

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: 28/05/2012		
	Stage: Consultation		
	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, Measure qualifies as One-Out?
NQ	NQ	NQ	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 seen 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 protect 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 and a consumer and that a contract must be signed by the consumer before any upfront fees are taken.

Option 3 – Amend CSR 18 to require CMCs to inform their clients if their authorisation status is varied or suspended.

Option 4 – Write to CMCs requesting that they voluntarily adhere to proposed amendments under Options 2 and 3 above.

The implementation of Options 1 to 3 concurrently is preferred, as it is expected that the majority of CMCs would not comply with options 2 and 3 on a voluntary basis.

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: 19 July 2012

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	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NQ

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

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

The costs associated with this measure are not quantifiable. All costs are expected to be negligible.

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

It is possible that some CMCs may incur a one-off additional cost to amend their pre-contractual and marketing information if the grace period is not sufficient to allow them to amend it as part of their regular business processes. This cost is expected to be negligible.

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

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

The benefits associated with this measure are not quantifiable. All benefits are expected to be small.

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

Claimants would benefit from clearer information about who is responsible for the regulation of CMCs.
 Some CMCs would benefit from a reduction in the cost of dealing with complaints from their clients under this rule.
 To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced costs.
 Reputational benefits to the wider MoJ as a result of greater clarity as to the MoJ's actual role in the regulation of CMCs.

Key assumptions/sensitivities/risks

Assume CMCs comply with this amended rule.
 Assume that the number of complaints regarding MoJ's role in CMC regulation will decrease.
 Assume no change in the volume of CMC business.
 Assume no increase in regulatory costs as a result of the amendment of this rule.
 Assume no impacts on HM Court and Tribunal Service and legal service providers.
 It is possible that some claimants may contact the CMR Unit directly rather than the wider MoJ with complaints or enquiries. This could result in some minor efficiency gains for the MoJ.

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

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

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NQ

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

Description and scale of key monetised costs by ‘main affected groups’

The costs associated with this measure are not quantifiable.

Other key non-monetised costs by ‘main affected groups’

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

Some CMCs may incur minimal one-off adjustment costs to alter existing documents to include a client signature section or draw up contract templates if not already in use. Any one-off cost incurred is expected to be minimal.

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

Description and scale of key monetised benefits by ‘main affected groups’

The benefits associated with this measure are not quantifiable.

Other key non-monetised benefits by ‘main affected groups’

Claimants and CMCs would benefit from greater certainty over whether a contract was agreed on a particular date or with particular terms. Both CMCs & claimants would benefit from reduced costs of complaints and disputes.

Claimants will benefit from a reduced risk of a business taking unauthorised upfront fees without their consent.

Key assumptions/sensitivities/risks

Assume CMCs comply with this amended rule.

Assume that the number of complaints to CMCs will decrease. Assume no change in the volume of CMC business.

Assume that most claimants who do not currently have a written contract would benefit from a written contract.

Assume no impacts on HMCTS and legal service providers.

Assume no increase in regulatory costs as a result of the amendment of this rule.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	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

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low					
High					
Best Estimate	NQ		NQ	NQ	
Description and scale of key monetised costs by 'main affected groups'					
The costs associated with this measure are not quantifiable.					
Other key non-monetised costs by 'main affected groups'					
Some CMCs may incur small administration costs where they need to inform claimants that their authorisation has been varied or suspended.					
BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low					
High					
Best Estimate	NQ		NQ	NQ	
Description and scale of key monetised benefits by 'main affected groups'					
The benefits associated with this measure are not quantifiable.					
Other key non-monetised benefits by 'main affected groups'					
Claimants will benefit from being able to pursue other avenues of redress more quickly if a CMC can no longer act for them (e.g. where the CMC's authorisation is suspended or varied affecting the progress of a claim). CMCs would benefit from a reduction in the cost of dealing with complaints under this rule. 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					
Assume CMCs comply with this amended rule. Assume no impact on HM Court and Tribunal Service. Assume that the number of complaints to CMCs will decrease. Assume no increase in regulatory costs as a result of the amendment of this rule. Assume no impacts on legal service providers. Assume no change in the volume of CMC business.					
Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as	
Costs: NQ	Benefits: NQ	Net: NQ	Yes	ZERO NET COST	

Summary: Analysis and Evidence

Policy Option 4

Description: Write to CMCs asking them to voluntarily conduct business under the terms of the proposed amendments to options 2 and 3)

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NQ

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

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

The costs associated with this measure are not quantifiable.

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

The majority of firms are not expected to comply with a voluntary code. For these firms the costs will be as for Option 0 (the do nothing scenario). However, these firms may also experience additional costs associated with complaints as the ambiguity in the current rules could be clarified through a voluntary code.

To the extent that firms do comply with the voluntary code, the costs will be as set out in Options 2 and 3.

The only additional cost under this option compared to Options 2 and 3 is a small administrative cost to the CMR Unit writing to all businesses asking them to comply with the voluntary code. This cost is expected to be negligible.

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

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

The benefits associated with this measure are not quantifiable.

The majority of firms are not expected to comply with a voluntary code. For these firms the benefits generated will be as for Option 0 (the do nothing scenario). To the extent that firms do comply with the voluntary code, the benefits generated will be as set out in Options 2 and 3.

Key assumptions/sensitivities/risks

Assume that the majority of CMCs would not comply with a voluntary code.

Assume no net impact on HM Court and Tribunal Service.

Assume no increase in regulatory costs as a result of the amendment of this rule.

Assume that some CMCs that comply with the voluntary code would incur additional costs and benefits compared to those that choose not to comply.

Assume that complaints regarding the issues will continue to be received by CMCs who choose not to comply with the voluntary code due to increased consumer awareness of the voluntary rules.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	NO	n/a

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			April 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

Specific Impact Tests: Checklist

	Impact	Page ref within IA
Statutory equality duties	No	24
Economic impacts		
Competition	Yes	24
Small firms	Yes	24
Environmental impacts		
Carbon emissions	No	24
Wider environmental issues	No	24
Social impacts		
Health and well-being	No	25
Human rights	No	25
Justice	No	25
Rural proofing	No	25
Sustainability	Yes	25

Evidence Base – Notes

References

No.	Legislation or publication
1	PIR Plan (Annex 1)
2	Equality Impact Assessment (EIA) (Annex 2)
3	Technical amendments to be implemented (Annex 3)
4	Conduct of Authorised Persons Rules (Annex 4)

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 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 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 evolved significantly since its inception in 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 2010-11 there were around 3,200 authorised CMCs. The overall turnover of the claims management sector during the 2010/11 financial year was a reported £581m. This is an increase of around £210m on the previous year's reported turnover of around £370m.

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 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.
- 1.8 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

¹ www.bis.gov.uk/files/file53251.pdf

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 2010/11 the cost of regulation was £2.32m, compared with £2.25m the previous year. In 2011/12 the estimated total cost of regulation rose to around £3m with £2.5m allocated for costs of monitoring and compliance and £0.5m for central costs. However, this includes funding an expansion of monitoring, compliance and enforcement activities in respect of claims businesses providing Payment Protection Insurance claims services, and measures to tackle organised fraud in the personal injury sector.

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 The CMR Unit is of the view that it is appropriate to implement amendments to the rules at this stage 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 aims to ensure 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 needs to maintain the effectiveness of enforcement of rules under the current policy.
- 1.14 A preliminary consultation and call for evidence exercise was conducted with members of the Regulatory Consultative Group (RCG) between 20 July and 31 August 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 consultation requested comments, proposals and views on any current regulatory concerns and sought views on proposed amendments to the conduct rules. These views, in addition to the Regulator's internal assessments, were used as a mechanism to formulate the final proposals for the amendments to the conduct rules that are presented in this IA.
- 1.15 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 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.

- 1.16 It is the Regulator's view that further controls are necessary in order to ensure the continued success of the regime and that the regulator is able to evolve and adapt to meet its regulatory remit.

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, receptive to advice and the breach can be quickly remedied. During the 2010/11 financial year, the regulator undertook 769 informal actions related to breaches of the rules by 568 separate CMCs.
- 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 2010/11 financial year formal action was taken against 10 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, 32 CMCs had their authorisation cancelled for rule breaches that were not remedied. Reasons for cancellation include those listed above but in addition also include 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 first six months of the 2011/12 financial year, the total number of recorded claims management complaints for this period was just above 7,000.
- 2.7 The problems identified in the current regime are explained in more detail below. Some further technical amendments are also attached in Annex 3.

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

- 2.8 **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”)”**
- 2.9 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.
- 2.10 Some complaints indicate that a CMC’s reference to being regulated by the MoJ gives claimants the impression that it is in some way endorsed by Government. Between 1 April and 30 September 2011, 98 of the 3,756 complaints recorded by the Compliance Office were regarding 23 different CMCs that had falsely claimed they were working on behalf of, or were endorsed by, Government.
- 2.11 The Citizen’s Advice Service provided an example of a case where a CMC cold called a person and claimed it was employed by MoJ and could help with challenging their credit agreements so that they did not have to pay the amount owed. This persuaded the claimant to sign up for the service and pay an up-front fee of £875. In this case, there was a breach of CSR 6 (d). However, in similar cases it is often unclear whether CMCs have in fact stated that they are ‘employed’ by MoJ, or whether they have merely stated they are ‘regulated’ by MoJ and there has been some misinterpretation by the claimant.
- 2.12 Most responses to the informal consultation indicated that CSR 6 (d) needs to be amended or refined. 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) 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 and that a reference to the CMR Unit is likely to be more informative to the average consumer than a reference to MoJ, which has a number of wider roles.
- 2.13 This rule was designed to ensure that claimants could accurately identify legitimate CMCs acting in accordance with the requirement to be regulated. The problem is that the current term ‘Regulated by the MoJ’ may suggest that a CMC is legitimate and approved by Government even if used in the correct way by a CMC and as outlined in the conduct rules.

Problem 2: Process for agreeing contract with claimant

- 2.14 **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.**
- 2.15 During the period 1 April to 30 September 2011, 1,263 of the 3,756 complaints recorded by the CMR Unit’s Compliance Office were under CSR 11. Of those, 256 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 33 different CMCs were complained about under this rule. A further 125 complaints regarding 37 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 70 to 95 complaints regarding around 220 different CMCs in total.
- 2.16 The rule does not stipulate the manner in which a contract can be agreed between a claimant and a CMC. In the absence of written agreements, it is often unclear whether a verbal agreement has been formed. Some complaints suggest that some CMCs have taken advance payments without explicit consent from the claimant themselves. This causes further problems for claimants wishing to cancel agreements: if a person 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.
- 2.17 CMCs are already obliged, under CSR 11, to give potential claimants adequate time to read and digest any pre-contract information before agreeing a contract. 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, 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. As a result of the current wording, it is difficult to enforce the rule 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.
- 2.18 The vast majority of responses to the informal consultation stated that there should be a requirement for contracts to be signed by a claimant before any agreement is reached and any advance fees are taken. The Finance & Leasing Association (FLA) has stated that written contracts between a CMC and a claimant are crucial to avoid confusion and poor practice by a CMC claiming a misunderstanding over when a contract was agreed. The BBA stated in their response to the preliminary consultation and call for evidence that their own research suggests that in 16% of cases received by banks from CMCs, there is no written contract or other written authority, signed by the claimant confirming they understand the terms and conditions of the contract and any advance payments due. In these instances it is difficult to ascertain if and when any verbal agreement was made and whether, as part of that agreement, the claimant understood the cost or other implications.

- 2.19 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 required. Some CMCs form verbal contracts with claimants in a manner that is unclear to them that a contract has been agreed. This can then cause considerable detriment to those wishing to claim refunds within the 14 day cooling off period.

Problem 3: What CMCs must keep claimants informed about

- 2.20 **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.**
- 2.21 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 other avenues for redress. 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.
- 2.22 Between 1 April and 30 September 2011, 182 of the 3,756 complaints recorded by the CMR Unit's Compliance Office were under this rule and concerned 74 different CMCs. The Trades Union Congress (TUC) stated that it is concerned that some CMCs have not informed their clients when their authorisation status changed. It believes it is crucial that CMCs are required to inform all clients of any amendment to their authorisation status as standard, in addition to the existing requirement to keep clients informed of the progress of their cases.
- 2.23 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 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.

3. Policy proposals

- 3.1 We have identified some rules that could be amended in order to address a number of issues, as discussed above. The main goal is to increase consumer protection by making the requirements of authorisation even clearer. This would be done by amending the Client Specific Rules. As a result, the proposals would also protect CMCs, as far as possible, from consumer complaints arising as a result of rules that may appear to be unclear or ambiguous.
- 3.2 The policy proposals are:
- **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. 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 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). 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. It must forward any relevant information received from the client without delay".

- **Option 4:** Request CMCs to voluntarily adhere to Options 2 and 3. Voluntary compliance with Option 1 is not included as an option as it would not be workable in practice as the inconsistency between firms complying and non-complying would be confusing for customers; under the conduct rules CMCs would still be required to being regulated by the 'Ministry of Justice'.

Why a voluntary code is not the preferred option

- 3.3 The Government's preferred option is to implement Options 1 to 3 concurrently. It is expected that the majority of CMCs would not comply 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. 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 would 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, 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.

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.

Approach to assessment of costs and benefits

- 5.2 This Impact Assessment provides a qualitative assessment of the expected costs and benefits, including an assessment of the relative magnitude. All impacts are expected to be negligible in scale.
- 5.3 It has not been possible to monetise the identified impacts in this IA as sufficient data or estimates are not available at this point. Where data is available, for example on the volume of complaints received by the CMR, this has been provided. A quantitative assessment would require information or estimates such as the costs to CMCs of complying with the clarified rules, the benefits to CMCs of no longer needing to deal with particular types of complaints and the benefits to claimants from improved information. Further information will be sought through the consultation exercise. If possible we will seek to monetise the costs and benefits of the proposals.

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;
- **Lawyers** that derive income from civil litigation;
- **Other dispute resolution services** e.g. ombudsman schemes;
- **HM Courts and Tribunal Service (HMCTS);** and
- **Wider economy and society.**

Option 0: Base case (do nothing)

- 5.4 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.
- 5.5 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

- 5.6 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.
- 5.7 A grace period would be put in place to give CMCs sufficient time to make the relevant amendments.
- 5.8 The amended regulatory statement would read: ***"Regulated by the Claims Management Regulator in respect of regulated claims management activities."***
- 5.9 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

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

Costs to CMCs

5.11 CMCs would not incur any significant additional costs in amending their pre-contractual information and marketing material that refers to the CMC being regulated by the MoJ. This is because the grace period will allow them to make this amendment as part of their regular pre-contractual updates. The consultation seeks views on an appropriate grace period. If the grace period is not sufficiently long, some CMCs may incur one-off adjustment costs to amend pre-contractual and marketing materials. These costs are unknown but are expected to be very negligible.

5.12 No additional regulatory costs are expected as a result of the amendment of this rule.

Benefits of Option 1

Benefits to the wider MoJ including the CMR Unit

5.13 The wider MoJ would 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

5.14 CMCs would benefit from a reduction in complaints received from their clients. The volume and overall costs of complaints to CMCs related to the change in this rule is unknown.

Benefits to claimants

5.15 Claimants would benefit from clearer information about who is responsible for the regulation of CMCs.

5.16 To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced costs.

Benefits to wider economy and society

5.17 There may be additional benefits to the wider economy and society from greater clarity and transparency.

Risks and Assumptions for Option 1

5.18 It is assumed that CMCs would comply with this amended rule.

5.19 It is assumed that there would be no significant change in the volume of CMC business as a result of the amendment to this rule. The proposal clarifies who is responsible for Claims Management Regulation and this is not expected to materially alter claimants' decisions about whether to bring a claim through a CMC.

5.20 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.

5.21 It is assumed that there are no additional regulatory costs associated with the amendment of this rule.

5.22 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.

- 5.23 No significant impacts are expected on HMCTS case volumes, court fees and operational costs.
- 5.24 No significant impacts are expected on legal service providers.

Option 1: One-In, One-Out implications

- 5.25 All impacts are expected to be negligible as the proposal simply clarifies who is responsible for Claims Management Regulation.
- 5.26 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 process. The grace period would be designed to minimise any adjustment costs. Any additional costs are therefore expected to be negligible. To the extent that costs are incurred they would count as an IN.
- 5.27 CMCs could benefit from a reduction in complaints relating to this rule. This would count as an OUT.
- 5.28 Overall the impacts are negligible. In the short-run it is expected that any adjustment costs to CMCs would be offset by a reduction in complaints to CMCs under this rule. In the long-run it is expected that there could be a small benefit for CMCs from the clarification. As it is not possible to monetise the impacts, the One-in One-out impact is assessed as a Zero net IN.

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

Description

- 5.29 Under this option, Client Specific Rule 11 would be amended to require any contract formed between a CMC that also represents clients and a client 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.
- 5.30 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.
- 5.31 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.
- 5.32 The BBA has conducted research² into the claims management industry. Further to this research the BBA's response to the preliminary consultation exercise states that in 16% of cases received by banks from CMCs there is no written contract in place. As no information is available on the volume of cases dealt with by banks, nor how this compares to total CMC volumes, it is not possible to quantify the volume of transactions that would be affected by this proposal. There is also no information on the number of CMCs that would be affected by this rule change in practice. Although there are around 3,000 regulated CMCs in operation, the proportion of those that already use signed contracts is unclear. It is assumed however that the majority of CMCs do not use signed contracts. We will be seeking further information on this through the consultation.
- 5.33 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 business must provide the following information in writing or electronically before a contract is signed...**"

² www.bba.org.uk/download/1362

Costs of Option 2

Costs to the wider MoJ including the CMR Unit

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

Costs to CMCs

- 5.35 CMCs that currently do not use signed contracts may incur one-off adjustment costs to draw up contractual documents. However, any additional costs are expected to be minimal as CMCs are already required to provide pre-contractual information in written form to any potential claimant. Additions to inform clients that a signature is required could be made to existing documents.
- 5.36 Where signed contracts are currently not used, CMCs may incur ongoing costs associated with setting up a contract agreement process.
- 5.37 It is expected that the CMCs most likely to be affected by this proposal are those currently operating outside the spirit and intention of the current rules, 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.
- 5.38 Information will be sought through the consultation on the cost to CMCs of establishing written contracts and the number of CMCs that are likely to be affected by the changes.
- 5.39 No additional regulatory costs are expected as a result of the amendment of this rule.

Costs to claimants

- 5.40 It is possible that some claimants may experience additional costs where the amended rule leads to a longer process for agreeing a contract and resolving a claim. The availability of electronic facilities to most claimants will help to reduce delays.

Benefits of Option 2

Benefits to CMCs

- 5.41 CMCs would benefit from greater certainty over the basis upon which a contract has been agreed. This would reduce the costs they incur in dealing with disputes and complaints over this rule. It is not known how many complaints CMCs currently receive from claimants as a result of the uncertainty created by a lack of written contracts or what the cost of dealing with them is.
- 5.42 It is possible that clarifying this rule could result in a reduction in complaints to CMCs and therefore 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 Impact Assessment.
- 5.43 The CMR does not hold any information on the volume of complaints that specifically relate to the uncertainty created by a lack of written contracts. In the first six months of 2011/12 the CMR received 381 complaints about the adequacy of pre-contractual written information, including information on charges; with the introduction of written contracts an unknown proportion of these complaints would no longer be made.

Benefits to claimants

- 5.44 Claimants would benefit from greater certainty over the basis upon which a contract has been agreed. This would reduce the costs associated with disputes and complaints.

- 5.45 Some claimants would benefit from 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.
- 5.46 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.
- 5.47 To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced costs.

Risks and Assumptions for Option 2

- 5.48 It is assumed that CMCs will comply with this amended rule.
- 5.49 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.
- 5.50 It is assumed that there would be no change in the volume of CMC business as a result of the amendment to this rule. Therefore no significant impacts are expected on HMCTS case volumes, court fees and operational costs.
- 5.51 We will be testing this assumption through the consultation. There are both downside and upside risks to volumes:
- downside risk – CMCs that do not currently comply with the spirit and intention of the current rules may see a reduction in business if fewer claimants chose to pursue a claim through them as a result of clearer information provided through the written contract. This would be a cost to those CMCs but a benefit to consumers and potentially other CMCs and legal service providers that the consumer might use instead.
 - upside risk – improved regulation could improve the reputation of the CMC sector and hence lead to increased volumes of work.
- 5.52 It is possible that the number of cases pursued via CMCs could change with potential flow on impacts for lawyers and HMCTS.
- 5.53 It is assumed that most claimants who do not have a written contract would benefit from having a written contract.
- 5.54 It is assumed that there are no additional regulatory costs associated with the amendment of this rule.

Option 2: One-In, One-Out implications

- 5.55 Some CMCs would incur one-off costs to implement changes to contractual documentation and ongoing costs from setting up a contract agreement process. We will be seeking information through the consultation on these costs. To the extent that they are incurred they would count as INs.
- 5.56 CMCs would gain from reduced direct and indirect costs of dealing with complaints under this rule. These would count as OUTs.
- 5.57 Overall, it is expected that costs to CMCs associated with setting up signed contractual processes would not be large, and where incurred would be offset by benefits associated with lower volumes of complaints. Taking into consideration that the aggregate impacts have not been quantified, the One-In One-Out impact is expected to be a Zero net In.

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

Description

- 5.58 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.
- 5.59 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. It must forward any relevant information received from the client without delay.**”

Costs of Option 3

Costs to MoJ including the CMR

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

Costs to CMCs

- 5.61 CMCs that have their authorisation varied or suspended by the CMR Unit would incur additional administration costs in informing their clients of changes to their authorisation status if they would not have otherwise done so. In 2010/11 10 CMCs had their authorisation suspended and 13 had their authorisation varied, however the volume of clients that would have been affected is unknown. The costs to these CMCs of informing clients of changes in their authorisation status are expected to be very negligible as it would just be the cost of sending a letter or email. Information will be sought through the consultation on the extent to which CMCs that have their authorisation varied or suspended are not already informing clients of this and what the additional cost to them of informing clients might be.
- 5.62 No additional regulatory costs are expected as a result of the amendment of this rule.

Benefits of Option 3

Benefits to CMCs

- 5.63 CMCs would benefit from a reduction in the number of complaints related to this rule. The extent of the reduction in complaints is unknown.
- 5.64 It is possible that clarifying this rule could result in a reduction in complaints to CMCs and therefore 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 Impact Assessment.
- 5.65 The CMR does not hold any information on the volume of complaints that relate to the uncertainty in the current rule. In the first six months of 2011/12 the CMR received 182 complaints under this rule; 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.

Benefits to claimants

- 5.66 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. The number of claimants affected and the extent of the benefit is unknown.

- 5.67 To the extent that claimants make fewer complaints as a result of the rule change, claimants would benefit from reduced costs.

Risks and Assumptions for Option 3

- 5.68 It is assumed that CMCs will comply with this amended rule.
- 5.69 It is assumed that there would be no significant change in the 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 is not expected to affect claimants' initial decisions about whether to bring a claim through a CMC.
- 5.70 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.
- 5.71 It is assumed that there are no additional regulatory costs associated with the amendment of this rule.
- 5.72 No significant impacts are expected on HMCTS case volumes, court fees and operational costs.
- 5.73 No significant impacts are expected on legal service providers.

Option 3: One-in, One-out implications

- 5.74 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, the CMCs affected by this proposal would be those not complying with the spirit and intention of the current rules. 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. To the extent that costs are incurred by these CMCs this would count as an IN.
- 5.75 CMCs would gain from lower direct and indirect costs of dealing with complaints under this rule. These would count as OUTs.
- 5.76 In conclusion, taking into consideration that the aggregate impacts have not been quantified, the One-In One-Out impact has been assessed as a Zero net In.

Option 4: Write to claims management companies asking them to voluntarily adhere to Options 2 and 3

Description

- 5.77 Under this option, the CMR Unit would write to all CMCs requesting that they voluntarily adhere to the standards set out in Options 2 and 3 above.
- 5.78 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. 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.
- 5.79 A scenario where some CMCs adhere to a voluntary code and some do not may also cause confusion for claimants as it may not be clear to them what the requirements of authorisation are.
- 5.80 The CMR Unit would not be able to take any enforcement action against any CMC that elects to follow a voluntary code but then subsequently breaches that code.

Costs of Option 4

Costs to MoJ including the CMR Unit

- 5.81 There could be additional administration costs to the CMR Unit in writing to all businesses asking them to comply with the voluntary code. This is expected to be minimal.

Costs to CMCs

- 5.82 CMCs would be liable to meet any increase in regulatory costs associated with the change in this rule. While the CMR Unit may incur administration costs in writing to all businesses asking them to comply with the voluntary code, this is expected to be minimal
- 5.83 Costs to CMCs overall would depend on whether they complied with the voluntary code. Compliant CMCs would incur costs outlined in options 2 and 3 above. Non-compliant CMCs would not incur any additional costs.
- 5.84 CMCs that choose not to comply with the voluntary code may experience additional costs associated with complaints as the ambiguity in the current CSRs could be clarified through a voluntary code. Such costs are expected to be minimal.

Costs to claimants

- 5.85 Costs to claimants would depend on the extent to which CMCs complied with the voluntary code. As for Option 2 it is possible that some claimants may incur additional costs where the requirement for a written contract leads to a longer process for agreeing a contract and resolving a claim.

Benefits of Option 4

Benefits to CMCs

- 5.86 Benefits to CMCs overall would depend on whether they would comply with the voluntary code. Compliant CMCs would benefit as outlined in Options 2 and 3 above.

Benefits to claimants

- 5.87 Where CMCs adhere to the voluntary code, the expected benefits to claimants would be the same as outlined in Options 2 and 3. Where CMCs did not adhere to the voluntary code there would be no additional benefits to claimants.

Risks and Assumptions for Option 4

- 5.88 It is assumed that the majority of CMCs would not comply with a voluntary code due to a risk of competitive disadvantage when compared with those not adhering to it.
- 5.89 There is a risk that CMCs that comply with the voluntary code may lose out on business to CMCs that do not comply with the voluntary code.

Option 4: One-In, One-Out implications

- 5.90 Compliance with a voluntary code is not a regulatory proposal. Therefore Option 4 is not within the scope of One-in One-out.

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

- 6.1 Further information regarding the impacts of the proposals will be sought from CMCs, related organisations and the general public as part of the formal consultation exercise in order to better understand the potential impacts of the proposals. Where sufficient data and estimates are available, impacts will be monetised.
- 6.2 Impacts are expected to be negligible. Based on the information available now, a summary of the overall 'One-in, One-out' policy is set out below.
- 6.3 Some CMCs would experience one-off and ongoing costs in complying with the amended rules. Affected CMCs will tend to be those that are not complying with the spirit and intention of the current rules. These costs are expected to be minor. To the extent that costs are incurred by these CMCs this would count as an IN.
- 6.4 CMCs would benefit from a reduction in the direct cost of dealing with complaints. This would count as an OUT.
- 6.5 It is possible that the clarifications to the rules might result in a reduction in complaints to CMCs and therefore 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. To the extent that savings are realised this would therefore count as an OUT across all CMCs. However, any change in CMR costs and therefore fees is expected to be negligible.
- 6.6 In conclusion, taking into consideration that it is not possible to quantify the aggregate impacts, the overall OIOO impact has been assessed as an IN with ZERO NET COST.

7. Micro Business Exemption Waiver – Options 1 to 3

- 7.1 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. 2,907 of the total 3,270 CMCs authorised in 2010/11 declared that they employed, or were due to employ, fewer than 10 members of staff to deal with claims management matters. Of those, 1,333 CMCs declared that they were sole traders who did not employ any staff.
- 7.2 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.
- 7.3 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 therefore consider withdrawing the proposed changes if no waiver from the moratorium is granted.

8. Sunsetting / Review Clause

- 8.1 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.

9. Enforcement and Implementation

- 9.1 The MoJ intends to implement the proposals in April 2013 alongside the Jackson reforms and the proposed bans on referral fees and inducements offered by CMCs. 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.

10. Specific Impact Tests

Equality Impact Assessment

- 10.1 An Equality Impact Assessment screening has been completed as a separate document.

Competition Assessment

- 10.2 For options 1-3 there are no anticipated major impacts on competition. The minimum standard of compliance would remain equal for all CMCs. In relation to option 4, the Regulator considers that those not following voluntary requirements would be at a competitive disadvantage compared to those who chose to adhere in a scenario where a voluntary code co-exists with a standard code. For example, a CMC that contracts with claimants in writing only may see a reduction in the volume of business or take longer to acquire clients than another CMC that follows the current rules.

Small Firms Impact Test

- 10.3 As part of the 2010/11 annual authorisation renewal exercise, 2,907 out of a total of 3,270 currently 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 smaller firms and sole traders, which make up approximately 89% of CMCs (2,907 out of 3,270 CMCs in total).
- 10.4 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.

Carbon Assessment

- 10.5 There are no anticipated major carbon impacts as a consequence of these proposals.

Other Environment

- 10.6 There are no anticipated major environmental impacts as a consequence of these proposals.

Health Impact Assessment

10.7 There are no anticipated major health impacts as a consequence of these proposals.

Human Rights

10.8 The reforms are considered to be compatible with Convention Rights.

Justice Impact Test

10.9 There are no anticipated major impacts on the Justice System. The justice impacts are set out in the main body of the Impact Assessment.

Rural Proofing

10.10 There are no anticipated major rural impacts as a consequence of these proposals.

Sustainable Development

10.11 There are no anticipated major sustainable development impacts as a consequence of these proposals.

Annex 1: Post Implementation Review (PIR) Plan

<p>Basis of the review:</p> <p>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.</p>
<p>Review objective:</p> <p>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.</p>
<p>Review approach and rationale:</p> <p>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.</p>
<p>Baseline:</p> <p>The baseline for the review is the current position.</p>
<p>Success criteria:</p> <p>Success will be based on the level of complaints received regarding the specific rules identified under the regulatory regime in operation.</p>
<p>Monitoring information arrangements:</p> <p>The Regulator's Monitoring and Compliance Unit currently monitors all regulated businesses to ensure compliance with the rules and regulations.</p>
<p>Reasons for not planning a PIR:</p> <p>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.</p>

