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Claims Management Regulation

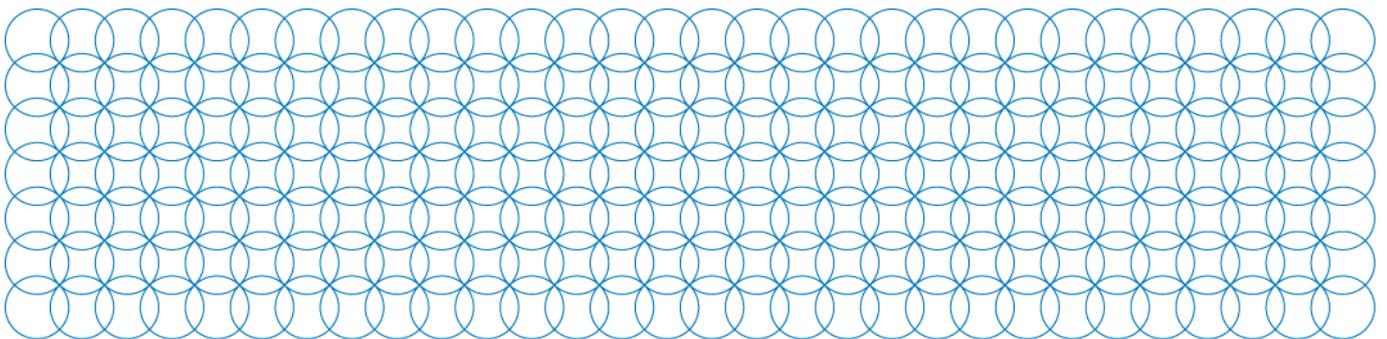
Proposals for amendments to the Conduct of
Authorised Persons Rules

22 August 2012

Consultation Paper [CP15/2012]

This consultation begins on 22/08/2012

This consultation ends on 03/10/2012





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Proposals for amendments to the Conduct of
Authorised Persons Rules

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**A consultation produced by the Ministry of Justice. It is also available on the
Ministry of Justice website at www.justice.gov.uk**

About this consultation

- To:** All Claims Management businesses throughout England and Wales
- The Claims Management Regulation Regulatory Consultative Group
- Any other party with an interest in claims management matters
- Duration:** From **22/08/2012** to **03/10/2012**
- Enquiries (including requests for the paper in an alternative format) to:** Mr Ashley Palmer
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Ministry of Justice
102 Petty France
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Email: claimsmanagementregulation@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published in December at: www.justice.gov.uk

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Executive Summary

1. The claims management industry has been subject to regulation by the Ministry of Justice's (MoJ) Claims Management Regulation Unit (The CMR Unit) since 2007. The department has driven out many of the bad practices that were prevalent in the industry prior to regulation. However, the claims management industry continues to evolve and the CMR Unit is keeping pace to identify and tackle emerging issues in the regulated claims management sector.
2. The majority of Claims Management Companies (CMCs) operate in accordance with the requirements of the Conduct of Authorised Persons Rules. Compared with the size of the industry as whole, only a relatively small proportion of regulated businesses come to the attention of the CMR Unit as a result of suspected breaches of the rules or reported malpractice.
3. Although the regime has made good progress, more needs to be done to improve the conduct of claims businesses and strengthen consumer protections. Following a review of the rules, key amendments are proposed in the following areas:
 - CMC referencing of their regulatory status
 - Pre-contractual information requirements
 - Client updates
4. The CMR Unit will also be considering other key issues including the fees charged by CMCs on non 'cash in hand' compensation awards, cold calling and also matters relating to the personal injury market.

5. The CMR Unit's current regulatory stance is to initially bring a business into compliance in cases where malpractice has been identified. This is usually by directing the business to follow a particular course of action to resolve issues with its clients within a certain time or face more formal sanctions. The CMR Unit will look to minimise consumer detriment for clients who have already contracted with a CMC by allowing for their claims process to continue to be managed whilst the business is still subject to regulation and direction by the CMR Unit.
6. Where formal enforcement action is necessary, it is important to balance the possible effects this will have on the current clients of the CMC with the possible detriment that could be caused to future clients if no formal enforcement action is taken. In some instances it will be more appropriate to put restrictions on a business's authorisation, rather than cancel it, so that they may only operate in order to fulfil their obligations to existing clients. However, there may be cases where it is not possible to bring a business into compliance or where an identified rule breach is serious enough to warrant immediate, formal enforcement action.
7. The CMR Unit continues to tackle emerging issues seen within the industry and is acting to ensure bad practices are stamped out. Since 2007, over 700 CMCs have had their authorisation removed and others have exited the sector after MoJ enforcement action.

Claims for Mis-sold Payment Protection Insurance (PPI)

8. In November 2011, a specialist team was formed within the CMR Unit to focus on tackling the poor practices seen within the Payment Protection Insurance (PPI) sector, such as high volume claims, claims where no PPI had been sold and non compliant marketing. The compliance team conducts audits and issues guidance and warnings to CMCs regarding the conditions of authorisation, in addition to undertaking other forms of enforcement action against those who are found to be in breach of the conditions of authorisation.

Unsolicited cold-calling and SMS text messaging

9. The CMR Unit is investigating individual CMCs believed to be buying leads generated from unsolicited texts and automated calls. Additionally, the CMR Unit, Ofcom, the Information Commissioner's Office (ICO), the Office of Fair Trading (OFT) and the Direct Marketing Association (DMA) have formed a working group with the mobile marketing industry (including network operators) to pool resources, share intelligence and mount an effective campaign of joined up action to tackle the sending of unsolicited text messages and automated calls marketing claims services.
10. The CMR Unit and the ICO have formed an effective working relationship that enables a productive exchange of intelligence. Adequate powers are already in place to tackle the problem of unsolicited marketing calls and text messages. The focus in this area is on joined-up investigations to enforce those powers, identify the perpetrators and improve communications to consumers about dealing with spam texts.

11. To assist the ongoing work currently being undertaken by the CMR Unit outlined above, a review of the current requirements placed on CMCs that are set out in the Conduct of Authorised Persons Rules is being undertaken. This consultation sets out proposals to provide further clarity to the rule framework and improve the current protections afforded to consumers and CMCs alike, via the rules.

Inducements

12. Further to the CMR rules review exercise¹ conducted in 2010 we can confirm that a full ban on the offering of financial rewards or similar benefits as an inducement to make a claim by CMCs will be brought into force in April 2013. Client Specific Rule 6 (b) of the Conduct of Authorised Persons Rules will be amended so that it states: ***“In soliciting business through advertising, marketing and other means a business must not offer a cash payment or a similar benefit as an inducement for making a claim.”*** This ban will apply to all regulated Claims Management Companies (CMCs). The Unit will be issuing further specific guidance related to the ban.

¹ Proposal to prohibit the offering of cash payments or similar as an inducement to make a claim by CMCs – Published 17 March 2011

Background

13. The Ministry of Justice's (MoJ) Claims Management Regulation Unit (The CMR Unit) is responsible for the regulation of Claims Management Companies (CMCs) within England and Wales. There are currently around 3,000 CMCs authorised to provide claims management services, with some 2,500 authorised for personal injury and over a 1,000 for financial products and services claims. Many CMCs also operate across multiple sectors.
14. Whilst personal injury is the largest sector the vast majority of consumer complaints are about CMCs operating in the financial products and services claims sector, most often in relation to PPI. Between April 2011 and March 2012 CMCs operating in the PPI sector generated 74% of consumer complaints overall. Of these, the majority of complaints related to some 15 - 20 CMCs. The possible detriment suffered by clients of those CMCs is not necessarily representative of the services offered by CMCs as a whole.
15. The CMR Unit has conducted an assessment of the Conduct of Authorised Persons Rules with a view to ensure that they remain fit for purpose and provide adequate protections for consumers. By drawing from the CMR Unit's experiences of enforcing the rules – coupled with the evolution of the claims management industry over the initial five years of regulation – the CMR Unit aims to ensure that the regulatory system remains efficient, clear and sustainable.

16. The Conduct of Authorised Persons Rules are prescribed under Regulation 22 of the Compensation (Claims Management Services) Regulations 2006². Regulation 25 gives provision for the Regulator to amend or revoke any prescribed rules and any amendment or revocation may include transitional, incidental or consequential provisions.
17. It is a condition of authorisation that CMCs adhere to the prescribed rules. The Conduct of Authorised Persons Rules include the general principles that all regulated CMCs are expected to adhere to, and the Client Specific Rules, which set out rules for how a regulated CMC must conduct relationships with clients, advertise and market and how it may take on new business. The Conduct of Authorised Persons Rules can be found here:

www.justice.gov.uk/claims-regulation/information-for-businesses/conduct-of-business

18. The CMR Unit carried out a preliminary, informal consultation exercise with members of the Claims Management Regulatory Consultative Group (RCG) towards the end of 2011. The observations and recommendations received as part of this process were useful and have been drawn upon in formulating proposals for amendments to the current rules. Please see **page 46** for a list of RCG members.
19. This consultation is aimed at persons authorised to provide regulated claims management services in England and Wales under the Compensation (Claims Management Services) Regulations 2006³, businesses and individuals contemplating making applications for authorisation, those likely to be dealing with claims

² www.legislation.gov.uk/uksi/2006/3322/regulation/22/made

³ www.legislation.gov.uk/uksi/2006/3322/contents/made

advanced by CMCs and anyone else with an interest in claims management matters. The Register of Authorised Persons is available at www.claimsregulation.gov.uk/search.aspx.

20. An Impact Assessment and Equality Impact Assessment detailing the effects of the proposed changes accompany this document. A quick reference guide to all proposed changes is attached at **Annex A**.
21. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation will run for a period of six weeks.
22. Copies of the consultation paper are being sent to:

All authorised claims management businesses and organisations

The Claims Management Regulation Regulatory Consultative Group.

23. This consultation list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subjects covered by this paper.

The proposals

24. Amendments to the following '**Client Specific Rules**' are proposed:

- i. **What CMCs are able to say about regulation by the MoJ**
– *Client Specific Rule 6 (d)*
- ii. **The provision of pre-contractual information and contractual agreements with clients** – *Client Specific Rule 11;*
- iii. **Requirement to keep clients updated as to the progress of their claims and any change to costs** – *Client Specific Rule 18;*

25. Additional amendments to the following rules are proposed:

- iv. Definition of the term '**client**' throughout rules
- v. Relationships between CMCs and Exempt Introducers - *General Rule 18 (b)*
- vi. Notices to clients of regulatory action imposed on a business by the CMR Unit - *General Rule 19*
- vii. Advice provided by CMCs in relation to ombudsman schemes or other means of redress - *Client Specific Rule 1 (e);*
- viii. Advertising, marketing and soliciting business - *Client Specific Rule 2 – Guidance Statement*
- ix. Taking on business - *Client Specific Rule 10*

- x. Cancellation of a contract between a CMC and a consumer
- *Client Specific Rule 11(k)*
- xi. Reference to regulation in pre-contractual information -
Client Specific Rule 11(l);
- xii. Information regarding other dispute resolution procedures
versus the perceived benefits of using a CMC - *Client
Specific Rule 12*
- xiii. Representing a client – Guidance Statement for Client
Specific Rules 17-20

26. Subject to appropriate clearances the aim is to implement the final proposals in April 2013.

Proposed Main Amendments to the Client Specific Rules

i. What CMCs are able to say about regulation by the MoJ

27. **Client Specific Rule 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**”).*

28. Consumers often complain to the CMR Unit that, having heard or read a CMC’s statement that it is regulated by the MoJ, they were under the impression that the CMC was not only a “legitimate” business but also endorsed by the wider government in some way.

29. In order to reduce the scope for CMCs to exploit this particular notion and the false sense of security it provides to some consumers, the wording of the rule should be amended to remove the MOJ brand. This would also ensure that consumers are aware of the CMR Unit’s role more specifically. It is proposed the rule is amended to state:

*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. A business must mention in advertising and marketing material that it is regulated and must only use the following statement that must be used in its entirety: “**Regulated by the Claims Management Regulator in respect of regulated claims management activities**”*

30. In addition, an equivalent amendment would be required to the wording of **Client Specific Rule 11(I)**, which states that a business must provide the regulatory statement as part of the pre-contractual information it sends to prospective clients:

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

- I) The statement that the business is “regulated by the **Claims Management Regulator** 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.*

Issues for further consideration – Client Specific Rule 6 (d)

31. In addition to the current proposal, there may be room to go further by restricting CMCs from using the statement in any marketing calls unless specifically asked by the consumer. The CMR Unit would be grateful for views on whether or not the current proposal could go further in this regard.

ii. The provision of pre-contractual information and contractual agreements with clients

32. **Client Specific Rule 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.*

33. The rule does not make clear how much time should elapse between the information being provided and the contract being agreed. The CMR Unit is aware of some CMCs that have cold-called consumers by telephone, e-mailed the information required under Client Specific Rule 11 during the call and then proceeded to agree a contract before ending the call. The CMR Unit considers that the intention of the rule is to give potential clients adequate time to read and digest the information before agreeing a contract; such an example clearly affords potential clients neither the time nor opportunity to make an informed decision about whether to enter into a contract. This has generated complaints from consumers who state that they were not fully aware of the implications of their agreements with CMCs.
34. Reports from consumers suggest that they are often unaware that they have agreed verbally to contract with a CMC during a telephone call. The CMR Unit is also aware that some CMCs have taken advance payments from consumers without their explicit consent and where the consumer is unclear as to whether or not an actual agreement has been made. This also has implications for consumers wishing to cancel agreements as they are often unaware of the 14-day cooling off period, which if not used could leave them liable to pay for any work completed by the CMC outside of the 14 day period.
35. The CMR Unit proposes to require CMCs to obtain signed contracts from consumers prior to any fees being taken. The provision of a written agreement would provide consumers with more protection, by allowing sufficient time for a consumer to read and understand pre-contractual information before agreeing a contract. It would also diminish the chances of disputes arising from verbal agreements and the CMR Unit hopes that this would eradicate the issue of CMCs taking unauthorised payments from consumers.

36. The CMR Unit considers that the proposed amendment would significantly improve conditions under which consumers are able to reach a decision on whether or not to contract with a CMC and would ensure that consumers are aware of the implications prior to the agreement of any contract. The rule currently does not apply to CMCs that only refer cases on to a solicitor and it is proposed that this exemption would remain.

37. The opening paragraph of the amended rule would state:

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

Key issues for further consideration – Client Specific Rule 11

38. The CMR Unit would be grateful for views on whether or not this rule could go further, for example, by requiring CMCs that have websites to publish their terms and conditions, including any fees or charges to be paid, online. The CMR Unit is aware that many CMCs already publish this information online as a matter of good practice which in turn assists consumers to reach a decision. The CMR Unit is looking to gain views on whether a mandatory requirement to publish the pre-contractual information online or possibly as part of marketing material more generally, would improve the position further.

39. The CMR Unit is also considering whether further changes are required in relation to the manner in which CMCs are able to levy fees on consumers where the value of a claim is calculated on non 'cash in hand' awards. The current rules require CMCs to provide any potential client with comprehensive information regarding fees to be paid, prior to the agreement of a contract. Additionally, guidance

has been issued to CMCs⁴ which states that they should present additional examples to cover different forms of compensation awards to avoid giving misleading price indications to consumers. Consumer guidance⁵ has also been issued providing details of how CMCs charges may affect them.

40. However, some consumers still appear to be unclear that they may be left in a position where any redress received is insufficient to settle the fees owed to the CMC. This is the case where for example, a PPI claim is successful and a loan or other finance agreement is still in effect. In these instances the award of compensation can take different forms. This can be either a) a reduction in the amount outstanding on their loan b) a reduction in future instalments on their loan; or c) a reduction in their arrears. As many consumers expect a 'cash in hand' payment this can lead to consumers challenging the amount of compensation they receive. This is often the case where due to the form of the compensation awarded, the consumer is liable to pay the CMC's fee from alternative means.
41. The nature of the fees charged by some CMCs can be complicated by the use of different terminology within the terms and conditions of a contract. Some terms and conditions seen by the CMR Unit use terms such as 'service charges', 'benefits' or 'legal costs', often within the same document to describe fees. This potentially confuses consumers further and could make it difficult for them to make a truly informed choice as to whether or not to contract with a CMC.
42. The CMR Unit would be grateful for views on these issues and any potential rule changes which could be implemented to address the concerns in this area, such as a ban of fees on 'non cash

⁴ Guidance for Claims Management businesses engaged in the Mis-sold PPI sector

⁵ Guidance on using a Claims Management company to claim for Mis-sold PPI

compensation,' or further more strict requirements on the pre contractual fee information that is to be provided.

iii. Requirement to keep clients updated as to the progress of their claims and any change to costs

43. **Client Specific Rule 18** 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.

44. Some consumers have reported that the relevant updates from CMCs have not been forthcoming. Keeping a client informed and providing details of the progress of their case should be a fundamental part of the overall quality of service offered by a CMC. It is also a condition of authorisation that CMCs ensure any service offered meets the needs of the client.

45. A proportion of complaints received by the CMR Unit suggest that upon chasing the progress of their cases, clients are unaware that a CMC has had their authorisation varied or suspended. Although General 19 rule states that a CMC must comply with the directions of the regulator on giving notice to clients where there are changes to its authorisation status, it may be of benefit if CMCs were automatically obliged to inform clients of any variation or suspension that affects the business's ability to operate as a result of regulatory action. An amendment to this effect would enable consumers to be better informed about the prospects of their case and could potentially enable them to pursue other avenues of redress more quickly where appropriate.

46. The amended rule would remain applicable only to CMCs who also represent their clients and would read:

A business must keep the client informed of the progress of the claim, including any significant changes to costs that the client may have to meet, and must inform the client of any variation or suspension of the business's authorisation status. It must forward any relevant information received from the client without delay.

Proposed Additional ‘Technical’ Amendments to the General Rules and Client Specific Rules

iv. Explanatory notes - Definition of the term ‘Client’

47. The term ‘client’ is used implicitly throughout the rules but no specific clarification exists as to whether the term refers to a prospective client or a client who has already agreed a contract with a CMC.
48. An explanatory note confirming that the term ‘client’ is used to describe any prospective or existing client of a business will be added to the explanatory notes at the beginning of the rules document to make the position clear.

v. Relationships between CMCs and Exempt Introducers

49. Some businesses are exempted from the need to be authorised as regulation is targeted at those who provide regulated services for commercial gain. This applies to those already regulated by other bodies and to certain other categories of people or organisations including charities, not for profit advice agencies and trade unions certified as independent by the Certification Officer.
50. Small scale ‘exempt introducers’ (i.e. those who refer no more than 25 cases per calendar quarter), where this is incidental to their main business and do not carry out any other regulated claims management activity are exempt from the requirement to be authorised. It is an offence to provide regulated claims management services unless authorised or exempt.
51. It is important that any regulated CMC that accepts introductions from exempt businesses, ensures that those introductions have been made in accordance with the spirit of the conduct rules in order to satisfy the conditions of authorisation.

52. **General Rule 18(b)** currently states:

*Where a business accepts introductions from exempt introducers it shall be responsible for ensuring that the exempt introducers **comply with the client specific rules on advertising, marketing and soliciting business.***

53. The rule in its current form could be ambiguous. Exempt introducers are not bound by the Conduct of Authorised Persons Rules since they do not require MoJ authorisation.

54. Further clarity is needed to outline how exactly a CMC would ensure that any exempt introducer it works with does not engage in business practices that would be unacceptable under the client specific rules or breach the terms of their exemption. The CMR Unit proposes to amend the wording of the rule to make the requirements clearer to state:

Where a business accepts introductions from exempt introducers it shall be responsible for ensuring that the exempt introducers **do not undertake any activity that, if carried out by a regulated person, would breach the client specific rules on advertising, marketing and soliciting business.**

vi. Notices to clients of regulatory action imposed on a business by the CMR Unit

55. **General Rule 19** currently states:

*Where the Regulator suspends, **Cancels** or imposes conditions on the authorisation of a business such that it may no longer provide regulated claims management services, the business must comply with directions of the Regulator on giving notice to clients.*

56. The rule in its current form lacks force. A business that has had its authorisation cancelled would no longer fall under the jurisdiction of the CMR Unit and would therefore be under no obligation to follow any directions of the CMR Unit. The rule will be updated to remove the reference to the cancellation of a business's authorisation so that it states:

Where the Regulator **suspends or imposes** conditions on the authorisation of a business such that it may no longer provide regulated claims management services, the business must comply with directions of the Regulator on giving notice to clients.

vii. Advice provided by CMCs in relation to ombudsman schemes or other means of redress

57. **Client Specific Rule 1 (e)** currently states:

A business shall, where advice is given, advise the client unambiguously of ombudsman schemes or other official means of obtaining redress.

58. The use of the term 'where advice is given' may create confusion as to what constitutes advice and whether a client should be advised of other schemes. The requirements of Client Specific Rule 10 also contain a similar effective obligation, which states that a business must make reasonable enquiries as to whether the client has alternative mechanisms for pursuing a claim. This can cause unnecessary confusion due to similar requirements being worded in different ways under two different rules. It is proposed that Client Specific Rule 1 (e) is removed and merged with Client Specific Rule 10. This proposed amendment to Client Specific Rule 10 is explained in more detail later on in this consultation document (under point **viii**).

viii. Advertising, marketing and soliciting business

59. **Client Specific Rule 2** currently states:

All advertising, marketing and other soliciting of business must conform to the relevant code –

The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code); or

The UK Code of Broadcast Advertising (the BCAP Code)

These codes are accessible at www.cap.org.uk/The-Codes.aspx

For the purposes of this rule a business's website shall be deemed to constitute advertising, and must comply with the CAP Code.

60. The Advertising Standards Authority's online remit has been extended and now covers the entirety of a business's website.

Therefore, the final paragraph of this rule will be amended to read:

For the purposes of this rule, the entirety of a business's website shall be deemed to constitute advertising, and must comply with the CAP Code.

ix. Taking on business

61. **Client Specific Rule 10** currently states:

Before seeking to enter into a contract with a client a business must make reasonable enquiries as to whether the client has alternative mechanisms for pursuing a claim

62. Client Specific Rule 1 (e) requires businesses to advise clients of ombudsman schemes 'where advice is given'. That rule does not further determine what constitutes advice. On the basis that it is the most useful for clients to be informed of ombudsman schemes before entering into a contract with a business, the CMR Unit proposes to simplify the requirement by merging Client Specific

Rule 1 (e) into Client Specific Rule 10 which already relates to pre-contractual advice. All CMCs would therefore be required to advise any prospective client of ombudsman schemes as standard, in all circumstances and regardless of the level of advice given to a consumer by the CMC before a contract is agreed.

63. Client Specific Rule 10 will be amended to read:

Before seeking to enter into a contract with a client a business must make reasonable enquiries as to whether the client has alternative mechanisms for pursuing a claim and must advise the client unambiguously of ombudsman schemes or other official means of redress

x. Cancellation of a contract between a CMC and a consumer

64. ***Client Specific Rule 11(k)*** currently states:

A business must provide information on 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.

65. Client Specific Rule 16 requires that any charges businesses make to their clients if they cancel their agreements are limited to what is reasonable in the circumstances and reflect work undertaken. CMCs are therefore not permitted to enforce any type of penalty charge.

66. The wording of the rule in its current form appears to conflict with that; the rule will therefore be amended so that it reads:

A business must provide information on 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 charges for work completed after the 14 day cooling off period.

xi. Reference to regulation in pre-contractual information

Please see changes proposed to ***Client Specific Rule 6(d)*** on page 12.

xii. Information regarding other dispute resolution procedures versus the perceived benefits of using a CMC

67. ***Client Specific Rule 12*** currently states:

Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, the Housing Ombudsman Service or any other recognised dispute resolution procedure, the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.

68. The rule does not currently refer to the Financial Services Compensation Scheme (FSCS) and the CMR Unit considers it appropriate that this organisation be included in the rule to provide further clarity. The amended rule would state:

Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, the **Financial Services Compensation Scheme**, the Housing Ombudsman Service or any other recognised dispute resolution procedure, the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.

xiii. Representing a client – Guidance Statement

69. The guidance statement that precedes ***Client Specific Rules 17 – 20*** currently states:

This section applies only where a business has a contractual relationship with a client and also represents a client in making a claim. It does not apply where a cases is passed to a solicitor or other legal professional.

70. The current wording of the statement may not be clear enough and may cause confusion with regards to when Client Specific Rules 17-20 apply. The guidance could benefit from simplification to make it clearer that CMCs who simply refer cases on to a solicitor are not required to adhere to these particular rules

71. The guidance statement would be simplified to read:

This section does not apply where a business only refers cases on to a solicitor or other legal professional.

Other Regulatory issues

72. The CMR Unit is aware that there are a number of concerns regarding the claims management industry as a whole and the general operation of the regulatory regime at present. Many suggestions and recommendations for reform have been put to the CMR Unit, not only as part of the preliminary consultation but also, more generally, via daily contact with consumers and other relevant organisations. Other issues which the CMR Unit is aware of and that have also been brought to our attention by various external parties are outlined below.

Claims for Mis-sold Payment Protection Insurance (PPI)

73. The CMR Unit is focusing on tackling the poor practices seen within the Payment Protection Insurance (PPI) sector such as high volume claims and claims where no PPI has been sold. To reinforce this work, the CMR Unit has expanded the compliance team and staff have been seconded from the Financial Ombudsman Service (FOS) and the Legal Ombudsman (LO) in order to assist the expansion of resources within the CMR Unit.

74. The CMR Unit works with the Financial Services Authority (FSA), the FOS, major banks, credit card providers and trade unions to help identify non-compliant CMCs and improve the claims process for consumers. The development of these direct relationships assists with the analysis of the compliance issues and sets up evidence gathering arrangements to elicit the details essential to focus compliance interventions.

75. The CMR Unit has developed a reporting template for use by credit card companies, banks and building societies to facilitate the exchange of information about CMCs activities. The CMR Unit is also encouraging the development of mechanisms for improving the banks' relationships with compliant CMCs. The intention is to help

streamline the PPI claims process for consumers who choose to use them and minimise the burden on the banks.

76. As well as producing guidance with the FSA/FOS on handling claims for mis-sold PPI, the CMR Unit and FOS have agreed a memorandum of understanding that facilitates sharing of relevant regulatory information, industry developments and provides for co-operation on some operational matters.

Personal Injury

77. In relation to the personal injury sector, the main area of concern is insurance fraud. The CMR Unit has committed resources to assisting partner agencies in tackling businesses involved in suspected criminality, in particular where there is evidence of companies submitting fraudulent claims and staged accidents. This includes working with the Insurance Fraud Bureau, Police forces, other regulators and trade organisations. This 'multi-agency' approach maximises the CMR Unit's effectiveness in dealing with CMCs engaged in making fraudulent claims.

Cold Calling

78. The CMR Unit is aware that concerns exist regarding the level of cold calling and the general manner in which this occurs. The CMR Unit acknowledges these concerns and is tackling these issues separately from this particular exercise, but also as part of the general enforcement of the regulatory regime.
79. The CMR Unit is working with the Information Commissioner, telecommunications regulators and industry bodies to tackle unsolicited electronic communications (including SMS texts) and cold-calling. SMS texts for example are often sent by third party companies or other entities, sometimes based overseas, solely set up to generate leads for other businesses including claims companies. In some instances cold calling is carried out fraudulently,

has no real link to any claims management business, and is often involved in a wider scam network - unrelated to the claims management industry or any legitimate CMC.

80. Unsolicited SMS text messages received by consumers, offering compensation for accidents that they may have had, are a widely recognised problem. In many instances the businesses behind these messages are often unauthorised businesses, with regulated CMC's only becoming involved when making follow up phone calls.
81. SMS text messages are a relatively low cost and easy method of contacting large volumes of people. Often, these types of messages are sent out by 'sim-farms' where a large number of unregistered sim cards are used to automatically send messages to mobile phone numbers by default. In some instances, responding to these messages, even if to say 'STOP' (as directed by some messages), simply confirms that the number is active and in use.
82. As many of the businesses that instigate these types of messages are unauthorised, the CMR Unit has no powers in relation to them, and any amendment to the current conduct rules would have no impact on their practices. More specific legislative powers belong to other regulators such as the ICO which is the lead regulator in this area and has powers of enforcement, such as the ability to fine.
83. The current conduct rules are designed to address issues regarding the advertising, marketing and soliciting of business of authorised CMCs. For example, Client Specific Rule 3 states that a business must not engage in high pressure selling and Client Specific Rule 4 states that cold calling in person is prohibited. Any other cold calling must be in accordance with the Direct Marketing Association's code of practice, which is a set of best-practice guidelines for direct marketers, incorporating relevant legal and regulatory requirements. CMCs that breach the conduct rules - for example, by referring claims that were generated through cold-calling to solicitors, by

giving misleading information over the phone or by cold-calling a consumer who is registered with the Telephone Preference Service, will be investigated by the CMR Unit.

84. The conduct rules are sufficient insofar as they set out clear guidelines on how regulated CMCs must operate in relation to cold calling and marketing generally. Action will continue to be taken against any regulated CMC, where it can be proven that a breach of the rules has occurred.
85. The main challenges confronting the various regulators are identifying who is responsible for the text messages, sharing that information and building up the evidence needed to take effective enforcement action to stop them. The CMR Unit and the main marketing industry body, the Direct Marketing Association, have set up a cross regulator and industry working group and is pooling resources, sharing intelligence and mounting an effective campaign of joined up action to try to eradicate unsolicited text messages and automated calls once and for all. The working group also includes the lead regulator in this area - the Information Commissioner as well as Ofcom, the Telephone Preference Service and representatives from the mobile marketing industry.
86. The CMR Unit is engaging with regulated CMCs, making it clear that they are responsible for ensuring that any consumer leads they obtain result from direct marketing, which is compliant with the relevant legislation. These leads should not result from unsolicited text messages and the regulated CMC must have the relevant permissions to contact consumers. CMCs that contact consumers as a result of non-compliant unsolicited SMS messaging are likely to be in breach of their conditions of authorisation, regardless of any assurances provided by third party data suppliers.

Fees charged to consumers by CMCs

87. CMCs offer a service of assistance with claims processes to consumers within the claims management industry. Some consumers do not want to or feel unable to pursue a claim themselves and will seek the assistance of a CMC. Although personal injury and financial products and services are by far the biggest claims sectors. Regulated CMCs also operate across other sectors including Criminal Injuries Compensation, Industrial Injuries Disablement Benefit, employment and housing disrepair.
88. CMCs also operate under various fee models, with some charging an up-front fee for their services or a back end fee upon the conclusion of a case. Others recover their fees from the defendant losing party. It is common for businesses that handle payment protection insurance claims for example, to act on a 'no-win, no-fee basis' and, if the claim is successful, base their fees on a percentage of the compensation awarded. Such 'contingency fees' have the advantage of being straightforward and transparent, provided the appropriate information is made available by the business before an agreement is entered into.
89. The CMR Unit is considering whether further restrictions on fees should be implemented. It is imperative that consumers are aware of any immediate or future charges that they may be liable for in advance of any agreement to contract with a CMC and the precise details of those charges. The current conduct rules do set out appropriate guidance and mandatory requirements regarding the provision of pre-contractual information to consumers and any fees to be paid. The CMR Unit is however open to considering ways in which these requirements could be made even clearer or even restricted further in order to provide consumers with increased protection.

90. It is important that consumers know their rights and are aware of other possible options for claiming redress. The CMR Unit considers that consumers must be in the best possible position to make an informed choice as to whether or not to pursue a claim and, if so, whether to use a CMC or pursue a claim themselves. Many of the issues in this area are related to the fact that some consumers are unaware that it is possible to pursue various types of claims themselves without using a CMC. Confusion can also be caused in instances where the compensation awarded is deducted from any outstanding loan or other financial agreement that may be in place and where the CMC still expects to receive a fee for its services. Consumers can become understandably frustrated if they are only aware of the full extent of their options after contracting with a CMC. Enforcement action has and will continue to be taken where it is proven that CMCs have misled consumers.
91. By introducing a mandatory requirement that a contract must be signed by a consumer before a contract can be agreed, the CMR Unit is of the view that consumers will be more inclined to go further to understand the terms and conditions they are agreeing to. It could also potentially afford consumers further time to consider their options before signing any contract. At present, as there is no such requirement, it is difficult for CMCs who agree verbal contracts to prove that the consumer understood their rights and any other potential options available to them. In some cases, consumers have reported that they were not aware that a CMC had deemed that a verbal agreement to pursue their case had ever been made.
92. Operating under the proper conditions, CMCs can offer a useful service to those who may not have the time, desire or in some cases, the ability to pursue a claim on their own, across a range of sectors as highlighted earlier in this consultation. Some consumers are happy to instruct a CMC to act on their behalf and to pay a fee for the services offered as is the case with many other industries. It

is, however, vital that consumers make this choice whilst being fully aware of all possible options available to them and not be misled into using the services of a CMC or indeed any other dispute resolution procedure.

- 93. The CMR Unit would be grateful for views and suggestions on the issues set out above, bearing in mind the need for a proportionate approach and the fact that rules and guidance in these areas already exist.**

Rule amendments – Micro-Business Moratorium

94. On 1 April 2011, a moratorium that exempts micro-businesses and new start-ups from new domestic regulation (including amendments to the Conduct of Authorised Persons Rules) came into force and will remain active until 2014. Any CMC that employs fewer than 10 members of staff is classed as a micro-business and, under the moratorium, would not be obliged to comply with any amended rules that are implemented. The CMR Unit therefore intends to apply for a waiver from the moratorium to implement the proposed changes in April 2013 in order to reduce the risk of further and continuing consumer detriment as soon as possible.

- 95. The CMR Unit would be grateful for any views regarding the moratorium in relation to the proposed amendments.**

Questionnaire

The CMR Unit would welcome responses to the following questions set out in this consultation paper.

- 1)** Do you have any comments on the proposals to amend the Client Specific Rules?
- 2)** In relation to Client Specific Rule 6 (d), should the proposed amendment go further and prohibit CMCs from stating, during any marketing calls, that they are regulated unless specifically asked by a prospective client?
- 3)** In relation to Client Specific Rule 11, should CMCs be required, as a condition of authorisation, to publish details of their terms & conditions, fees and any other charges online and as standard?
- 4)** In relation to Client Specific Rule 11, do you have any alternative proposals that could address the issues regarding fees charged by some CMCs? For example, could a ban on CMCs levying fees on anything other than a 'cash in hand' compensation award paid to a consumer be effective? *(This would mean that a CMC could not charge a consumer a fee if the compensation awarded was deducted from the outstanding balance of a loan or other type of credit agreement where the consumer does not receive the award directly).*
- 5)** In relation to Client Specific Rule 11, should CMCs be required to tell prospective clients, more clearly and explicitly that their fees would be charged irrespective of whether they ultimately receive a 'cash-in-hand' compensation award? *(Under this scenario a CMC would need to make clear to the prospective client that their fee must be paid independently from any compensation award deducted from the original agreement, should that be the case.)*
- 6)** Do you have any comments on the proposals to make additional amendments to the General Rules?

7) Do you have any comments or views as to the likely transitional or other costs to business that may be incurred by the proposed amendments to the Conduct Rules?

8) Would a grace period for businesses to implement any required changes to its business be necessary? If so, how long should the grace period be in order to enable all CMCs to successfully adhere to the amended rule framework?

9) Do you have any comments or views on the likely costs or benefits to business arising from the proposed amendments to the Conduct Rules?

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

11) In view of the moratorium that would exempt 'micro-businesses'⁶ from any new regulation (including amendments to the Conduct of Authorised Persons Rules) until 2014, do you consider there to be any compelling reasons why the proposed changes should be implemented prior to the end of the moratorium period?

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

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

⁶ Micro-businesses are businesses that have ten members of staff or fewer.

CMC SPECIFIC QUESTIONS

Client Specific Rule 6 (d)

14) Does your business currently refer to its regulatory status in advertising or marketing material? If so, please indicate which type of material the statement is used in (i.e. Client letters, contracts, websites or other material)

15) If your business intends to refer to its regulatory status after the proposed change is in place, do you foresee any additional costs that would need to be incurred to make the required changes? If so, please quantify these costs

16) Do you foresee any long term benefits regarding the amended regulatory statement?

17) Since use of the regulatory statement is not compulsory, would the proposed amendment make you more or less inclined to use the regulatory statement in advertising or marketing material?

18) What, if any, impact would the revised rule have on business volumes?

19) Do you support the proposed amendment to CSR 6 (d)?

Client Specific Rule 11

20) Does your business currently require clients to sign a contract in order to confirm that they wish to proceed with a claim (including confirmation of permission to take an upfront fee - if applicable)?

21) If your business does not currently use signed contracts, would there be any additional costs incurred in order to comply with a new requirement for signed contracts? If so, please quantify these costs.

22) Do you foresee any long term benefits regarding a requirement for signed contracts between a consumer and a business?

23) What, if any, impact would the revised rule have on business volumes?

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

Client Specific Rule 18

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

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

General

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

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

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

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

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

The CMR Unit would also welcome any general comments you may have.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
CMC Micro-Business? (i.e. 10 or less staff employed)	Yes / No / Not Applicable (Delete as appropriate)
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by **03/10/2012** to:

Mr Ashley Palmer
Ministry of Justice
Claims Management Regulation
4th Floor - Post Point 4.15
102 Petty France
London SW1H 9AJ

Tel: 0203 334 6831

Email: Ashley.palmer@justice.gsi.gov.uk

claimsmanagementregulation@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can be requested from claimsmanagementregulation@justice.gsi.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published in December 2012. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you

could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Departments will follow a range of timescales, particularly where extensive engagement has occurred before.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact **Lisa Levy**, Ministry of Justice Consultation Co-ordinator, via email at consultation@justice.gsi.gov.uk

Alternatively, you may wish to write to the address below:

**Consultation Co-ordinator
Ministry of Justice
102 Petty France
London SW1H 9AJ**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper on page 40.

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This publication is also available on our website at www.justice.gov.uk

Alternative format versions of this report are available on request from claimsmanagementregulation@justice.gsi.gov.uk.

List of consultees

The following organisations and individuals are being consulted:

All authorised claims management companies

The general public and anybody with an interest in claims management regulation

Claims Management Regulatory Consultative Group – members as follows:

Advertising Standards Authority (ASA)
Advisory, Conciliation and Arbitration Service (ACAS)
Association of British Insurers (ABI)
Association of Independent Financial Advisors (AIFA)
Association of Personal Injury Lawyers (APIL)
British Bankers Association (BBA)
British Insurers Brokers Association (BIBA)
Building Societies Association (BSA)
Citizens Advice Bureau (CAB)
Claims Standards Council (CSC)
Council of Mortgage Lenders (CML)
Financial and Leasing Association (FLA)
Financial Ombudsman Service (FOS)
Financial Services Authority (FSA)
Forum of Insurance Lawyers (FOIL)
Law Society
Office for Legal Complaints (OLC)
Legal Services Board (LSB)
Motoring Accident Solicitors (MASS)
National Debtline
Office of Fair Trading (OFT)
Solicitors Regulation Authority (SRA)
UK Cards Association
Unison/TUC
Which?

This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Full prohibition on Inducements (CMR Rules Review Phase One - Cleared for implementation in April 2013)		
Current Wording	Issue	Proposed Wording
<p>Client Specific Rule 6 (b)</p> <p><i>In soliciting business through advertising, marketing and other means a business must not offer an immediate cash payment or similar benefit as an inducement to make a claim.</i></p>	<p>Inducements encourage spurious claims that may not otherwise have been brought. These also encourage potential claimants to believe that they can be financially rewarded simply for bringing a claim.</p>	<p>Client Specific Rule 6 (b)</p> <p><i>In soliciting business through advertising, marketing and other means a business must not offer any cash payment or similar benefit as an inducement to make a claim.</i></p>
Further proposed main amendments to the Conduct of Authorised Persons Rules (CMR Rules Review Phase 2 – Final proposals subject to clearance)		
Current Wording	Issue	Proposed Wording
<p>Client Specific Rule 6 (d)</p> <p><i>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”</i></p>	<p>Reference to MoJ in the regulatory statement may give a false impression that Government endorse CMCs in some way.</p>	<p>Client Specific Rule 6 (d)</p> <p><i>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 Claims Management Regulator in respect of regulated claims management activities”</i></p>

<p>Client Specific Rule 11</p> <p><i>A business must provide the client with the following information in writing or electronically before a contract is agreed...</i></p>	<p>Consumer complaints indicate that those who have made verbal agreements with a CMC are often unaware that an agreement was made or the date on which this was made. This causes problems for those wishing to claim refunds on advance fees within the 14 day cooling off period.</p> <p>Consumer complaints suggest that in some cases advance fees are being taken without consent.</p>	<p>Client Specific Rule 11</p> <p><i>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 business must provide the client with the following information in writing or electronically before a contract is signed...</i></p>
<p>Client Specific Rule 18</p> <p><i>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</i></p>	<p>Consumer complaints suggest that some consumers are unaware that a CMC has had their authorisation suspended or varied which in turn can have an affect on the progress of their cases.</p>	<p>Client Specific Rule 18</p> <p><i>A business must keep the client informed of the progress of the claim, including any significant changes to costs that the client may have to meet, and must inform the client of any suspension or variation of the business's authorisation. It must forward any relevant information received from the client without delay</i></p>

Additional Amendments to the Conduct of Authorised Persons Rules (CMR Rules Review Phase 2 - Subject to clearance)		
Current Wording	Issue	Proposed Wording
<p>Definitions</p> <p>In these Rules –</p> <p><i>[Explanations of the terms ‘Business’ and ‘Exempt Introducer’]</i></p>	<p>The term ‘client’ is used implicitly throughout the rules but no specific clarification exists as to whether the term refers to a prospective client or a client who has already agreed a contract with a CMC.</p>	<p>Definitions</p> <p>In these Rules –</p> <p><i>[Explanations of the terms ‘Business’ and ‘Exempt Introducer’]</i></p> <p>“Client” means any <u>prospective</u> OR <u>existing</u> client of a business</p>
<p>General Rule 18 (b)</p> <p><i>Where a business accepts introductions from exempt introducers it shall be responsible for ensuring that the exempt introducers comply with the client specific rules on advertising, marketing and soliciting business.</i></p>	<p>Exempt introducers are not bound by the Conduct of Authorised Persons Rules since they do not require MoJ authorisation.</p>	<p>General Rule 18 (b)</p> <p><i>Where a business accepts introductions from exempt introducers it shall be responsible for ensuring that the exempt introducers do not undertake any activity that, if carried out by a regulated person, would breach the client specific rules on advertising, marketing and soliciting business.</i></p>

<p>General Rule 19</p> <p><i>Where the Regulator suspends, Cancels or imposes conditions on the authorisation of a business such that it may no longer provide regulated claims management services, the business must comply with directions of the Regulator on giving notice to clients.</i></p>	<p>A CMC that has had its authorisation cancelled would no longer fall under the jurisdiction of the Regulator.</p>	<p>General Rule 19</p> <p><i>Where the Regulator suspends, or imposes conditions on the authorisation of a business such that it may no longer provide regulated claims management services, the business must comply with directions of the Regulator on giving notice to clients.</i></p>
<p>Client Specific Rule 1 (e)</p> <p><i>A business shall, where advice is given, advise the client unambiguously of ombudsman schemes or other official means of obtaining redress</i></p>	<p>The term ‘where advice is given’ creates confusion as to what constitutes advice and whether a client should be advised of other schemes. CSR 10 contains a similar effective requirement</p>	<p>Removal of rule – to be merged with CSR 10 (See below)</p>
<p>Client Specific Rule 2 -Guidance Statement</p> <p><i>For the purposes of this rule a business’s website shall be deemed to constitute advertising, and must comply with the CAP Code.</i></p>	<p>The Advertising Standards Authority’s remit now covers marketing claims on companies’ own websites and the guidance note should therefore clarify the scope of the rule.</p>	<p>Client Specific Rule 2 – Guidance Statement</p> <p><i>For the purposes of this rule, the entirety of a business’s website shall be deemed to constitute advertising, and must comply with the CAP Code</i></p>

<p>Client Specific Rule 10</p> <p><i>Before seeking to enter into a contract with a client a business must make reasonable enquiries as to whether the client has alternative mechanisms for pursuing a claim.</i></p>	<p>CSR 1 (e) currently requires businesses to advise clients of ombudsman schemes “where advice is given”. That rule does not further determine what constitutes advice. On the basis that it is the most useful for a client to be informed of ombudsman schemes before entering into a contract with a business, adding that requirement to CSR 10, which already relates to pre-contractual advice, represents a simplification</p>	<p>Client Specific Rule 10</p> <p><i>Before seeking to enter into a contract with a client a business must make reasonable enquiries as to whether the client has alternative mechanisms for pursuing a claim and must advise the client unambiguously of ombudsman schemes or other official means of redress.</i></p>
<p>Client Specific Rule 11 (k)</p> <p><i>A business must provide information on 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.</i></p>	<p>CSR 16 prevents CMCs from enforcing any type of penalty charge as a result of cancellation of an agreement by a client after the 14-day cooling off period. The current wording may therefore be misleading.</p>	<p>Client Specific Rule 11 (k)</p> <p><i>A business must provide information on 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 charges for work completed after the 14-day cooling off period.</i></p>

<p>Client Specific Rule 11 (I)</p> <p><i>A business must provide the client with the following information in writing or electronically before a contract is agreed-</i></p> <p><i>(I) 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.</i></p>	<p>As CSR 6 (d) will be amended to refer to regulation by the ‘Claims Management Regulator’ rather than the MoJ, CSR 11 (I) must also be amended to reflect the substantive change to CSR 6 (d).</p>	<p>Client Specific Rule 11 (I)</p> <p><i>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 business must provide the client with the following information in writing or electronically before a contract is signed...</i></p> <p><i>(I) The statement that the business is “regulated by the Claims Management Regulator 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.</i></p>
<p>Client Specific Rule 12</p> <p><i>Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, the Housing Ombudsman Service or any other recognised dispute resolution procedure, the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.</i></p>	<p>This rule does not refer to the relevant Financial Services Compensation Scheme (FSCS) currently in operation.</p>	<p>Client Specific Rule 12</p> <p><i>Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, Financial Services Compensation Scheme, the Housing Ombudsman Service or any other recognised dispute resolution procedure, the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.</i></p>

<p>Representing a client – Guidance Statement</p> <p><i>This section only applies where a business has a contractual relationship with a client and also represents a client in making a claim. It does not apply where a case is passed to a solicitor or other legal professional</i></p>	<p>The wording of the statement may not be clear enough and cause confusion. The statement could benefit from simplification so that it is clearer when the rules that follow should apply.</p>	<p><i>This section does not apply where a business only refers cases on to a solicitor or other legal professional.</i></p>
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