

Title: Claims Management Rules Review - Phase Two Amendments to the Conduct of Authorised Persons Rules IA No: MOJ125 Lead department or agency: MOJ Other departments or agencies:	Impact Assessment (IA)	
	Date: 05/02/2013	
	Stage: Implementation	
	Source of intervention: Domestic	
	Type of measure: Other	
	Contact for enquiries: Mr Ashley Palmer MoJ – Claims Management Regulation Ashley.Palmer@justice.gsi.gov.uk	
Summary: Intervention and Options		RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
0.1	0.1	0.0	Yes IN/Zero net cost

What is the problem under consideration? Why is government intervention necessary?

The regulator is concerned about the current level of detriment experienced by claimants in the industry. Parts of the Conduct of Authorised Persons Rules may be difficult to enforce in certain situations and could benefit from clarity to assist and protect both claims management companies (CMCs) and claimants. Some rules may not be clear enough and make it harder for CMCs to comply. In such instances, this can lead to consumer detriment.

What are the policy objectives and the intended effects?

The policy objective is to make the requirements of authorisation clearer, reduce the level of detriment experienced by claimants and increase protection for claimants and CMCs. The intended effect is to reduce the level of complaints received under specific rules by both CMCs and the Regulator by exercising powers under Regulation 25 of the Compensation (Claims Management Services) Regulations 2006 by implementing changes to the Conduct of Authorised Persons Rules in order to increase protections for claimants and CMCs alike.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 – Do Nothing. The current rules would remain in place.

Option 1 – Amend Client Specific Rule (CSR) 6 (d) & CSR (11) (l) to require CMCs to refer to being regulated by the 'Claims Management Regulator' rather than the 'Ministry of Justice'.

Option 2 – Amend CSR 11 to state that a contract must be agreed in writing between a CMC that represents consumers and a consumer and that a contract must be signed by the consumer before any upfront fees are taken from the client. In addition, standard terms and conditions of any contract should be published online (where a business operates online).

Option 3 – Amend CSR 18 to require CMCs to inform their clients if their authorisation status is varied or suspended within 14 days of such action being imposed.

The government's preferred approach is to implement Option 1 to 3.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/YearContinual monitoring and enforcement in line with the current regulatory setup.

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 11/02/2013

Summary: Analysis and Evidence

Policy Option 1

Description: Client Specific Rule 6 (d) - Replace the reference to the 'MoJ' in the current regulatory statement with 'Claims Management Regulator'

Price Base Year 13/14	PV Base Year 13/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.1	High: -0.3	Best Estimate: -0.2

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.30	1	0	0.30
High	0.60		0	0.60
Best Estimate	0.45		0	0.45

Description and scale of key monetised costs by 'main affected groups'

It is estimated that around 3,000 CMCs will face one-off costs of around £150 each in 2013/14 to update their pre-contractual and marketing material follow this rule change. The total one-off cost to all CMCs is estimated between £0.3m and £0.6m in 2013/14.

Other key non-monetised costs by 'main affected groups'

There may be some costs to CMCs if they receive fewer claims as a result of this change as they may be using the current association with MoJ to generate demand. However, this would only impact on businesses which are not complying with the existing rule and generating business through inappropriate use of the existing statement and association with MoJ.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	0.02	0.15
High	0		0.04	0.35
Best Estimate	0		0.03	0.25

Description and scale of key monetised benefits by 'main affected groups'

It is estimated that compliant CMCs across the industry will benefit by between £0.02m and £0.04m per year from 2013/14 as a result of fewer complaints following this reform.

Other key non-monetised benefits by 'main affected groups'

Claimants would benefit from clearer information about who is responsible for the regulation of CMCs. To the extent that claimants make fewer complaints as a result of the rule change, claimants would also benefit from reduced costs. It has not been possible to quantify the benefits to consumers and they are not included in the stated NPV figures.

There may be reputational benefits to the wider MoJ as a result of greater clarity as to the MoJ's actual role in the regulation of CMCs.

Compliant CMCs may benefit from more business if this change leads to improved consumer confidence in the industry. This would be an indirect, second round impact of these changes.

Key assumptions/sensitivities/risks

It is assumed CMCs comply with this amended rule and that the number of complaints regarding MoJ's role in CMC regulation will decrease.

It is assumed that there would be no direct change in the volume of CMC business for compliant CMCs.

It is assumed that there is no increase in CMR regulatory costs as a result of the amendment of this rule.

It is assumed that there are no impacts on HM Court and Tribunal Service and legal service providers.

Some claimants currently contact wider MoJ with complaints or enquiries and it is possible that they will contact the CMR Unit directly after this change. This could result in some minor efficiency gains for the MoJ.

Direct impact on business (Equivalent Annual) £m):			In scope of OITO?	Measure qualifies as
Costs: 0.05	Benefits: 0.03	Net: 0.02	Yes	IN

Summary: Analysis and Evidence

Policy Option 2

Description: Client Specific Rule 11 - Require any contract between a CMC (that also represents clients) and a client to be signed by the client before an agreement can be reached and any advance fees taken. Terms and conditions currently provided to clients prior to the agreement of a contract to also be made available online (Where CMCs use and operate a website)

Price Base Year 13/14	PV Base Year 13/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.0	High: 0.5	Best Estimate: 0.3

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.4	1	0	0.4
High	0.8		0	0.8
Best Estimate	0.6		0	0.6

Description and scale of key monetised costs by 'main affected groups'

It is estimated that around 750 CMCs that represent clients may face one-off costs associated with obtaining signed contracts, updating their websites and potential delays to case conclusions which, in total, are estimated at between £0.4m and £0.8m in 2013/14.

Other key non-monetised costs by 'main affected groups'

Some claimants may experience a longer sale/agreement process as they would not be able to agree a contract verbally.

There may be some additional costs to CMCs that do not comply with the existing rule if they receive fewer claims as a result of this change. This is because they may be using the lack of a requirement for signed contracts to secure clients' business in ways that are outside the existing rules but difficult for the CMR to prove, for example by taking unapproved advanced payments.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	0.05	0.4
High	0		0.15	1.3
Best Estimate	0		0.10	0.9

Description and scale of key monetised benefits by 'main affected groups'

It is estimated that compliant CMCs across the industry will benefit by between £0.05m and £0.15m per year from 2013/14 as a result of fewer complaints following this reform.

Other key non-monetised benefits by 'main affected groups'

Claimants would benefit from greater certainty over whether a contract was agreed on a particular date or with particular terms. Claimants would benefit from reduced costs of complaints and disputes. Claimants will also benefit from a reduced risk of a business taking unauthorised upfront fees without their consent.

Compliant CMCs may benefit from more business if this change leads to improved consumer confidence in the industry. This would be an indirect, second round impact of these changes.

Key assumptions/sensitivities/risks

It is assumed that CMCs comply with this amended rule and that the number of complaints to CMCs will decrease.

It is assumed that there would be no direct change in the volume of CMC business for compliant CMCs.

It is assumed that most claimants who do not currently have a signed contract would benefit from a signed contract.

It is assumed that there would be no increase in the CMR's regulatory costs as a result of the amendment of this rule.

It is assumed that there are no impacts on HM Court and Tribunal Service and legal service providers.

Direct impact on business (Equivalent Annual) £m):			In scope of OITO?	Measure qualifies as
Costs: 0.07	Benefits: 0.10	Net: -0.03	Yes	ZERO NET COST

Summary: Analysis and Evidence

Policy Option 3

Description: Client Specific Rule 18 - Require CMCs to inform clients of any suspension or variation of their authorisation status within 14 days of such action being imposed.

Price Base Year 13/14	PV Base Year 13/14	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	0	0
High	0		0	0
Best Estimate	0		0	0

Description and scale of key monetised costs by 'main affected groups'

The business costs associated with this measure are not quantified as they will only impact on CMCs that are non-compliant under the existing rules as they are already subject to suspension or variation of their authorisation.

Other key non-monetised costs by 'main affected groups'

Some non-compliant CMCs may incur small administration costs where they need to inform claimants that their authorisation has been varied or suspended. In 2011/12 12 CMCs had their authorisation varied or suspended. These costs are expected to be small as they would only be the cost of a letter or email to clients.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	0	0
High	0		0	0
Best Estimate	0		0	0

Description and scale of key monetised benefits by 'main affected groups'

The business benefits associated with this measure are not quantified as they will only impact on CMCs that are non-compliant under the existing rules as they are already subject to suspension or variation of their authorisation..

Other key non-monetised benefits by 'main affected groups'

There may be some benefits to non-compliant CMCs as a result of fewer complaints following this rule change. These benefits are not included in the total costs and benefits estimates as they accrue to non-compliant businesses. Some compliant CMCs may benefit if business is transferred to them from other CMCs more quickly following this change. Claimants will benefit from being able to pursue their claim more quickly through other CMCs. To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced costs.

Key assumptions/sensitivities/risks

It is assumed that CMCs comply with this amended rule.

It is assumed that the number of complaints to CMCs will decrease.

It is assumed that there would be no change in the overall volume of CMC business. Some business may shift from de-authorised, non-compliant CMCs to other CMCs meaning that some claims may be completed more quickly.

It is assumed that there is no increase in CMR regulatory costs as a result of the amendment of this rule.

It is assumed that there is no impact on HM Court and Tribunal Service or legal services providers.

Direct impact on business (Equivalent Annual) £m):			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	ZERO NET COST

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		May 2013			
Which organisation(s) will enforce the policy?		MoJ			
What is the total annual cost (£m) of enforcement for these organisations?		Unchanged			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: 0		Non-traded:0	
Does the proposal have an impact on competition?		No			
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes	No	No	No	No

Evidence Base

1. Introduction

- 1.1 The Ministry of Justice (MoJ) is responsible for the delivery of Claims Management Regulation (CMR) under the Compensation (Claims Management Services) Regulations 2006. The regulatory objectives underpinning CMR are to protect and promote the interests of claimants and the public, improve standards of competence and conduct of authorised persons, improve access to justice and to promote practices that facilitate competition between providers of regulated claims management services.
- 1.2 Prior to the inception of CMR and following the withdrawal of legal aid for most personal injury claims and the establishment of the conditional fee arrangement system in 2000, the number of CMCs rose significantly. 'No Win, No Fee' was extended as a method for claimants to fund the costs of making a claim. However, many CMCs were misleading consumers to raise their own profits, particularly in relation to claims for personal injury. CMCs often used aggressive marketing techniques and appeared to encourage false claims by leading potential claimants to believe that they could benefit financially. The need for regulation was therefore identified and MoJ was deemed the most appropriate body to undertake this role.
- 1.3 The MoJ's direct regulatory responsibilities remain a unique function for a Government department to hold. In October 2009 the Better Regulation Executive concluded in its report entitled 'Better Regulation, Better Benefits: Getting the Balance Right'¹ that CMR was a good example of efficient and low cost regulation.

The Claims Management Industry

- 1.4 The claims management market is volatile and subject to changes in the wider economy, legal judgments on the types of claims allowed, reforms to the personal injury claims process and new regulations introduced in respect of legal costs and funding. The number of claims management businesses trading and the volume of business conducted is subject to large swings that are difficult to predict. The industry has also evolved significantly since 2007.
- 1.5 Businesses providing claims management services in the following sectors must be authorised and regulated by the CMR Unit within MoJ: personal injury, financial services, criminal injuries compensation, industrial injuries disablement benefit, employment and the housing disrepair service. In 2011-12, there were fewer than 3,000 authorised CMCs, a drop from the previous year where approximately 3,300 CMCs were authorised to provide regulated claims management services. Details of businesses' turnover are requested for the 12 months to 30 November for each year. The total turnover declared for the 12 months to 30 November 2011 was £774m, up £192m on the previous year. The personal injury sector remains the largest sector with a turnover of £455m compared to £377m in the previous year. The financial products and services sector turnover increased to £313m – up from £189m. Turnover generated from the payment protection insurance (PPI) claims sector is main reason for the increase. Personal Injury and financial products/services account for over 99% of declared turnover by regulated businesses. The remaining sector turnovers were all down compared to the previous year with the employment sector down by £10m.

Funding of Claims Management Regulation (CMR)

- 1.6 CMR is organised across two sites: a London (HQ) based team is responsible for managing the operation of the regulatory system and approving statutory decisions made on behalf of the Secretary of State, including authorisations, suspensions and cancellations. The Compliance Office is a branch of the CMR Unit based in Burton-On-Trent and handles applications and complaints, monitors compliance, investigates malpractice and takes enforcement action.
- 1.7 The CMR Unit is financed through fees charged to CMCs for initial application for authorisation and annual renewal fees. The fees paid by regulated CMCs are reviewed and consulted upon each year to ensure they are proportionate and that regulation remains self-financing. Although regulation fees are usually set at the start of the year to which they apply, there is provision for in-year adjustments to align fee income with costs incurred.

¹ <http://www.bis.gov.uk/files/file53251.pdf>

- 1.8 The cost of regulation is driven by a range of factors, some of which are relatively fixed and predictable while others are more variable and less certain as they are demand driven. The variable factors include the scale of complaints received, volume of contact from businesses and other organisations, the number of compliance exercises and investigations, audits and enforcement actions conducted. Other variable factors include legal costs and other costs incurred from defending appeals against the Regulator's decisions to refuse, cancel or suspend authorisation. These factors and the changing nature of the claims management sector can impact on the level of fees paid and the costs of regulating the conduct of regulated businesses.
- 1.9 In 2011/12, the total cost of regulation was around £3m with £2.5m allocated for costs of monitoring and compliance and £0.5m for central costs. Application fees for authorisation recovered around £550,000 and annual regulation fees brought in around £2.5m with the regime continuing to successfully operate under a full cost recovery model.

Regulations and Rules

- 1.10 Regulation 22 of the Compensation (Claims Management Services) Regulations 2006 states that the Regulator must prescribe, in writing, rules for the professional conduct of authorised persons. Regulation 25 states that the Regulator may amend or revoke rules or a code of practice and any amendment or revocation may include transitional, incidental or consequential provisions. The proposals presented in this Impact Assessment (IA) relate to the amendment of a number of rules contained within the Conduct of Authorised Persons Rules that were prescribed under the provision of Regulation 22. The proposals therefore do not affect any statutory legislation but the rules created and prescribed underneath it.
- 1.11 Regulation 12 (b) of The Compensation (Claims Management Services) Regulations 2006 states that it is a condition of authorisation that regulated businesses must comply with the rules prescribed. If a CMC were to breach any of the conduct rules, they would breach the conditions of authorisation.
- 1.12 Regulation 46 gives provision for the Regulator to vary, suspend or cancel a business's authorisation to provide regulated claims management services if it is satisfied, after investigation of the alleged or suspected failure, that the authorised person has failed to comply with the condition. Authorisations may be suspended and cancelled for a variety of reasons relating to CMCs' non-compliance with their conditions of authorisation.
- 1.13 In line with better regulation principles, the CMR Unit takes a targeted approach and encourages compliance rather than taking a punitive approach. However, in most instances it is difficult to improve consumer protection via the codes of conduct, regular publication of guidance and continual stakeholder engagement without placing additional regulatory requirements on CMCs. When advising CMCs of the compliance requirements through guidance, monthly bulletins or enforcement action, the intent of what the rules aim to achieve often requires explanation so that CMCs fully understand their purpose. The regime was in fact set up to provide a better environment for consumers by restricting the operation of CMCs, deter those who wish to take advantage of consumers and drive those who wish to profit from malpractice out of the industry.
- 1.14 Further controls are necessary in order to ensure the continued success of the regime and that the CMR Unit is able to evolve and adapt to meet its regulatory remit as it moves forward.
- 1.15 The CMR Unit is of the view that it is appropriate to implement amendments to the rules after undertaking a comprehensive review of the operation of the current regulatory framework. Drawing from the experiences of enforcing the current rules and how the industry has evolved since the regulatory regime started in 2007; the CMR Unit is ensuring that the regulatory system remains efficient, clear and sustainable. The conduct rules were initially designed in response to the malpractice by CMCs as considerable detriment was being caused to consumers. The claims management industry has adapted to a firm regulatory regime, however the CMR Unit must maintain the effectiveness of enforcement of rules under the current policy.

Consultation and Engagement

- 1.16 A preliminary consultation and call for evidence exercise was conducted with members of the Regulatory Consultative Group (RCG) in 2011. The RCG is made up of claims management industry stakeholders and responses were received from: The Association of British Insurers (ABI), The Association of Personal Injury Lawyers (APIL), British Bankers' Association (BBA), Building Societies Association (BSA), Citizens Advice, Finance & Leasing Association (FLA),

Financial Ombudsman Service (FOS), UK Cards Association (UKCA), Trades Union Congress (TUC) and Which? The views of the RCG members, in addition to the Regulator's internal assessments, were used as a mechanism to formulate the initial proposals for the amendments to the conduct rules.

- 1.17 On 22 August 2012, the CMR Unit launched a formal public consultation on proposals to amend the conduct rules. The consultation, IA and equalities impact assessment were sent directly to all regulated CMCs and members of the RCG. In addition, the consultation documentation was placed onto the MoJ's main website for easy access for members of the public and anybody else with an interest in claims management matters. The CMR Unit worked with the MoJ's Press Office in order to raise public awareness of the consultation which was covered by a number of media outlets nationally including newspapers such as the Financial Times and across a number of news and legal websites in addition to related forums across the internet.
- 1.18 Whilst the consultation period was active, the CMR Unit pro-actively sought further engagement with the industry to understand the impacts of the proposed rule changes. A business bulletin was released directly to all regulated CMCs and also placed onto the claims management regulation website separately; setting out the details of the consultation including the key areas proposed for amendment. Responses and views were encouraged, particularly in relation to any possible financial implications of the proposals. CMCs were also invited to contact the unit to discuss the proposals or meet with the CMR Unit to discuss further if necessary. In addition, the CMR Unit made direct contact with a number of CMCs by phone to encourage views and responses to the consultation with a particular focus placed on the need for financial information and monetisation of the potential impacts of the proposals.
- 1.19 The consultation ran for a period of 6 weeks until 3 October 2012. Responses were received from across the various sectors, stakeholders and from regulated businesses of all sizes. Responses were also received from some businesses outside of the direct remit of the CMR Unit and trade organisations. A total of 81 responses were received. A full list of those that responded is attached to this IA.
- 1.20 Overall, the majority of responses to the consultation agreed with the direction of the proposed changes indicating that the proposals would help to improve the reputation of the industry and also improve consumer protection whilst keeping any additional costs to a minimum. It was also clear that the implications of the proposals would affect different sectors within the claims management industry in different ways and that the industry overall supported any effort to improve the current requirements set out in the rule framework.

2. Problems under consideration

- 2.1 As currently worded there are a number of Client Specific Rules (CSRs) that are either difficult to enforce or could benefit from amendment to reduce consumer detriment. Some of the rules contained within the Conduct of Authorised Persons Rules (CAPRs) may not be clear enough and as a result make it harder for some CMCs to adhere to and increases the level of detriment seen by claimants.
- 2.2 Enforcement is necessary to ensure that the interests of the public are protected. There are two enforcement categories: informal and formal. Informal actions are carried out on a daily basis and are used to address less serious breaches of the rules. Examples of informal action include: giving specific advice to businesses, warning letters and written undertakings. Taking informal action is the most sensible and efficient way of handling matters if a business is not already under investigation or subject to formal enforcement action, is co-operative and receptive to advice and the breach can be quickly remedied.
- 2.3 Formal action is taken where a business has committed a serious rule breach, has persistently breached rules or has been convicted of criminal offences. Formal actions will almost always be preceded by informal enforcement action and if a CMC is unable or unwilling to comply with the rules it is likely that its authorisation will be suspended or cancelled.
- 2.4 During the 2011/12 financial year, formal action was taken against 5 CMCs who had their authorisation suspended for breaches of the rules. Issues for suspension of these businesses include irresponsible conduct, implying that the business model is approved by government, poor sales practices, potential claimants not provided with pre-contractual information and poor refund and complaint handling. Suspension is a temporary measure and is usually lifted if and when CMCs take remedial actions to ensure that they adhere to the conditions of authorisation.

- 2.5 During the same period, 260 CMCs had their authorisation cancelled for rule breaches that were not remedied. Reasons for cancellation include those listed above but in addition also include not paying the annual regulatory fee, relevant criminal convictions (such as fraud), refusal to provide information to the Regulator and, not dealing with clients fairly and reasonably.
- 2.6 During the 2011/12 financial year, the use of variations to authorisation was also used more frequently to address business conduct issues. Variations will usually mean that a business is able to continue trading but under tighter restrictions to their operation. For example, a CMC that has failed to provide refunds to clients wishing to cancel their claim within 14 days within a timely manner could be prevented from taking upfront fees in future and only be allowed to charge clients upon the conclusion of a case at the direction of the CMR Unit.
- 2.7 Any business that has had conditions imposed will already have been given an opportunity to remedy any rule breaches via warnings or advice issued by the CMR Unit prior to any formal action. Where they fail to do this and problems persist, variations are increasingly being used to address issues identified in order to ensure that existing clients are unaffected. 7 CMCs had their authorisation varied during the 2011/12 financial year. Decisions on the type of enforcement action to be taken are however based specifically on the circumstances and the specific CMC involved in each case and all enforcement options remain available.
- 2.8 During the 2011/12 financial year, the CMR Unit recorded around 9,000 complaints from consumers regarding the conduct of CMCs. Over 93% of all complaints related to the financial services sector even though less than a third of all authorised businesses are active in that sector
- 2.9 The problems identified in the current regime and details of some of the responses to the consultation exercise are set out below.

Problem 1: What CMCs can say about the MoJ role in Regulation

- 2.10 **CSR 6 (d) currently states: “In soliciting business through advertising, marketing and other means a business must not imply that it 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 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”)”**
- 2.11 This regulatory statement also appears at CSR 11 (l), which requires CMCs to provide the regulatory statement given in CSR 6 (d) to potential claimants as part of the pre-contract information.
- 2.12 Evidence received from consumers shows that the current prescribed wording - ‘Regulated by the MoJ’, even if used in the correct way by a CMC, can automatically suggest to consumers that a CMC is endorsed or approved by Government. In addition to providing wide scope for misuse/misinterpretation of the regulatory statement, the current rule does not fully achieve its original objective to simply provide consumers with information that enables them to identify a legitimate CMC in many instances.
- 2.13 During the 2011/12 financial year, 174 of the 9,000 complaints recorded by the Compliance Office were regarding 45 different CMCs that claimants believed had falsely claimed they were working on behalf of, or were endorsed by, Government.
- 2.14 **The consultation set out a proposal to amend the rule so that CMCs would only be able to refer to being regulated by the ‘Claims Management Regulator’ instead of by the ‘Ministry of Justice’. This was to reduce the temptation for misuse of the statement by some CMCs but also to ensure that those using the statement in the correct manner are not seen to be misleading consumers. It is not compulsory that CMCs refer to the regulator in marketing material.**
- 2.15 The majority of the responses to the consultation indicated an agreement with the proposed amendment. The Citizen’s Advice Service agreed with the proposed amendment and indicated that they had seen cases where the statement “regulated by the Ministry of Justice” had been used in a misleading way, such as implying that the CMC was administering a specific MoJ compensation redress scheme.
- 2.16 The Association of Personal Injury Lawyers’ (APIL’s) preference would be that the regulatory statement refers to the CMR Unit rather than MoJ because such an amendment would prevent claimants inferring from CMCs’ advertising that they are endorsed or recommended by the MoJ.

The Building Societies Association (BSA) confirmed their support for an amendment in this area having previously stated that the wording of the rule should be as clear and as helpful as possible to claimants or those considering whether to use a CMC.

Problem 2: Process for agreeing contract with claimant

2.17 **CSR 11** currently states:

A business must provide the client with the following information in writing or electronically before a contract is agreed:

- a) Honest, comprehensive and objective written information to assist the client to reach a decision including the risks involved in making a claim, in particular the possibility of losing money and, in the case of legal action, appearing in court.**
- b) The services that will be provided, in a way that does not misrepresent, either by implication or omission, any term or condition or by whom the service will be provided.**
- c) The procedures that will be followed.**
- d) Contracts, including for insurance or loans, that the client will be asked to agree to.**
- e) Any charge the business makes. Where this is a percentage of compensation payable the percentage must be indicated together with a typical example of the actual cost in pounds, or more than one example if the business makes differential charges.**
- f) Any referral fee paid to, or other financial arrangement with, any other person in respect of introducing the claim.**
- g) Any costs that the client may have to pay, including repayments on a loan taken out for any purpose and the purchase of a legal expenses insurance policy, and whether the client will be liable to pay any shortfall in recoverable costs or premiums from the losing defendant party.**
- h) Documentation needed to pursue the claim.**
- i) Any relationship to a particular solicitor or panel of solicitors.**
- j) Procedures to follow in the event of a complaint.**
- k) How the client may cancel the contract and the consequences of cancellation including the reimbursement of any costs paid during the cancellation period and any costs or penalty that has to be paid after the 14 day cooling off period.**
- l) The statement that the business is “regulated by the Ministry of Justice in respect of regulated claims management activities” and the authorisation number of the business. This requirement applies one month after the date of authorisation of the business.**

2.18 The above rule only applies to CMCs that also represent their clients in pursuing a claim and does not apply to those businesses that refer cases onto a solicitor or other CMC to pursue. Currently, where applicable, the information listed above, including a copy of the CMCs contract, must be provided to any potential client in written form prior to the agreement of any contract and regardless of whether a contract is ultimately signed by the client or agreed verbally. Despite the fact that there is currently no requirement for a contract to be signed, an agreement cannot be made between a consumer and a CMC until the information listed above, is provided in writing to the consumer.

2.19 For those that do not use signed contracts, the contractual information is furnished upon any potential consumer in written form prior to the agreement of any verbal contract, as required by the rules. However, businesses operating in this way would not expect or require any client signature to be forthcoming prior to pursuing a case.

- 2.20 This rule is designed to ensure that potential claimants have as much relevant information as possible in advance of making a decision on whether to use a CMC to pursue a claim. The problem here is that due to the wording of the rule, some CMCs take advantage of the fact that no written agreement is formally required although this was the initial intention of the rule. Complaints seen suggest that some CMCs form verbal contracts with claimants in a manner that is unclear to them that they have agreed a contract, and often payments are taken without the consumers explicit consent or knowledge. This can then cause considerable detriment to those wishing to claim refunds within the 14 day cooling off period and also conflicts with the requirements of CSR 15 which states that a business must allow a cooling off period of at least 14 days after *signing* any agreement during which a client may cancel the agreement and be entitled to a refund of any payments made to the business. Where a consumer is not immediately aware that they have made an agreement, they may not be able to cancel their contract within the 14 day cooling-off period.
- 2.21 CMCs are already obliged, under CSR 11, to give potential claimants pre-contractual information and adequate time to read and digest this information before agreeing a contract with the claimant. The CMR Unit is aware of some CMCs that have, for example, cold-called potential claimants, e-mailed the information required under the rule to them and proceeded to agree a contract before ending the call. Some complaints suggest that although pre-contract information was provided as currently required by the rule, some claimants did not feel they had adequate time to read and understand the terms they were effectively agreeing to. It is the case that in some instances claimants dispute the fact that an agreement has even been reached. This is especially so where it is purported by a CMC that a verbal agreement was reached with the claimant.
- 2.22 As a result of the current wording, the rule can be difficult to enforce in many cases as the CMR Unit is unable ascertain whether or not a claimant has in fact agreed a contract and also confirmed that they understood the terms and conditions of service where no written contract is used. It is understood that this problem is mainly associated with CMCs operating in the financial services sector of the industry and where an upfront fee is taken by a CMC.
- 2.23 As there is currently no requirement for a signed contract, it is unknown exactly how many CMCs currently use them versus those that do not. There is, however, some information available on the total number of complaints against CSR 11; during 2011/12, 4,772 complaints recorded by the CMR Unit's Compliance Office were under CSR 11. Of those, 578 related to CSR 11 (a), which requires CMCs to provide potential claimants with honest, comprehensive and objective written information to assist them to reach a decision on whether to use the CMC, including any relevant risks involved. A total of 60 different CMCs were complained about under this rule. A further 443 complaints regarding 61 different CMCs were reported under CSR 11 (e), which requires a CMC to provide details of any charges it makes. The remaining complaints were attributed to each of the other requirements of CSR 11 with CSRs 11 (b) – (d) and (f) – (l), each bringing in between 350 to 400 complaints regarding around 400 different CMCs in total.
- 2.24 The consultation set out a proposal to amend the rule so that CMCs (who have a contractual relationship with a client and represent them only) could only agree contracts in writing and before any fees are taken.**
- 2.25 The proposal is intended to provide increased certainty to consumers by preventing CMCs from agreeing a contract and in particular from taking fees without their signed consent. As CMCs are already required to send out pre-contractual information prior to an agreement being formed, this requirement simply places the additional requirement of obtaining a signature.
- 2.26 On the whole, responses to the consultation indicated an agreement with the proposed requirement for signed contracts. The majority of CMCs that responded indicated that they already use sign contracts with their clients and therefore the proposed change would not depart from normal practice. The Claims Standards Council (CSC) and the Access to Justice Action Group (AJAG) indicated their support for a requirement for signed contracts and stated that well run CMCs should be doing this anyway. The Finance and Leasing Association (FLA) agreed that a contract should be signed by a consumer and that this should be done before any fees are taken. The FLA went on to state that it is important that the rule ensures that pre-contractual information is provided in 'good time' before the contract is signed. Gladstone Brookes Ltd stated that all client agreements which may result in the payment of fees must be formalised and that formalising agreements is essential for clarity of relationship. JPS Financial Ltd stated that a signed contract should be a mandatory requirement before any work or transactions take place.

- 2.27 Some responses received appeared to misunderstand the proposal and were not in agreement as a result. It should be made clear that the current proposal only applies to CMCs that also represent their clients in making a claim. It would not apply to CMCs that simply refer cases on to another entity such as a solicitors firm to pursue. In this scenario, the conduct of the solicitor running the case would be under the jurisdiction of the Solicitors Regulation Authority. Some responses to the consultation by firms that only refer cases appeared not to support the amendment under the mistaken assumption that they would need to start using signed contracts even if they do not represent clients.

Problem 3: What CMCs must keep claimants informed about

- 2.28 **CSR 18 currently states: 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 forward any relevant information received from the client without delay.**
- 2.29 Some complaints received by the CMR Unit suggest that some clients may be unaware that a CMC has had its authorisation suspended or varied until they attempt to get an update on their case. For such clients, the CMR Unit is concerned that a proportion of claimants are unaware that no further progress can be made on their cases in certain instances and that they may be able to pursue their claim through other CMCs. CMCs are obliged to give notice to their clients regarding their authorisation status only when the CMR Unit specifically directs them to do so. In those cases, the CMR Unit directs the CMC to inform its clients of the change in its status; usually this will be where there has been significant consumer detriment caused by the business.
- 2.30 This rule is designed to ensure that claimants are aware, as soon as possible, of any updates that may affect the progress of their case or any fees to be paid. The rule in its current form may not provide claimants with the protection the CMR Unit intended to provide with this rule. The rule in its current form may also mean that some claimants are not able to pursue other means of redress in a timely manner if a CMC is subject to enforcement action that places restrictions on its ability to operate. This may lead to costs to claimants.
- 2.31 During 2011/12, 247 complaints recorded by the CMR Unit's Compliance Office were under this rule and concerned 88 different CMCs.
- 2.32 EMC Advisory Services Ltd (EMCAS) stated that keeping a customer updated is an integral part of the customer experience. EMCAS also signalled their agreement that all CMCs should be required to disclose any variations to their authorisation to their customers. Consumer group Which? stated that considering the substantial fees charged by CMCs, they feel that it is unacceptable that consumers are being kept in the dark as to the progress of their claim and that they support the proposal to require CMCs to automatically inform clients of any variation or suspension to their authorisation.
- 2.33 **The consultation set out a proposal to amend the rule so that CMCs who also represent client would need to inform their clients of any suspension or variation of the authorisation status.**
- 2.34 Overall, the responses to the consultation indicated an agreement with the proposed amendment. The proposal was backed mainly by trade organisations and representative groups and, on the whole, CMCs were in favour of the rule. We Fight Any Claim Ltd (WFAC) stated that they champion regulations which safeguard consumer protection and reinforce good business practice. WFAC went on to state that they would therefore welcome moves to ensure consumers receive regular updates on the status of their claims and any changes to the business's authorisation status. National Accident Helpline stated that they also wholeheartedly agree with the change. The Fair Trade Practice stated that they also supported the change provided adherence in the sector is suitably enforced.
- 2.35 Some responses to the consultation indicated that in order for the proposed amendment to work it should go further to ensure that the clients of the CMC affected receive information about any suspension or variation of authorisation as soon as possible within a set time. The Direct Marketing Association (DMA) stated in their response that a time frame should be given in which CMCs must provide the information to their clients.

3. Policy proposals

- 3.1 The rules highlighted should be amended in order to address the issues raised. The main goal is to increase consumer protection by making the requirements of authorisation even clearer via amendments to the Rules. In addition, the CMR Unit aims to ensure a clearer route of enforcement against those in breach of the mandatory requirements. As a result, the proposals will also protect CMCs who do act within the spirit of the rules, as far as possible, from consumer complaints arising as a result of obligations that may appear to be unclear or ambiguous.
- 3.2 The final policy proposals are outlined below. The Government's preferred approach is to implement all three options.
- **Option 1:** Require CMCs to refer to being regulated by the 'Claims Management Regulator' rather than the 'Ministry of Justice'. The amended rule would read: "*Client Specific Rule 6 (d) - Regulated by the Claims Management Regulator in respect of regulated claims management activities*".
 - **Option 2:** Require contracts to be agreed in writing between CMCs (who do not simply refer cases on to a solicitor) and their clients, and that a contract must be signed by the customer before any upfront fees are taken from the client. The opening paragraph of the rule would be amended to read: "*CSR 11 - 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...*"
 - **Option 3:** Require CMCs who also represent clients to inform their clients of changes in their authorisation status (Client Specific Rule 18) within 14 days of the change of status. The amended rule would read: "*CSR 18 – A business must keep the client informed of the progress of a claim, including any significant changes to costs that the client may have to meet, and must inform the client of any suspension or variation to the business's authorisation status within 14 days of such action being imposed. It must forward any relevant information received from the client without delay*".

Why a voluntary code is not the preferred option

- 3.3 The Government's preferred option is to implement Options 1 to 3 concurrently. A voluntary option has been considered whereby the CMR Unit would issue best practice guidance outlining how CMCs could operate in line with the proposed amendments without any regulatory requirement to comply. It is expected however that the majority of CMCs targeted by these reforms would not comply with the proposed changes on a voluntary basis and therefore the problems under consideration would not be resolved. CMCs have not indicated that they would be willing to follow a voluntary code and the CMR Unit expects that most CMCs would not comply with a voluntary code if issued. A number of CMCs currently do not follow the spirit of the current rules, which are intended to rule out some practices that the proposals above seek to address.
- 3.4 A voluntary code may also cause confusion amongst claimants as to what the requirements of authorisation are and would effectively contradict the intention of the proposed changes. In relation to option 3 for example, claimants would be unclear as to whether or not a CMC did in fact have to inform its clients of any suspension or variation of their authorisation. The proposals are intended to make the requirements of authorisation clearer for consumers and CMCs alike and a voluntary code would not achieve this aim. In effect the current problems relate to the way that current rules are voluntarily interpreted by CMCs and these reforms would "tighten up" this rules to avoid the problems outlined.

4. Economic rationale

- 4.1 The conventional economic approach to Government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies overcharging debtors, or if there are strong enough failures in existing Government interventions, e.g. outdated regulations generating inefficiencies. In all cases, the proposed intervention should avoid generating a further set of disproportionate costs and distortions. The Government may also intervene for reasons of equity or fairness and for redistributive reasons (e.g. reallocating resources from one group in society to another).

- 4.2 Intervention in this case would be justified on efficiency grounds through simplifying and clarifying existing rules. The amendments to the rules would reduce information asymmetries between claimants and CMCs, leading to more informed decision making by claimants and increased consumer protection. The amendments could also reduce costs associated with ambiguity, for example, in dealing with queries and complaints raised about ambiguous rules.

5. Costs and Benefits

- 5.1 This Impact Assessment attempts to identify both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Assessment of costs and benefits

- 5.2 This Impact Assessment provides a quantitative assessment of the expected costs and benefits to businesses and a qualitative assessment of the costs to individuals. All impacts are expected to be small in scale.
- 5.3 This Impact Assessment only attempts to quantify the impacts to businesses for government regulatory policy purposes and, whereas the impacts on consumers are widely dispersed, the impacts on businesses are concentrated and so can be more easily identified. However, the estimates in this Impact Assessment should be considered illustrative given the limitations on data outlined below.
- 5.4 As stated earlier, MoJ has conducted a proactive consultation with CMCs which focussed heavily on obtaining further information on the anticipated financial impacts of these rule changes. This included a number of direct questions around the financial impacts of the proposals and direct contact and engagement with CMCs of all sizes across all sectors.
- 5.5 However, due to the nature of the regulatory regime, the vast diversity of the industry and the commercial and sensitive nature of the financial information requested from CMCs, it has generally been difficult for the CMR Unit to obtain information that would enable it to accurately monetise all of the identified impacts in this Impact Assessment. As such, the financial estimates included in this Impact Assessment are based on limited information and assumptions. This includes information on the number of CMCs and current level of complaints that may be affected by these changes and a small amount of cost information which was received through the consultation. Overall, most respondents indicated that the net costs of these reforms would be small.
- 5.6 The Direct Line Group (DLG) stated that they do not foresee that the proposed amendments to the rules would expose CMCs to any substantial resultant costs. DLG went on to state that those CMCs that operate 'good practice' already should be compliant with the proposals. DLG believe that any consequential costs that may arise for some CMCs will be necessary and proportionate to the benefits that these amendments will bring to consumers. DLG also stated that they do not believe it is possible to quantify any direct costs or benefits to business from their implementation but that the net result should be that consumer complaints and detriment is reduced. This should in turn mean that CMCs, compensators and the CMR unit benefit indirectly from reduced administration costs.
- 5.7 EMC Advisory Services Ltd stated that some CMCs may incur costs when amending product literature, websites and contracts – a cost which would be very difficult to estimate due to variances in supplier charges and other matters. EMCAS went on to state however that, from their own perspective, they would expect to incur very little cost.
- 5.8 Many responses to the consultation did however indicate that any costs incurred as a result of the changes are to be negligible provided a lead-in time or sufficient grace period is applied. The Motor Accident Solicitors Society (MASS) stated that whilst undoubtedly there will be some costs to some CMCs to implement the proposed changes, they do not consider that these will be excessive provided a reasonable lead in time for the amendments is allowed for. The Access to Justice Action group (AJAG) stated that with an appropriate transitional period arrangement, the changes will not impact either way on well run CMCs. AJAG stated that as long as an appropriate

transitional period is in place, there will be some minor additional costs incurred, but these would not be excessive and can be absorbed. The CMR Unit is of the view that provided sufficient lead-in time is given businesses will be able to amend their operations within normal business change processes.

- 5.9 In addition, some responses indicated that any costs incurred would be mitigated by the overall benefits to the industry and consumers. Consumer forum Legal Beagles stated that they could not see that there would be any significant costs to business as a result of the amendments to the conduct rules, save for those businesses that operated dishonestly (for example - those that take advance fees on the strength of a sales call alone and therefore in breach of the existing rules). Legal Beagles went on to state that cost should not be a consideration of conduct.
- 5.10 A response to the consultation did state that the financial information requested in the consultation appeared to be quite intrusive. Although some figures regarding the costs of dealing with a complaint by a CMC were received, CMCs did not provide any information regarding the current levels of complaints received under each rule and appeared reluctant to do so for commercial and reputational reasons.

Main affected stakeholder groups, organisations and sectors

- **Ministry of Justice (MoJ);**
- **Claims Management Companies (CMCs)** in England and Wales;
- **Claimants** wishing to contract with a regulated CMC;
- **Defendants** in those cases that may be pursued;
- **Legal services providers** that derive income from civil litigation;
- **Other dispute resolution services** e.g. ombudsman schemes;
- **HM Courts and Tribunal Service (HMCTS);** and

Option 0: Base case (do nothing)

- 5.11 Under this option, no intervention would be made. This means the current regime would remain. The current ambiguity in the rules would remain and claimants would continue to experience detriment from some CMC practices.
- 5.12 The do nothing option is included for comparative purposes. As its costs and benefits are compared against themselves, they are necessarily zero, as is its net present value.

Option 1: Client Specific Rule 6 (d) & 11 (I) - Require that CMCs refer to being regulated by the 'Claims Management Regulator' rather than the MoJ

Description

- 5.13 Under this option, the regulatory statement given in Client Specific Rules 6 (d) & 11(I) would be amended so that CMCs would have to refer to being regulated by the 'Claims Management Regulator' (CMR) rather than the MoJ. All CMCs would need to amend their pre-contractual information in which the regulatory statement is compulsory, by replacing the words 'Ministry of Justice' with 'Claims Management Regulator'. Those CMCs that choose to refer to their regulation in any advertising or marketing material would need to amend that material.
- 5.14 A transitional period of 3 months would be put in place to give CMCs sufficient time to make the relevant amendments and minimise costs.
- 5.15 The amended regulatory statement would read: ***"Regulated by the Claims Management Regulator in respect of regulated claims management activities."***
- 5.16 All impacts of this proposal are expected to be negligible as the proposal simply clarifies who is responsible for Claims Management Regulation.

Costs of Option 1

Costs to the wider MoJ including the CMR Unit

- 5.17 The wider MoJ would incur no additional net costs from the change in this rule as the CMR Unit is funded by CMCs on a cost recovery basis.

Costs to CMCs

- 5.18 There may be some small one-off administrative costs for CMCs of amending their pre-contractual and marketing material that refers to their regulatory status. The consultation revealed that these costs will depend on the size of the business and how long the grace period is. Although few cost figures were received overall, smaller businesses tended to forecast negligible or minimal costs regardless of the length of any grace period, whereas larger businesses would need to rely more on a transitional or grace period of between 3-6 months in order to minimise costs. National Accident Helpline stated that an 'overnight' change in this regard would burden their business and others with unnecessary costs associated with printing new corporate materials. Where a transitional or grace period is not applied, estimates provided by a handful of CMCs suggested that it would cost between £50 and £3,000 to comply with the new rule, although it should be recognised that most consultation respondents suggested that the costs would be negligible. A transitional period of 3 months has therefore been proposed to allow CMCs to incorporate these changes into the normal cycle of updating their marketing and administrative material and to, therefore, minimise costs.
- 5.19 The estimated average cost of this change is therefore assumed to be well towards the lower end of the range provided by the handful of CMCs that provided cost figures to the consultation. This is because of the provision of a grace period and also because the CMC industry is characterised by a large number of small firms (which the consultation indicated would face minimal costs) and a few much larger businesses. If it were to cost each CMC on average £150 to update their pre-contractual and marketing material then on average the overall one-off cost to businesses (of which there are approximately 3,000) would be around £450,000.
- 5.20 This estimate equates to around six hours of business time using ASHE 2012 data on the average wage of "Business, finance and related associate professionals" (£19.68 per hour), with an additional 30% added to account for overheads. This yields a management cost per hour figure of £25.58 and thus, on this basis, the cost per business would be approximately £150.
- 5.21 As stated previously, financial data on CMCs is limited and there is necessarily a degree of uncertainty around this estimate. The actual costs incurred could be higher or lower than this level and it is therefore prudent to suggest that the cost will fall within a range rather than a spot estimate. Our best estimate is that the one-off cost of this change would be between £300,000 and £600,000 in total in 2013/14, which reflects changes in the assumed number of hours it would take to make any adjustments. Our central estimate is a cost of £450,000.
- 5.22 It is also worth highlighting that these proposals are mainly designed to tackle CMCs which are not operating within the spirit of current CMR rules. There were 174 complaints recorded by the CMR against 45 CMCs directly relating to this rule in 2011/12, although it may be the case that more businesses are affected than the number currently complained against as customers may not escalate complaints to the CMR. The CMR's assessment based on their established knowledge of the sector is that whilst this might relate to only a relatively small proportion of the 3,000 CMCs within the industry, it probably relates to enough CMCs to justify proceeding with the reforms in question.
- 5.23 It is possible that there may be some costs to CMCs if they receive fewer claims, i.e. less business, as a result of this change as they may be using the current association with MoJ to generate demand. However, it is assumed that this cost would only be borne by non-compliant CMCs that are using the current statement inappropriately and are acting outside of the current rules by suggesting they are endorsed by MoJ. These costs are therefore not included in the overall assessment.
- 5.24 No additional CMR regulatory costs associated with enforcement action are expected as a result of the amendment of this rule.

Costs to Claimants

- 5.25 There may be some costs to claimants as they might feel less reassured that CMCs are 'only' regulated by the CMR and not regulated or even endorsed by MoJ - even if this reassurance was based on false pretences and is perceived rather than real.

Benefits of Option 1

Benefits to the wider MoJ including the CMR Unit

- 5.26 The wider MoJ may see reputational benefits from the clarification of regulatory responsibility as there will be less confusion as to the MoJ's actual role in the regulation of any CMC proven to be involved in malpractice.

Benefits to CMCs

- 5.27 CMCs would benefit from a reduction in complaints received from their clients relating specifically to any notion that the business is endorsed or recommended by Government. These specific and narrow avoided complaints are solely about the fact that claimants perceive that CMCs are claiming to be regulated by the MoJ rather than by the CMR. Some CMCs have indicated that this would facilitate increased transparency. As stated previously, there were 174 complaints recorded by the CMR Unit against 45 CMCs related to this specific rule in 2011/12. Responses to the consultation suggested that it costs between £50 and £500 to deal with a consumer complaint on average so any reduction in complaints about the regulatory statement gives consumers a false impression that a business is endorsed or part of Government in some way would benefit CMCs. Unlike the costs of amending contracts, the costs of dealing with a consumer complaint do not appear to be dependent on the size of the business and hence we assume a saving of £275 per complaint. These figures imply that up to £50,000 may be saved per year if all complaints to the CMR were avoided as a result of this change. These costs are met by those CMCs who are the subject of the complaint. However, there may also be an unknown number of additional complaints which are dealt with by CMCs regarding false claims of Government endorsement which are not escalated to the regulator that are also affected by this change, as such the potential benefit may be larger but the extent to which this is the case is unknown.
- 5.28 There is necessarily a degree of uncertainty around the £50,000 estimate above and the actual benefits could be higher or lower than this level. As such, it is prudent to suggest that the cost will fall within a range rather than a spot estimate. Furthermore for the OITO calculation we should not be including the benefit of avoided complaints which accrue to non-compliant CMCs, in the same way that we are not including the cost to non-compliant CMCs from reduced levels of business. Based on information from the CMR the £50,000 central estimate has been reduced to capture only those avoided complaints which apply to compliant CMCs, these complaints stemming from general confusion associated with the current rules rather than specific misconduct by CMCs. On balance, our best estimate is that the benefit of this change for compliant CMCs would be between £20,000 and £40,000 per year in total from 2013/14. Our central estimate for the NPV calculation is £30,000.
- 5.29 As a result of fewer complaints brought against CMCs specifically relating to the perception that CMCs are endorsed by Government, there may be a reduction in breaches dealt with by the CMR under this rule. As the CMR is funded by CMCs on a cost recovery basis, in theory any savings might be passed through to CMCs through reduced licensing fees. However, any change in CMR costs and therefore fees is expected to be negligible. The impact of other factors on CMC fees including other policy changes, are not considered in this IA.
- 5.30 As stated, it is the case that the current statement can confuse consumers even if used in the prescribed way. This means that it is also possible that this change may potentially improve consumer confidence in the claims management industry insofar as CMCs using the revised statement in the newly prescribed manner would not be seen to be misleading consumers as to their true relationship with Government. Improved consumer confidence could result in a small increase in business although this would be a second round impact of the proposal. This provides for better transparency and, with less scope to be misled, those choosing to use the services of a CMC may do so for the right reasons and not simply because it appears as though a business is safe to use because it is in some way linked to Government.

Benefits to claimants

- 5.31 Claimants would benefit from clearer information about who is responsible for the regulation of CMCs. One respondent to the consultation stated that increased consumer confidence would be seen throughout the sector. As many CMCs advertise heavily on TV and in national newspapers where the regulatory statement is also used, CMCs will no longer be seen to be misleading consumers on mass via advertising and marketing on a national scale with the use of a

regulatory statement that can engender a false sense of security and the notion that Government has endorsed or recommended a business in some way.

- 5.32 As there would be less confusion over what regulation means, consumers may also be in a better position to decide the best course of action for them to pursue a case. They may place a greater importance on a CMC's dispute resolution procedures, rather than choosing a CMC purely because it appears as though the Government will be involved in the pursuit of their claim somehow.
- 5.33 To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced time, stress and financial costs.

Risks and Assumptions for Option 1

- 5.34 It is assumed that CMCs would comply with this amended rule.
- 5.35 It is assumed that there would be no change in the volume of CMC business undertaken by compliant CMCs as a result of the amendment to this rule. It is assumed that some non-compliant CMCs that are using the association with MoJ inappropriately may face a reduction in business.
- 5.36 It is assumed that CMCs may bear a one-off cost associated with making this change. The assumptions underpinning these estimates are outlined above. There is a risk that larger costs may be incurred for some CMCs if they have an unusual business model or a sufficient transitional or grace period is not applied. The grace period proposed is within the region suggested by consultation respondents. There are also risks in the other direction that these costs might be smaller.
- 5.37 It is assumed that the number of complaints regarding the MoJ's role in regulation to the CMCs would decrease as a result of clearer regulation.
- 5.38 NPV calculations are based on costs and benefits for compliant CMCs and are calculated over a 10 year appraisal period.
- 5.39 It is assumed that there are no additional CMR regulatory costs associated with the amendment of this rule.
- 5.40 It is possible that the clarification of regulatory responsibility may lead to some claimants contacting the CMR Unit directly rather than the wider MoJ with complaints or enquiries. This could result in some small efficiency gains for the MoJ, but these would be expected to be negligible.
- 5.41 No significant impacts are expected on HMCTS case volumes, court fees and operational costs.
- 5.42 No significant impacts are expected on legal service providers.

Option 1: One-In, Two-Out implications

- 5.43 All impacts are expected to be small as a sufficient grace period is proposed, enabling changes to be incorporated as part of business as usual (as marketing material is often updated periodically as a matter of course). This proposal simply clarifies who is responsible for Claims Management Regulation.
- 5.44 Some CMCs could incur minor additional one-off costs if the grace period is not sufficient to allow them to amend their pre-contractual and marketing information as part of their regular business processes. This one-off cost is estimated at between £300,000 and £600,000 in total in 2013/14. However, the grace period has been designed to minimise any adjustment costs and the overall cost could be lower than this level. To the extent that costs are incurred, they would count as an IN.
- 5.45 CMCs could benefit from a reduction in complaints relating to this rule and increased transparency. This ongoing benefit is estimated to total between £20,000 and £40,000 per year from 2013/14.
- 5.46 The estimates provided above suggest that the one-off cost to businesses of updating their marketing and administrative material (£300,000 to £600,000) may be offset by the ongoing benefit of reduced complaints (between £20,000 and £40,000) in the long term.

- 5.47 The potential impacts on business volumes for non-compliant CMCs highlighted above are not included in this OITO assessment.
- 5.48 Overall, the anticipated impacts of this change are small. The One-in two-out impact is assessed as an IN with a Net Present Cost over a 10 year appraisal period of around £200,000.

Option 2: Client Specific Rule 11 - Require contracts to be agreed in writing

Description

- 5.49 Under this option, Client Specific Rule 11 would be amended to require any contract formed between a client and a CMC that also represents clients to be agreed in writing. It would also mean that the CMCs could not take any fees from the client until a signed contract had been received by the CMC. In addition, CMCs would be required to published their standard terms and conditions online (only where a business operates a website). The current rule only applies to CMCs that also represent their clients in making a claim and does not apply to CMCs who simply refer cases on to a solicitor. The current requirements in this regard will therefore remain the same.
- 5.50 This change would remove uncertainty about whether a contract had been agreed. It would mean that CMCs that are currently able to operate outside the spirit and intention of the current rules because of this uncertainty can no longer do this. The issues of CMCs taking unauthorised payments, and of disagreement between CMCs and clients about the terms on which a contract was formed, could be significantly reduced or even eradicated as there would no longer be ambiguity and differences of opinion on whether a contract was verbally agreed.
- 5.51 The opening paragraph of the rule would be amended to read: ***“CSR 11 - A contract between a business and a client must be signed by the client, and the business must 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...”***
- 5.52 As outlined at paragraph 2.17, this rule already requires that CMCs send a substantial amount of information to clients detailing the agreement that a client is entering with a CMC. As such, the additional costs of this proposal relate only to providing a means to collect a signature from a client and updating an existing website rather than drafting and sending out new contractual information to clients, something which must already be done under the existing rules.

Costs of Option 2

Costs to the wider MoJ including the CMR Unit

- 5.53 The MoJ would incur no additional net costs from the change in this rule as the CMR Unit is funded by CMCs on a cost recovery basis.

Costs to CMCs

- 5.54 Only CMCs that also represent their clients in making a claim will be affected as these are the only CMCs that are required to adhere to this rule. Within this group, CMCs that currently do not use signed contracts may incur one-off adjustment costs through providing a means to collect a signature from clients, updating their websites and through a delay in settling claims.
- 5.55 In order to calculate an estimate of the expected one-off aggregate costs on the industry of Option 2 it has been necessary to estimate the proportion of CMCs affected and the expected costs of any changes. We have used information from the CMR to form an estimate of the proportion of businesses affected, although there remains a degree of uncertainty around these estimates.
- 5.56 This reform will only affect CMCs that also represent clients and it is assumed that this subset of the industry accounts for approximately 33% of total firms². Not all of these CMCs will be directly

² Data for 2012 indicates that around half of the 30 largest CMCs in the industry (by turnover) represent clients and it is assumed that a much lower proportion of smaller firms represent clients. CMCs that also represent clients

affected either because they do not have a website or already use signed contracts and, therefore, to estimate the cost of this reform it is assumed that around 25% of all CMCs will be affected by this rule change. These assumptions are based on information provided by the CMR.

- 5.57 As CMCs are already required to provide pre-contractual information in written form to clients, the necessary changes under this rule could be readily made to existing documents and provided with the existing pre-contractual information already supplied. CMCs would be required to ensure that consumers sign the pre-contractual information that they are already being sent and return it to the business, rather than simply sending the information to the client to satisfy the precise wording of the rule. It would not be necessary for CMCs to draft new contractual material and it is therefore expected that it will take minimal resources to make any amendments. Similarly, those CMCs that have websites would be required to make small changes to incorporate their terms and conditions. The provision of a grace period should also provide the opportunity for CMCs to update these materials at low cost as part of their normal business change processes.
- 5.58 For the purposes of this Impact Assessment it is therefore assumed that an average cost of around £150 for each change would be incurred - £300 for both changes (to contractual material and to websites). On a similar basis to option 1 this equates to around six hours of business time to make each of the necessary changes. Using the assumptions stated - the proportion of CMCs in the industry that the proposal would affect (750 CMCs based on 25% of the industry) and a unit cost of £300 – it is, therefore, estimated that there would be a one-off cost to CMCs of around £225,000 in total in 2013/14 to update their contracts and websites.
- 5.59 Some CMCs may face an additional one-off cost if the requirement for signed contracts introduces a delay in settling claims. This cost would be one-off because, although there may be a delay to CMCs claims at the introduction of signed contracts, the flow of ongoing claims would otherwise be unaffected. This was not raised as an issue by CMCs responding to the consultation and, for compliant CMCs that already have systems in place to validate clients' consent, the impact is expected to be negligible. Moreover, the availability of electronic facilities to most claimants will also help to reduce delays.
- 5.60 It is difficult to estimate the size of this cost accurately as it depends on the speed with which clients return signed contracts. Given the potential benefits for clients from making a claim it is likely that they will respond quickly. Assuming that the average claim is delayed by two working days this would represent a one-off two day delay for some CMCs which could cost an average CMC around £450 based on a number of high level and illustrative assumptions³. For the 750 CMCs affected this would cost around £340,000 in aggregate in 2013/14.
- 5.61 As stated previously, financial data on CMCs is limited and, therefore, there is necessarily a degree of uncertainty around the estimates provided above. The actual costs incurred could be higher or lower than this level and it is therefore prudent to suggest that the cost will fall within a range rather than a spot estimate. In summary our best estimate is that the total one-off costs of this change would be between £400,000 and £800,000 in 2013/14, which reflects potential changes to the assumptions on hours of business time required, profit margin, number of days delay and number of businesses affected. Our central estimate is a one-off cost of around £600,000 (i.e. the sum of the £225,000 and £340,000 figures mentioned above).
- 5.62 In addition to these one-off costs, it is possible that some CMCs may face ongoing costs of these reforms through lost business. However, it is expected that only CMCs that are non-compliant under the existing rule would be affected by loss of business. For example, CMCs taking advance payments from claimants without authorisation or claiming to have an agreement in place with a consumer when in fact, there is not. These CMCs may face costs if they receive fewer claims because they will no longer be able to use the lack of a requirement for signed contracts to secure clients' business without their explicit consent. This includes taking unauthorised advance payments from clients as a way to "tie them in" to claiming through the

would tend to have a higher turnover on average because of the additional activities they undertake and, as the CMC industry is characterised by a large number of small firms and much fewer large firms, it is assumed that a significantly smaller proportion than 50% of firms represent clients. This assumption is supported by the regulator's understanding of the industry.

³ This high level approximation assumes the average CMC has a turnover of around £260,000 (based on the industry figures at paragraph 1.5) and assuming a 20% profit margin this implies profits of around £50,000. A 2 day delay to activities equates to around 0.9% of the working year, which applied to the estimated profit implies a cost of around £450 per CMC.

CMC. It is currently difficult to identify such CMCs under the existing rule and the requirement for signed contracts will make it easier to do so. As these costs are borne by non-compliant companies (who do not explicitly receive consent) they are not included in the OITO assessment.

- 5.63 Compliant CMCs would already be acting within the intention of the current rules and only progressing claims with clients' consent. Compliant businesses that currently do not use signed contracts will necessarily have existing processes in place to validate client's consent and therefore are unlikely to face any costs associated with lost business.
- 5.64 No additional CMR regulatory costs associated with enforcement action are expected as a result of the amendment of this rule.

Costs to claimants

- 5.65 It is possible that some claimants who specifically wish to use the services of a CMC may experience additional costs where the amended rule leads to a longer process for agreeing a contract with a CMC. The availability of electronic facilities to most claimants will help to reduce delays. Claimants who do not wish to use the services of a CMC and opt to use other dispute resolution procedures will not be affected in any way.

Benefits of Option 2

Benefits to CMCs

- 5.66 Some responses to the consultation indicated surprise that under the rules signed contracts are currently not required. Assured Money Solutions Ltd stated that for those in the industry who do not currently use a signed contract system the impact of the rule change should increase their business volume as the trust level between the prospective client and the CMC should increase. The Claims Standards Council stated that good CMCs will already have signed contracts in place and that where fees are involved there should be a contract between the client and the CMC.
- 5.67 Renaissance Easy Claim Ltd stated that there would be major long term benefits to the industry for ensuring a signed contract is in place. We Fight Any Claim Ltd (WFAC) stated that CMCs and consumers would benefit from greater certainty and transparency to identify exactly when a contract was agreed, on a particular date, or with particular terms. WFAC went on to state that both CMCs and consumers would therefore benefit from a reduction in misunderstanding.
- 5.68 The CMR does not hold any information on the volume of complaints received directly by CMCs that specifically relate to the uncertainty created by a lack of signed contracts, although in 2011/12 there were around 1,000 complaints that were escalated to the CMR against 120 CMCs related to rules regarding honest pre-contract information (CSR 11a) and charges (CSR 11e). Responses to the consultation suggested that it costs between £50 - £500 to deal with a consumer complaint on average. With the introduction of signed contracts, CMCs would benefit from a reduction in the costs of these complaints due to greater certainty over the basis upon which a contract has been agreed. These figures imply that around £275,000 per year may be saved if all 1,000 complaints were avoided as a result of this change. This estimate is based on a saving of £275 per complaint. As explained before this cost per case applies to CMCs in relation to complaints made against them. There may also be an unknown number of complaints which are not escalated to the CMR that are affected by this change and this would represent a further benefit to CMCs.
- 5.69 There is necessarily a degree of uncertainty around this estimate and the actual benefits could be higher or lower than this level. As such, it is prudent to suggest that the benefit will fall within a range rather than a spot estimate. Furthermore for the OITO calculation we should not be including the benefit of avoided complaints which accrue to non-compliant CMCs, in the same way that we are not including the cost to non compliant CMCs from reduced levels of business. Based on information from the CMR the £275,000 central estimate has been reduced to capture only those avoided complaints which apply to compliant CMCs, these complaints stemming from general confusion associated with the current rules rather than specific misconduct by CMCs. Our best estimate is that the benefit of this change for compliant CMCs would be between £50,000 and £150,000 per year from 2013/14. Our central estimate is a benefit of £100,000.
- 5.70 As a result of fewer complaints brought against CMCs there may be a reduction in breaches dealt with by the CMR under this rule. As the CMR is funded by CMCs on a cost recovery basis, in

theory any savings might be passed through to CMCs through reduced licensing fees. However, any change in CMR costs and therefore fees is expected to be negligible. The impact of other factors on CMC fees including other policy changes, are not considered in this IA.

- 5.71 As the consultation responses highlighted above state, it is also possible that this change may improve consumer confidence in the claims management industry resulting in a small increase in business. This would be a second round affect of this proposal.

Benefits to claimants

- 5.72 Claimants would benefit from greater certainty over the basis upon which a contract has been agreed. The rule amendment enables a clear determination on whether basic standards of business operation have been met in addition to the requirements of the rules. If there is no signed contract available then a contract cannot be deemed to have been agreed and it is therefore instantly clear whether or not permission has in fact been given to proceed. This means that the CMR unit will be able to take enforcement against those proven not have adhered to the rule by not obtaining a client signature, regardless of any other factors such as any purported verbal agreement which, in most cases, is difficult to prove. This would reduce the costs associated with disputes and complaints.
- 5.73 Some claimants would benefit from increased transparency, making a more informed decision and understanding the risks better. Claimants may be more inclined to read pre-contract information thoroughly before signing to confirm that they agree with the terms and conditions.
- 5.74 Signed contracts would also reduce the extent to which fees are taken from claimants without their explicit consent. This will reduce the associated costs to claimants.
- 5.75 To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced time, stress and financial costs.

Risks and Assumptions for Option 2

- 5.76 It is assumed that CMCs will comply with this amended rule.
- 5.77 It is assumed that the number of complaints to CMCs that relate to whether a contract has been agreed and the unauthorised taking of fees will decrease.
- 5.78 It is assumed that a transitional period of 3 months is a sufficient transitional period that would minimise any additional costs.
- 5.79 It is assumed that CMCs may bear a one-off cost associated with making this change. The assumptions underpinning cost estimates are outlined above. Given the lack of specific financial data available, these assumptions should largely be considered illustrative and there is a large degree of uncertainty around these estimates. There is a risk that larger costs may be incurred for some CMCs if they operate an unusual business model or if a sufficient transitional or grace period is not applied. The grace period proposed is within the region suggested by consultation respondents. There is also a risk in the other direction that these costs might be smaller.
- 5.80 NPV calculations are based on costs and benefits for compliant CMCs and are calculated over a 10 year appraisal period.
- 5.81 It is assumed that any reduction in the volume of CMC business as a result of the amendment to this rule would only affect non-compliant businesses that currently use the lack of clarity about contracts to gain businesses through inappropriate means. It is assumed that there is no reduction in business for compliant CMCs.
- 5.82 No significant impacts are expected on HMCTS case volumes, court fees and operational costs.
- 5.83 It is assumed that most claimants who do not have a written contract would benefit from having a written contract.
- 5.84 It is assumed that there are no additional CMR regulatory costs associated with the amendment of this rule.

Option 2: One-In, Two-Out implications

- 5.85 CMCs would incur one-off costs estimated to be between £400,000 and £800,000 in total 2013/14 to implement changes to contractual documentation and their websites. To the extent that any costs are incurred, they would count as INs.
- 5.86 CMCs would gain from reduced costs of dealing with complaints under this rule. This benefit is estimated to total between £50,000 and £150,000 per year from 2013/14.
- 5.87 The potential impacts on business volumes highlighted above are not included in this OITO assessment as they are considered to affect only non-compliant firms.
- 5.88 Overall, it is expected that costs to CMCs associated with setting up signed contractual processes would be small given that a 3 month transition period is proposed, and where incurred would be offset by ongoing benefits associated with lower volumes of complaints and increased transparency. Taking into consideration the estimates provided, the One-In Two-Out impact is estimated to be a net present benefit of £300,000 over the 10 year appraisal period.

Option 3: Client Specific Rule 18 - Require CMCs to inform clients of any suspension of variation to their authorisation status

Description

- 5.89 Under this option, Client Specific Rule 18 would be amended to clarify that CMCs who also represent clients must inform their clients if their authorisation is varied or suspended. The current rule already requires CMCs to keep clients informed of the progress of their claim and so this change is just a clarification of the existing rule, rather than the introduction of a new obligation on CMCs.
- 5.90 The amended rule would read: “**CSR 18 – *A business must keep the client informed of the progress of a claim, including any significant changes to costs that the client may have to meet, and must inform the client of any suspension or variation to the business’s authorisation status within 14 days of such action being imposed. It must forward any relevant information received from the client without delay.*”**

Costs of Option 3

Costs to MoJ including the CMR

- 5.91 The wider MoJ would incur no additional net costs from the change in this rule as the CMR Unit is funded by CMCs on a cost recovery basis.

Costs to CMCs

- 5.92 CMCs that have their authorisation varied or suspended by the CMR Unit would incur small additional administration costs from 2013/14 to inform their clients of changes to their authorisation status if they would not have otherwise done so. In 2011/12, 5 CMCs had their authorisation suspended and 7 had their authorisation varied so this change is only expected to affect a very small number of CMCs. The costs to these CMCs of informing clients of changes in their authorisation status are expected to be negligible as it would just be the cost of sending a letter or email. Furthermore these proposals are designed to tackle CMCs which are non-compliant as they have already had their authorisation suspended or varied, and therefore these costs are not included in the OITO assessment.
- 5.93 It is unclear if there would be any additional costs to CMCs associated with a reduction in business as a result of this change as CMCs would be constrained in their activities following suspension or variation. In any case such costs would relate to non-compliant CMCs and hence would not be included in the OITO assessment.
- 5.94 No additional CMR regulatory costs associated with enforcement action are expected as a result of the amendment of this rule.

Benefits of Option 3

Benefits to CMCs

- 5.95 CMCs would benefit from a reduction in the number of complaints related to this rule. The extent of the reduction in complaints is unknown. The CMR does not hold any information on the volume of complaints received by CMCs that relate directly to the uncertainty caused by the current rule. During 2011/12 however, the CMR unit received 247 wider complaints under this rule regarding 88 different CMCs; with the clarification that CMCs must inform their clients if their authorisation is varied or suspended, an unknown proportion of these complaints would no longer be made. Responses to the consultation suggested that it costs between £50 - £500 to deal with a consumer complaint on average. These figures imply that around £70,000 may be saved if all 247 complaints were avoided as a result of this change. This figure is based on a saving of £275 per complaint. As explained before this cost per case applies to CMCs in relation to complaints made against them. There may also be an unknown number of complaints which are not escalated to the CMR that are affected by this change.
- 5.96 There is necessarily a degree of uncertainty around this estimate and the actual benefits could be higher or lower than this level. As such, it is prudent to suggest that the cost will fall within a range rather than a spot estimate, and the central estimate of £70,000 might lie within a range of £40,000 to £100,000. Furthermore for the OITO calculation we should not be including the benefit of avoided complaints which accrue to non-compliant CMCs, in the same way that we are not including the cost to non compliant CMCs from reduced levels of business. Based on information from the CMR the £70,000 central estimate has been reduced to £0 to capture only those avoided complaints which apply to compliant CMCs. This is because all complaints in this area are considered to apply to non-compliant firms.
- 5.97 As a result of fewer complaints brought against CMCs there may be a reduction in breaches dealt with by the CMR under this rule. As claims management regulation is funded by CMCs on a cost recovery basis, in theory any savings might be passed through to CMCs through reduced licensing fees. However, any change in CMR costs and therefore fees is expected to be negligible. The impact of other factors on CMC fees including other policy changes, are not considered in this IA.
- 5.98 Some CMCs may benefit if they take on work from other CMCs that have had their authorisation varied or suspended more quickly as a result of this change. It is also possible that this change may improve consumer confidence in the claims management industry resulting in a small increase in business. This would be a second round effect of this proposal.

Benefits to claimants

- 5.99 Claimants would benefit from being better informed about the authorisation status of their CMC and whether it can continue to act for them. They would be able to decide, in a timelier manner, the best course of action to pursue their case where CMCs have their authorisation status varied or suspended. This may mean that some claimants are able to get compensation awards more quickly by using other CMCs. The number of claimants affected and the extent of the benefit is unknown.
- 5.100 To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced time, stress and financial costs.

Risks and Assumptions for Option 3

- 5.101 It is assumed that CMCs will comply with this amended rule.
- 5.102 It is assumed that there would be no change in the overall volume of CMC business as a result of the amendment to this rule. Clarifying that CMCs must inform their clients if their authorisation is varied or suspended will not affect claimants' initial decisions about whether to bring a claim through a CMC although improved consumer confidence in the industry may result in a second round effect of increasing business. Furthermore it is assumed that claimants that are informed about changes in authorisation would take their claim to a different CMC or pursue it through other means or drop their claim. It is possible that claimants might be more likely to take up their claim with another CMC (rather than dropping their claim or pursuing it through other means) if they find out sooner that their initial CMC is no longer able to deal with their claim.
- 5.103 NPV calculations are based on costs and benefits for compliant CMCs and are calculated over a 10 year appraisal period.

- 5.104 It is assumed that the level of complaints to CMCs under this rule would be reduced as a result of clarifying what is expected of CMCs.
- 5.105 It is assumed that there are no additional regulatory costs associated with the amendment of this rule.
- 5.106 No significant impacts are expected on HMCTS case volumes, court fees and operational costs.
- 5.107 No significant impacts are expected on legal service providers.

Option 3: One-in, Two-out implications

- 5.108 CMCs that have their authorisation varied or suspended may incur additional costs in informing clients of this if they would not have otherwise done so. As CMCs are already required to keep clients informed of their claim's progress, only non-compliant CMCs would be affected by this proposal. It is expected that only a very small number of CMCs would be affected and the cost incurred would be negligible as it would just be the costs of sending a letter or email. As this impact only affects non-compliant businesses these costs are not scored in the OITO assessment.
- 5.109 CMCs would gain from lower direct and indirect costs of dealing with complaints under this rule. This benefit is estimated to total between £40,000 and £100,000 annually from 2013/14 and again would be for non-compliant CMCs. Some CMCs would also benefit if claimants transfer their business to them from CMCs that have had their authorisation suspended or varied more quickly.
- 5.110 The potential impacts on business volumes associated with improved consumer confidence are not included in this OITO assessment as they are considered to be second round effects of this change.
- 5.111 In conclusion, taking into consideration that the direct impacts of this change will affect non-compliant CMCs, the One-In Two-Out impact has been assessed as a Zero net cost IN.

Summary of Overall One-In, Two-Out Implications – Options 1 to 3

- 5.112 Further information regarding the financial impacts of the proposals has been sought from CMCs, related organisations and the general public as part of the formal consultation exercise to better understand the potential impacts of the proposals. Where sufficient data and estimates are available, impacts have been monetised as far as possible.
- 5.113 The overall financial impacts on businesses are expected to be small as a 3 month grace period will allow firms to respond to these proposals within their normal business change processes. The impacts of the three proposals can be considered to be additive as no significant interactions are anticipated between them. However, it is possible that making the changes simultaneously may allow some businesses to minimise any costs of the proposals. Based on the information available, a summary of the overall 'One-in, Two-out' policy is set out below.
- 5.114 Some CMCs would experience one-off transitional costs in complying with the amended rules. Costs are expected to be minor so long as a sufficient transition period is applied and MoJ intends to implement these rules with a 3 month grace period. Across the three options these one-off costs are estimated to be between £0.7m and £1.4m across all CMCs in 2013/14. To the extent that costs are incurred by these CMCs this would count as an IN.
- 5.115 Compliant CMCs would benefit from a reduction in the direct cost of dealing with complaints following these changes. These benefits are estimated to be between £0.07m and £0.19m per year from 2013/14.
- 5.116 As a result of fewer complaints brought against CMCs there may be a reduction in breaches dealt with by the CMR under this rule. As claims management regulation is funded by CMCs on a cost recovery basis, in theory any savings might be passed through to CMCs through reduced licensing fees. However, any change in CMR costs and therefore fees is expected to be negligible.
- 5.117 The potential impacts on business volumes highlighted in the costs sections of the three options are not included in this OITO assessment as they relate to non-compliant CMCs or otherwise to be second round effects of this change.

5.118 In conclusion, taking into account the estimates outlined above it is estimated that these changes would result in a net present benefit of around £0.1m over a 10 year appraisal period. The overall OITO impact has been assessed as an IN with ZERO NET COST.

6. Micro Business Exemption Waiver – Options 1 to 3

- 6.1 The Claims Management Regulator seeks an exemption from the moratorium on the basis that, without such an exemption, the intended effect of its proposals would be unduly limited. The detriment suffered by claimants under the current system can be caused by CMCs of any size. 2,721 of the total 3,000 (approx) CMCs authorised in 2011/12 declared at the start of the regulatory year that they employed, or were due to employ, fewer than 10 members of staff to deal with claims management matters.
- 6.2 The Claims Management Regulator is different from most other regulators – such as the Solicitors Regulation Authority and the Financial Services Authority – as it operates from within central Government. It is because of where the Regulator sits, rather than the nature of its functions that its proposal is subject to the moratorium on new regulations for micro-businesses and start-up businesses. In addition, Regulation 25 of the Compensation (Claims Management Services) Regulations 2006 gives provision for the Regulator to amend or revoke rules or codes of practice with any such amendments containing transitional, incidental or consequential provisions. In regulatory terms, the amendment of the conduct rules would need to apply to all regulated CMCs as per the provisions of the legislation mentioned above as adherence to the conduct rules is a condition of authorisation.
- 6.3 The Claims Standards Council (CSC) and the Access to Justice Group both stated that, in relation the proposals set out, there should be no exemptions for micro businesses and that they should be regulated on the same basis as larger CMCs. The CSC went on to state that it is not fair to the client if they do not have the same protections if their claim is taken by a small operator, as compared to a larger operation. The Finance and Leasing Association (FLA) stated that consumer protection is paramount and that when added together, small CMCs have the potential to cause large scale consumer detriment. The Association of Regulation Claims Management Companies (ARC) stated that the sooner the changes are implemented the better it will be as it will help 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.
- 6.4 The Law Society stated that given the proposed changes in rules are in response to issues identified by the regulator as giving rise to consumer detriment; they should be implemented as soon as possible. The Law Society go on to state that the rules should apply to all CMCs and that they would support a waiver from the current moratorium on micro businesses.
- 6.5 The Regulator considers that the proposed rule amendments would be inadequate if the majority of regulated CMCs were exempt from the obligation to comply. The Regulator would not therefore be able to impose the changes if no waiver from the moratorium is granted.

7. Sunsetting / Review Clause

- 7.1 There will be no change to any legislation as a result of the proposed amendments and so the proposals would not fully fall within scope of the Sunsetting Regulations. The amendments will however place some small additional burdens on regulated CMCs. The effectiveness of the rules is monitored on a constant basis and so it is not necessary to set a specific future review date. The CMR industry is continuously evolving and so future rules review exercises may be conducted, prompted by specific, emerging issues. The effectiveness of the CMR regime is assessed on an annual basis and set out in the CMR annual report which is cleared through Ministers.

8. Enforcement and Implementation

- 8.1 The MoJ intends to implement the proposals in May 2013 alongside the Jackson reforms and the proposed bans on referral fees and inducements offered by CMCs. A minimum transitional period of 3 months prior to implementation will be applied. All measures are subject to Ministerial and Cabinet Committee clearance. Monitoring and enforcement will be carried out as part of the existing regulatory regime already in operation.

9. Specific Impact Tests

Small Firms Impact Test

- 9.1 As part of the 2011/12 annual authorisation renewal exercise, 2,721 out of a total of around 3,000 regulated CMCs declared that they employed or were due to employ between 0 to 10 staff over the forthcoming year. CMCs range in size from large national companies to smaller local firms that employ small numbers of people and operate within a more localised community. Information provided by the monitoring and compliance unit suggests that some small CMCs however, do consistently declare annual turnovers in excess of £500,000 despite employing little or no additional staff. For example, some CMCs in the personal injury sector with fewer than 10 members of staff are operating with a turnover in excess of £1m and appear in the top 50 grossing personal injury CMCs. This is an indication that the current regulatory regime promotes high business volumes to smaller firms. The high volume of firms operating in this industry indicates that the current regulations encourage a competitive environment, in particular amongst micro businesses, which make up the majority of CMCs (2,721 out of 3,000 CMCs in total).
- 9.2 It is not envisaged that the proposals considered would have a disproportionate impact on small businesses. As it appears that most CMCs would be classed as micro businesses, approval is being sought for the proposed rule change to be exempt from the micro business moratorium in order to maintain uniformity and to uphold the integrity of the overall regime. The proposed changes could not feasibly be applied without a waiver being granted.

Annex 1: Post Implementation Review (PIR) Plan

Basis of the review:

To monitor levels of compliance throughout the industry on a continual basis and in line with the current enforcement policy. All CMCs must adhere to the Conduct of Authorised Persons Rules as a condition of authorisation. Monitoring and enforcement procedures in relation to the rules are ongoing in line with the regulatory objectives to protect consumers generally and the wider public interest.

Review objective:

To ensure compliance and take action against businesses that do not adhere to the conduct rules in line with the regulatory framework already in place. To monitor the number of complaints received under the amended rules and compare with the number received over a similar period under the previous versions of the rules.

Review approach and rationale:

Monitoring and enforcement are currently in place with regards to the Compensation Act 2006 and the Compensation (Claims Management Services) Regulations 2006. The current enforcement structure will remain unchanged; however it will adopt the amendments made to existing rules.

Baseline:

The baseline for the review is the current position.

Success criteria:

Success will be based on the level of complaints received regarding the specific rules identified under the regulatory regime in operation.

Monitoring information arrangements:

The Regulator's Monitoring and Compliance Unit currently monitors all regulated businesses to ensure compliance with the rules and regulations.

Reasons for not planning a PIR:

Current monitoring and enforcement arrangements provide the regulatory framework under which the claims management industry operates under statutory law. The monitoring and compliance process is continuous and so the implementation of new proposals will be constantly reviewed as part of the current monitoring process.