling should be made in accordance with the Direct Marketing Code of Practice.¹

100. It is clear that the relevant issues in this area must be tackled as part of a wider programme of work not only with the lead regulator, the ICO, but also other telecoms regulators and industries bodies such as Ofcom and the Telephone Preference Service (TPS). The ICO for example, has more specific, legislative powers of enforcement and the ability to fine businesses in breach of data protection legislation. Most businesses that are involved with the *sending* of unsolicited texts are not regulated CMCs but lead generators who then sell consumer information on to other parties, including some CMCs.
101. CMCs that contact consumers as a result of non-compliant unsolicited SMS messaging are likely to be in breach of their conditions of authorisation; regardless of any assurances provided by third party data suppliers. It is important that any consumer leads obtained as a result of direct marketing comply with relevant legislation. We will continue to take regulatory enforcement action against regulated CMCs proven to be in breach of the rules.
102. General Rule 18 (b) places the onus on regulated CMCs to ensure that where they accept introductions from exempt introducers, they are responsible for ensuring that the exempt introducers do not undertake any activity that would put them in breach of the rules regarding the advertising, marketing or soliciting of business.

¹ <http://www.dma.org.uk/content/dm-code-practice>

Clearance and Implementation

Clearance

103. The amended conduct rules have now received the necessary Government clearances in order to enable implementation. This clearance has however taken longer than initially expected. This is, in part, due to the Government's overall aim to reduce the regulatory burden on businesses more generally and the fact that the changes would increase the regulatory burden on businesses despite providing better protections for consumers. This has meant that the proposals and in particular, the implementation stage impact assessment, were subject to an increased level of scrutiny by the relevant Government clearance committees under the reducing regulation policy and was subject to delay.
104. The nature of the changes in this instance and the improvement in the level of consumer protection afforded by the rules however, far outweigh any general need to reduce regulation on businesses.

Implementation

105. We had originally indicated our intention to implement the changes in April 2013, subject to the relevant Government clearance processes. However, this is not now possible as it is appropriate to give sufficient notice of the confirmed changes so that transitional arrangements can be made by all regulated CMCs accordingly. We have therefore put in a place a **3 month** notice and transition period in order to enable the implementation of the proposed changes on **8 July 2013**.
106. All regulated CMCs should now initiate their transitional arrangements so that the new rule framework can be complied with accordingly from **8 July 2013**. A copy of the Conduct of Authorised Persons Rules 2013 is attached at annex E. All regulated CMCs offering regulated claims management services in England & Wales, including those with 10 employees or less, will need to comply with the new rules as a condition of authorisation from **8 July 2013**. Failure to adhere to the rules will lead to enforcement action that could result in the variation, suspension or complete cancellation of their authorisation to provide regulated claims management services.

Future Reviews of the Conduct Rules

107. The CMR industry is continuously evolving and the effectiveness of the rules is constantly monitored. Further reviews of the rules may be conducted, prompted by specific, emerging issues. The effectiveness of the CMR regime overall is also assessed on a regular basis and that process will have regard to any wider regulatory issues.

Consultation Principles

108. The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-principles.pdf

Annex A – List of respondents

1. Access to Justice Action Group (AJAG)
2. ACM URL Ltd
3. Advertising Standards Authority (ASA)
4. *[Anonymous Response]*
5. Association of British Credit Unions (ABCU)
6. Association of British Insurers (ABI)
7. Association of Independent Financial Advisors (AIFA)
8. Association of Mortgage Intermediaries (AMI)
9. Association of Professional Debt Solutions Intermediaries (APDSI)
10. Association of Regulated Claims Management Companies (ARC)
11. Assured Money Solutions Ltd
12. Auto Assist Direct Ltd
13. AXA Wealth
14. Bertram Webster Frater Legal Services
15. Black White and Grey Ltd
16. British Armed Forces Federation (BAFF)
17. British Bankers' Association (BBA)
18. Building Societies Association (BSA)
19. Capital One Europe PLC
20. Citizen's Advice Service (CAS)
21. Civil Justice Council (CJC)
22. Claim Easy Ltd
23. Claims Central
24. Claims Standards Council (CSC)
25. Clockwork Finance Ltd
26. *[Confidential Response]*
27. *[Confidential Response]*
28. Consumer Credit Counselling Service (CCCS)
29. CSC Financial Services Group
30. Deborah Mallender
31. Direct Line Group
32. Direct Marketing Association (DMA)
33. EMC Advisory Services Ltd

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34. The Fair Trade Practice
35. Finance & Leasing Association (FLA)
36. Financial Ombudsman Service (FOS)
37. Financial Services Consumer Panel (FSCP)
38. Financial Services Practitioner Panel and Smaller Businesses Practitioner Panel
39. Gladstone Brookes Ltd
40. Hall & Co (UK) Ltd
41. Hayward Marsh LLP
42. Highclere Financial Services
43. Humane Resources Ltd
44. iAccident Ltd
45. The IFR Group
46. Investor Compensation UK Ltd
47. Irwin Mitchell Solicitors
48. JPS Financial Ltd
49. Judge David Latham – Employment Tribunals Service
50. The Law Society
51. Legal Beagles
52. Legal Issues (UK) Ltd
53. The Legal Ombudsman (LeO)
54. Missold Interest Only
55. MoneySavingExpert.com
56. Motor Accident Solicitors Society
57. MP Financial
58. National Accident Helpline Ltd
59. National Franchised Dealers Association
60. Naz Saeed
61. NBR Financial Ltd
62. Nottingham Claims Service
63. On Claims
64. Pentagon (UK) Ltd
65. Personal Reclaims Ltd
66. Refresh My Credit
67. Release Money Group Ltd
68. Renaissance
69. Resources in Insurance Group PLC

70. Sabelnikov LLP
71. Solicitor's Regulation Authority (SRA)
72. The Claims Guys Ltd
73. Trades Union Congress (TUC)
74. Trading Standards Institute
75. UK Cards Association (UKCA)
76. We Fight Any Claim Ltd
77. Weightmans LLP
78. Which?
79. Wyvern Claims Management
80. Yorkshire Building Society
81. Zurich Insurance PLC

Annex B – Consultation Questions

The following questions were set out in Consultation Paper CP15/2012 – Proposals for amendments to the Conduct of Authorised Persons Rules:

- 1) Do you have any comments on the proposals to amend the Client Specific Rules?
- 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?
- 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?
- 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*).
- 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.*)
- 6) Do you have any comments on the proposals to make additional amendments to the General Rules?
- 7) Do you have any comments or views as to the likely transitional or other costs to business that may be incurred by the proposed amendments to the Conduct Rules?
- 8) Would a grace period for businesses to implement any required changes to its business be necessary? If so, how long should the grace period be in order to enable all CMCs to successfully adhere to the amended rule framework?
- 9) Do you have any comments or views on the likely costs or benefits to business arising from the proposed amendments to the Conduct Rules?
- 10) Do you have any comments or views regarding the current rules in relation to cold-calling?
- 11) In view of the moratorium that would exempt 'micro-businesses'² from any new regulation (including amendments to the Conduct of Authorised Persons Rules) until

² Micro-businesses are businesses that have ten members of staff or fewer.

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?

- 12) The CMR Unit welcomes your views on the Equality Impact Assessment in terms of the potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence
- 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?

CMC SPECIFIC QUESTIONS

Client Specific Rule 6 (d)

- 14) Does your business currently refer to its regulatory status in advertising or marketing material? If so, please indicate which type of material the statement is used in (i.e. Client letters, contracts, websites or other material)
- 15) If your business intends to refer to its regulatory status after the proposed change is in place, do you foresee any additional costs that would need to be incurred to make the required changes? If so, please quantify these costs
- 16) Do you foresee any long term benefits regarding the amended regulatory statement?
- 17) Since use of the regulatory statement is not compulsory, would the proposed amendment make you more or less inclined to use the regulatory statement in advertising or marketing material?
- 18) What, if any, impact would the revised rule have on business volumes?
- 19) Do you support the proposed amendment to CSR 6 (d)?

Client Specific Rule 11

- 20) Does your business currently require clients to sign a contract in order to confirm that they wish to proceed with a claim (including confirmation of permission to take an upfront fee - if applicable)?
- 21) If your business does not currently use signed contracts, would there be any additional costs incurred in order to comply with a new requirement for signed contracts? If so, please quantify these costs.
- 22) Do you foresee any long term benefits regarding a requirement for signed contracts between a consumer and a business?
- 23) What, if any, impact would the revised rule have on business volumes?

24) Do you support the proposed amendment to CSR 11?

Client Specific Rule 18

25) What effect, if any, would the proposed change have on your business?

26) Do you support the proposed amendment to CSR 18?

General

27) Overall, do you foresee any change in the total number of complaints received by your business as a result of the proposed changes? If so, please indicate how you expect things to change.

28) On average, how much does it cost your business to reply to a consumer complaint?

29) Overall, do you foresee any change in the operating costs as a result of the proposed changes? If so, how do you expect these costs to change?

30) Overall, do you foresee any change in business volumes as a result of the proposed changes? If so, how do you expect volumes to change?

31) Are you responding on behalf of a CMC that would be classed as a 'micro-business' employing fewer than 10 employees?

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