



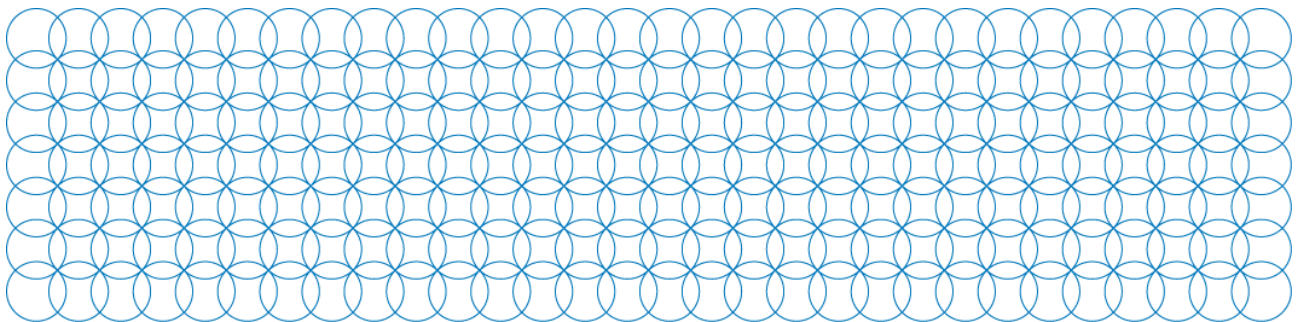
Ministry
of Justice

Claims Management Regulation

Proposals for amendments to the Complaints Handling Rules – Complaints handling by the Legal Ombudsman

This consultation begins on 3 November 2014

This consultation ends on 24 November 2014





**Ministry
of Justice**

Claims Management Regulation

Proposals for amendments to the Complaints Handling Rules –
Complaints handling by the Legal Ombudsman

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

About this consultation

- To:** Authorised claims management businesses in England and Wales
- Members of the Claims Management Regulation Regulatory Consultative Group
- Any party with an interest in Claims Management Regulation
- Duration:** From 3/11/14 to 24/11/14
- Enquiries (including requests for the paper in an alternative format) to:** Miss Kate Moore
Claims Management Regulation
Ministry of Justice
102 Petty France
London SW1H 9AJ
Tel: 020 3334 6489
Email: claimsmanagementregulation@justice.gsi.gov.uk
- How to respond:** Please send your response by 24/11/14 to:
Claims Management Regulation
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: claimsmanagementregulation@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published in December 2014 at: www.gov.uk/government/groups/claims-management-regulator#reports-and-consultations.

Contents

Executive summary	2
Introduction	4
The proposals	5
Questionnaire	10
About you	11
Contact details/How to respond	12
Consultation principles	13

Executive summary

1. The Claims Management Regulation regime was established in 2007 under Part 2 of Compensation Act 2006 (the Act). The Secretary of State for Justice currently exercises the regulatory functions (the Regulator); however, in practice this role is undertaken in his name by the Claims Management Regulation Unit (CMR Unit), which sits within the Ministry of Justice.
2. Businesses providing regulated claims management services in England and Wales must be authorised to do so by the Regulator. Regulation covers six claims sectors: personal injury, financial products or services, employment, criminal injuries, industrial injuries, and housing disrepair¹. Once authorised, these businesses are technically known as authorised persons but are, more generally, referred to as regulated claims management companies. For the purposes of this consultation the term authorised persons will be used, however within the Complaints Handling Rules 2006 they are referred to as businesses.
3. The CMR Unit is principally concerned with the conduct of authorised persons which includes processing applications for authorisation; monitoring compliance; gathering intelligence from a number of sources; undertaking regulatory investigations and taking enforcement action; and where offences under the Act are identified undertaking criminal investigations.
4. Currently, the Regulator has a limited remit to review consumer complaints about an authorised person, the service it has provided and how it has handled the complaint. The Regulator can direct the authorised person to apologise, re-do work and in limited circumstances provide a full or partial refund of fees, but cannot award compensation where it may be due. The Regulator where possible works informally with the parties to resolve the complaints.
5. The Government announced in August 2012 that it would extend the Legal Ombudsman's jurisdiction to deal with complaints from clients dissatisfied with the service provided to them by authorised persons. This means that consumers will have greater scope for redress, including awards for compensation which have not been previously available. The regulation of authorised persons will remain with the Ministry of Justice.
6. The independent complaints and redress scheme provided by the Legal Ombudsman will be free to consumers, with the cost incurred currently by lawyers. When the Legal Ombudsman's remit is extended to include claims management complaints authorised persons will incur the cost of the handling of their complaints and so there will be no additional cost to the legal profession for claims management complaints. The consultation on the costs incurred by authorised persons in respect of the handling of complaints by the Legal Ombudsman was completed on 6 June 2014².
7. As a direct result of the extension of the Legal Ombudsman's jurisdiction the Regulator has to make some technical amendments to the Compensation (Claims Management Services) Regulations 2006:

¹ <http://www.legislation.gov.uk/ukxi/2006/3319/contents/made>

² <https://consult.justice.gov.uk/digital-communications/consultation-fees-framework>

- The removal of the Regulator's powers to review the handling of a complaint and to direct an authorised person to make redress to a complainant.
 - The amendment of the Regulator's powers to issue directions to an authorised person.
 - The creation of a duty to share information with the Legal Ombudsman.
8. Summary of proposed amendments to the Complaints Handling Rules 2006:
- To require authorised persons to notify all clients in writing of their right to complain to the Legal Ombudsman; before signing a contract for prospective clients, at the next appropriate opportunity for existing clients and within a final response to a complainant.
 - To require authorised persons to ensure that their complaints handling procedures comply with the requirements of the Legal Ombudsman scheme rules and that they cooperate with the Legal Ombudsman when it is considering a complaint.
 - To remove identified conflicts with the Complaints Handling Rules and the Legal Ombudsman's Scheme Rules in respect to the timescale for authorised persons to consider a complaint and the prescriptive rules for providing redress.
 - A number of other small amendments to the content of the Complaint Handling Rules including amending the effective date of the rules and reference to the Compensation (Claims Management Services) Regulations 2006.
9. This consultation is conducted in accordance with Regulation 25 of the Compensation (Claims Management Services) Regulations 2006 which requires the Regulator to consult appropriate persons in respect of any amendment to the rules. It seeks to set out the intended changes to the Complaints Handling Rules 2006 that are required as a direct result of the extension of the Legal Ombudsman's remit in handling complaints about authorised persons. It is intended that the Legal Ombudsman will consider complaints in early 2015.

Introduction

The consultation is aimed at authorised persons under the Compensation Act 2006 in England and Wales.

Copies of the consultation paper are being sent to the following; however 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:

- All authorised persons in England and Wales
- Members of the Claims Management Regulatory Consultative Group and other stakeholders

A Welsh language consultation paper is available on request.

The proposals

i. Changes to the Complaints Handling Rules

1. Section 112(1) of the Legal Services Act 2007 requires approved regulators to make provision in their regulatory arrangements requiring relevant approved persons to have effective procedures in place for the resolution of first-tier complaints. Approved regulators must also make provision for the enforcement of that requirement.
2. As a result of this requirement we need to amend the Complaints Handling Rules to ensure that they are not in conflict with the Legal Services Act 2007 and that the rules provide express obligations for authorised persons when handling complaints.

Amendments to the following “Complaint Handling Rules” are proposed:

- Introduction – Reference to the Compensation (Claims Management Services) Regulations 2006 added and an updated reference to the Conduct of Authorised Persons Rules – Rule 1
- Application – Removal of the reference that the rules do not apply to other activity that a business may undertake – Rule 2
- Application – The application of, and compliance with, the rules for authorised persons when handling ongoing and new complaints – Rule 3
- Requirement to have internal complaints handling procedures – Notifying clients of their right to complain to the Legal Ombudsman – Rule 6(d)
- Timescale for dealing with complaints – Informing clients in a final response or a response by the end of 8 weeks after receipt of the complaint that they can complain to the Legal Ombudsman, the timeframe to do so and full contact details – Rule 13(a)
- Publicising procedures – Notifying prospective clients in writing of their right to complain before signing a contract and notifying existing clients of their right to complain at the next appropriate opportunity – Rule 14(a)

The following additional requirements are proposed to be inserted into the “Complaint Handling Rules”:

- Requirement to have internal complaints handling procedures – General requirement to comply with the Legal Ombudsman’s Scheme Rules when dealing with complaints within the scope of the Legal Ombudsman – Rule 6
- Cooperation with the Legal Ombudsman – providing assistance to the Legal Ombudsman when investigating complaints, complying with a notice for information or documents and compliance with any direction made by the Legal Ombudsman – Rules 19, 20 and 21

Removal of the following “Complaints Handling Rules” and content are proposed:

- Timescale for dealing with complaints – Discretion for authorised persons to decline complaints made six months after the complainant was aware – Rule 10

- Timescale for dealing with complaints – Requirement for authorised persons to provide a final response or a holding response to a complainant within 4 weeks – Rule 12
- Providing Redress – Requirement for authorised persons to provide fair compensation when deciding that redress is appropriate – Rule 16
- Providing Redress – The forms of redress and reference to a reasonable rate of interest – Rule 17
- Reference to the Claims Management Regulator – Requirement for a final response to include a reference to the Claims Management Regulator, the address, phone number and email address of the Regulator – Rule 18
- The explanatory note and the reference to the Compensation (Claims Management Services) Regulations 2006

ii. The timing and application of the amended Complaint Handling Rules

3. It is intended to amend Rule 3 for the rules to be applied to all new complaints received by the authorised person and any complaints that are on going when the Complaints Handling Rules are effective. The effective date for the amended Rules will be provided in the response document to this consultation.
4. It is proposed that the rule is amended to state:

These rules apply:

- a) to any complaint received by a business on or after [the effective date]; and
- b) to any complaint received by a business before [the effective date] where, on that date, a final response letter has not yet been sent to the complainant.

iii. Amending the reference of the Claims Management Regulator to the Legal Ombudsman

5. The following rules require amendment to remove the reference to the Claims Management Regulator to ensure that authorised persons provide information to complainants of their right to complain to the Legal Ombudsman, the timeframe to do so and the contact details of the Legal Ombudsman.
6. It is proposed that the rule 6(d) is amended to state:

The internal complaints handling procedures must provide for:

- d) notifying complainants of their right to complain to the Legal Ombudsman, the timeframe for doing so and full contact details of the Legal Ombudsman.

7. It is proposed to remove Rule 12 which requires authorised persons to provide a final response or holding response within 4 weeks of receiving a complaint in order to make the requirements more concise for authorised persons to comply with. The requirements will be contained within Rule 13.
8. Rule 13 will become the new Rule 12 and the proposed amendments are:

A business must, by the end of eight weeks after its receipt of a complaint, send the complainant either:

- a) a final response (which must inform the complainant that they can complain to the Legal Ombudsman, the timeframe for doing so and full contact details for the Legal Ombudsman); or
- b) a response which:
 - i. explains that the business is still not in a position to make a final response, gives reasons for the further delay and indicates when it expects to be able to provide a final response; and
 - ii. informs the complainant in writing that they can complain to the Legal Ombudsman, the timeframe for doing so and full contact details for the Legal Ombudsman.

9. It is also proposed to remove Rule 18 in its entirety which requires an authorised person to indicate in their final response that if a complainant is not satisfied that they may refer the handling of the complaint to the Claims Management Regulator and provide the contact details for the Regulator as this requirement has been added to new Rule 12.

iv. Requirement to notify clients in writing of their right to complain to the Legal Ombudsman before signing a contract or at the next appropriate opportunity

10. Authorised persons are already required to provide details of the availability of its complaints handling procedure before a contract is signed. However the Legal Services Board (LSB) has specified that approved regulators must require their regulated entities to notify all prospective clients in writing of their right to complain to the Legal Ombudsman before signing a contract and for existing clients at the next appropriate opportunity. In order to ensure that the requirements are satisfied it is proposed that the rule is amended to state:

A business must:

- a) before signing a contract with a client and at the next appropriate opportunity for existing clients, notify a client in writing of:
 - i. their right to make a complaint to the business, how and to whom this can be done and provide a copy of its internal complaints handling procedure; and
 - ii. their right to complain to the Legal Ombudsman at the end of the complaints process, the timeframe for doing so and full contact details for the Legal Ombudsman; and
- b) publish details of its internal complaints handling procedures on its website if it has one, supply a copy on request to a complainant, and supply a copy automatically to the complainant when it receives a complaint.

v Insertion of the requirement to comply with the Legal Ombudsman's Scheme Rules

11. The following text is proposed for insertion under the heading "Requirement to have internal complaints handling procedures" and would become the new rule 6:

Complaints that are within the scope of the Legal Ombudsman's Scheme Rules must be dealt with in compliance with those Rules.

12. This rule will require authorised persons to ensure that they handle all complaints that fall within the scope of, or the remit of, the Legal Ombudsman in accordance with the Scheme Rules. This rule intends to ensure that authorised persons make sure that they are aware of how the scheme rules impact the handling of their complaints and their interaction with the Legal Ombudsman.

v. Cooperation with the Legal Ombudsman

13. Additional rules are required in order to ensure that authorised persons cooperate with the Legal Ombudsman when it is considering, investigating or determining a complaint. The rules will require authorised persons to provide assistance they are reasonably able to give, comply with notices requiring documents or information and comply with directions issued by the Legal Ombudsman.

14. The following text is proposed for insertion in the Complaints Handling Rules:

Cooperating with the Legal Ombudsman

Where the Legal Ombudsman requests assistance in connection with the investigation, consideration or determination of complaints under the ombudsman scheme a business must provide all such assistance in connection with the matter as it is reasonably able to give.

A business must comply with a notice that requires specified information or documents to be provided to the Legal Ombudsman under section 147 of the Legal Services Act 2007.

A business must comply with any direction made by the Legal Ombudsman under section 137(2) of the Legal Services Act 2007 where the determination of the complaint has been accepted by the complainant and is binding and final.

vi. Other amendments to the Complaints Handling Rules 2006

15. It is intended to make amendments to Rule 1 in order to update the reference to the Conduct of Authorised Persons Rules and to detail Regulation 23(c) which provides the ability for the Regulator to make rules in respect of the handling of complaints.
16. It is also proposed to amend Rule 2 to remove the statement "the rules do not apply to other activity that a business may undertake" as it is a duplication of the first part of the rule by further stating that the rules do not cover any other activity completed by an authorised person.

vii. Removal of rules and content from the Complaints Handling Rules

17. The removal of Rule 6 is required as there is a conflict between the Complaints Handling Rules and the Legal Ombudsman's Scheme Rules. Currently authorised persons can decline to consider a complaint made six months after the complainant become aware of the cause to complain. The Legal Ombudsman under its Scheme Rules can consider complaints referred to it by complainants six years from the act/omission; or three years from when the complainant should reasonably have known there was cause for complaint.
18. It is intended to remove Rules 16 and 17 in their entirety to ensure that the obligations for authorised persons to provide reasonable compensation and interest are consistent with the Legal Ombudsman's Scheme Rules which will be a requirement in the inserted Rule 6.
19. The content of the explanatory note is intended to be removed from the Complaints Handling Rules with a view to update and amend the information; a revised guidance note will be issued to give compliance advice to authorised persons. In addition the content of Regulations 28 and 29 of the Compensation (Claims Management Services) Regulations 2006 will also be removed as it will be amended by the Compensation (Claims Management Services) (Amendment) Regulations 2015.
20. The proposed changes to the Complaints Handling Rules detailed in this consultation are technical in nature and are required as a direct result of the extension of the Legal Ombudsman's jurisdiction to consider complaints about authorised persons. In order to assist interested parties in considering the proposed amendments a copy of the amended Complaints Handling Rules is attached in appendix 1.

Questionnaire

We would welcome responses to the following question set out in this consultation paper:

- 1. Do you have any comments in respect of the proposed amendments to the Complaints Handling Rules 2006?**

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):	
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 24/11/14 to:

**Claims Management Regulation
Ministry of Justice
Post point 10.11, 10th Floor
102 Petty France
London SW1H 9AJ**

Email: claimsmanagementregulation@justice.gsi.gov.uk

Complaints or comments

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

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>.

Publication of response

A paper summarising the responses to this consultation will be published in December 2014. 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.

Consultation principles

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

<https://www.gov.uk/government/publications/consultation-principles-guidance>



© Crown copyright 2014

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.2. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2/ or email PSI@nationalarchives.gsi.gov.uk.

Where third party material has been identified, permission from the respective copyright holder must be sought.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at: claimsmanagementregulation@justice.gsi.gov.uk.