



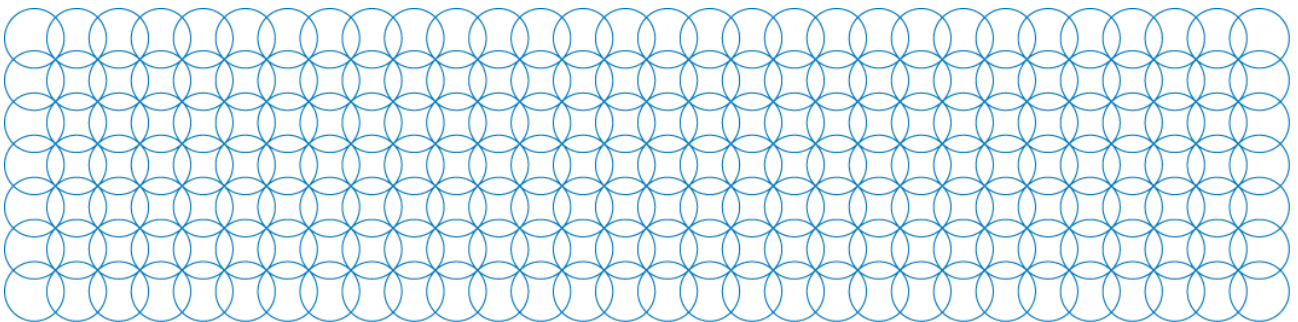
Ministry
of Justice

Claims Management Regulation

Proposals to amend the Conduct of Authorised Persons Rules: The Financial Services Perspective

This consultation begins on 21 November 2013

This consultation ends on 09 January 2014





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of Justice

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Proposals to amend the Conduct of Authorised Persons
Rules: The Financial Services Perspective

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

About this consultation

- To:** All claims management businesses throughout England and Wales and interested parties
- Duration:** From 21 November 2013 to 09 January 2014
- Enquiries (including requests for the paper in an alternative format) to:** Kelly Whittle
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- Response paper:** A response to this consultation exercise is due to be published by February 2014 at: <http://www.justice.gov.uk>

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Executive summary

1. Claims Management Regulation was established in 2007 under Part 2 of the Compensation Act 2006 (the Act). The Regulator is responsible for regulating businesses, commonly known as claims management companies, that handle certain types of claims for compensation in relation to personal injury, financial products and services (such as mis-sold payment protection insurance), employment matters, criminal injuries, industrial injuries disablement benefit and housing disrepair. Regulation is self-financed and recovered from regulated claims management companies paying application and authorisation fees. It is an offence to provide regulated claims management services unless authorised under the Act, exempt, the subject of a waiver or an individual acting other than in the course of a business.
2. The overriding objective of regulation is to provide better safeguards and protections to consumers and to promote access to justice. The CMR Unit proposes further changes to the existing 'Conduct of Authorised Persons Rules 2013'.
3. Earlier changes created more robust safeguards for consumers including a ban on CMCs offering inducements, and since April 2013 the CMR Unit has policed a ban on referral fees in personal injury cases brought in by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Recent consultations on rule amendments have also resulted in stricter requirements. CMCs can no longer refer to the Ministry of Justice brand in any regulatory statements – they can now only refer to being regulated by the 'Claims Management Regulator' (reducing the scope for abuse of the regulatory statement), and tighter pre-contractual information requirements have been put in place making signed contracts mandatory from July 2013. In addition, CMCs are now required to advise existing clients of any variation to or suspension of their authorisation status.
4. Following the implementation of these changes, the regime has made good progress. However, we acknowledge that more can be done to improve the conduct of CMCs. The new proposals are designed to better deal with the poor practices of some CMCs, which will assist consumers with valid claims in getting their claims dealt with promptly by eliminating the congestion caused in the systems of financial services providers and the Financial Ombudsman Service (Ombudsman) through poor or speculative claims.
5. Information provided by financial services providers has highlighted a number of CMCs submitting significant numbers of claims where the CMCs failed to establish if the consumer had payment protection insurance (PPI), or sometimes, whether the consumer was ever a client of the financial institution. The CMR Unit is working hard to improve CMC compliance, reduce instances of poor quality claims being submitted to financial services providers, reduce the proportion of claims submitted to the Ombudsman prematurely, promote and facilitate improved relationships between financial services providers and compliant CMCs, and to identify and take firm enforcement action against those CMCs committing serious or serial rule breaches. In July 2013, the CMR Unit increased its auditing and related compliance capacity.
6. To reinforce this work, the CMR Unit is reviewing the current rules that apply to CMCs to tackle more effectively the practices that financial services providers and

other third party organisations find most objectionable; such as CMCs failing to substantiate the basis of a claim or submitting high volumes of speculative claims. This consultation sets out proposed rules that clarify how a regulated CMC is expected to behave.

7. The Conduct of Authorised Persons Rules are prescribed under Regulation 22 of the Compensation (Claims Management Services) Regulation 2006, with Regulation 25 providing for the Regulator to amend or revoke any prescribed rules and any amendment or revocation may include transitional, incidental or consequential provisions.
8. This consultation is aimed at all persons authorised to provide regulated claims management services in England and Wales, businesses considering an application for authorisation, the Claims Management Regulatory Consultative Group (RCG) and any other interested parties.
9. The main proposals to amend the Conduct of Authorised Persons Rules 2013 which form the basis of the consultation are summarised as follows:
 - Defining the word 'document' in the 'Definitions' section of the rules
 - Clarifying the scope of the 'General Rules' and 'Client Specific Rules'
 - Introducing non-exhaustive examples of the requirement for CMCs to act 'responsibly'
 - Clarifying expectations around information provision
 - Several technical amendments

This consultation seeks views on the CMR Unit's strategy to promote transparency, consistency and effectiveness by amending the existing rules. It is anticipated that targeting non-compliant CMCs by removing the opportunity to mis-interpret the rules, will achieve the policy aim without delivering significant regulatory burdens on responsible CMCs.

Background

10. The personal injury sector has consistently remained the largest regulated claims management sector in terms of the number of regulated CMCs operating in it. However the financial products and services sector, now the largest sector in terms of annual turnover, accounts for the highest number of complaints received by the CMR Unit, primarily related to ongoing PPI mis-selling claims – currently the main focus of this sector.
11. Practices such as CMCs making high-volume speculative claims, claims where no PPI existed and the use of non-compliant marketing have contributed to a poor reputation, and caused detriment to consumers and other businesses and organisations in the sector.
12. The previous CMR consultations on amending the Conduct of Authorised Persons Rules (Review Phases I and II) were focused primarily on improving protections for consumers; safeguarding consumers is the statutory objective of the CMR Unit. The present review will go further to address the rules from the perspective of other parties involved in the claims industry, including respondent businesses such as banks and financial advisors, brokers and car dealers, and third party organisations such as the Ombudsman, the Financial Services Compensation Scheme (FSCS) and the Financial Conduct Authority (FCA).
13. The administrative and associated cost of dealing with meritless claims brought en masse by CMCs has reportedly caused detriment for many financial services providers. Third party issues identified by stakeholders include:
 - The failure of CMCs to undertake robust pre-complaint checks
 - The failure of CMCs to substantiate claims
 - CMCs making numerous speculative claims or other ‘phishing’ practices
 - The use of generic or template complaint letters
 - Discrepancies between letters sent to financial service providers and Ombudsman questionnaires
 - Frivolous and vexatious claims
 - Factually incorrect letters
 - Premature referral of complaints to the Ombudsman
 - Commissioning unnecessary reports, the costs of which are passed to consumers
 - In the course of a telephone call, suggesting that clients could receive a certain amount, where the figure given has no bearing on their case or claim
 - Alleging breaches of the FCA rules which are unsupported by facts or are inappropriate

14. Although this assessment of the existing Conduct of Authorised Persons Rules 2013 was instigated by problems in the financial products and services sector and the PPI mis-selling market in particular, the rules have been assessed to ensure that they remain fit for purpose, relevant to all existing and potentially emerging markets, and allow the regulatory regime to continue to be efficient, sustainable and adaptable.
15. The consultation period for this review will last six weeks, which is largely determined by the following:
 - The PPI mis-selling market continues to be a focus for non-compliant CMCs with referrals to the Ombudsman reaching up to 2,000 per day¹. The CMR Unit feels that the sector and industry would be best served by the shortest possible delay in implementing and enforcing the rule amendments.
 - The CMR Unit's stakeholders (which include trade associations of financial services providers) have participated in extensive engagement in the two previous rules reviews; many consultation responses provided suggestions on the improvement of the regulatory regime, and they have informally provided the CMR Unit with intelligence, which is taken account of in the present review.
 - The impact is focused on non-compliant CMCs - meaning that although all CMCs may review their operating practices, compliant CMCs will not need to amend them.
16. The consultation list is by no means exhaustive or exclusive; responses will be welcomed and considered from anyone who wishes to submit views.

¹ Financial Ombudsman Service Annual Report 2012-2013

Introduction

This paper sets out for consultation the proposed amendments of the Conduct of Authorised Persons Rules. The proposed amendments are either technical, specifications added to generalised rules or an emphasis on the standing requirements of other regulators, organisations or existing legislation. The consultation is aimed at all CMCs, members of the Claims Management Regulatory Consultative Group and any party with an interest in claims management matters in England and Wales.

CMCs are only likely to be adversely affected if they are in breach of the existing rules; these proposals seek only to clarify existing responsibilities and introduce minimum new burdens on compliant businesses.

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 CMCs in England and Wales.
- Members of the Claims Management Regulatory Consultative Group and other stakeholders/interested parties:
 - Advertising Standards Authority
 - Advisory, Conciliation and Arbitration Service
 - Association of British Insurers
 - Association of Independent Financial Advisors
 - Association of Mortgage Intermediaries
 - Association of Personal Injury Lawyers
 - Association of Professional Finance Advisors
 - Association of Regulated Claims Management Companies
 - British Bankers Association
 - British Insurers Brokers Association
 - Building Societies Association
 - Citizens Advice
 - Claims Standards Council
 - Council of Mortgage Lenders
 - Direct Marketing Association
 - Employment Appeals Tribunal Service
 - Financial Conduct Authority
 - Financial and Leasing Association
 - Financial Ombudsman Service
 - Financial Services Compensation Scheme
 - Forum of Insurance Lawyers
 - Information Commissioners Office
 - Law Society
 - Legal Ombudsman

Motoring Accident Solicitors
National Debtline
National Franchised Dealers Association
Office of Communications (OFCOM)
Office of Fair Trading (OFT)
Professional Financial Claims Association
Solicitors Regulation Authority
UK Cards Association
TUC
Which?

The proposals

1. The following text is proposed for insertion into the 'Definitions' section of the Rules:

"document" means a business must arrange for written, printed or electronic records to be kept which must be sufficient to enable the Regulator to monitor compliance with the requirements of regulation.

2. The CMR Unit intends for this to provide a clear reference to assist CMCs with regulatory compliance wherever it is referred to in the rules, and to remove any scope for an interpretation which may be inconsistent with the intended meaning of the rules.
3. The following text is proposed for insertion into the preamble of the 'General Rules' section of the Rules:

The rules must be complied with at all times, and a business must be able to demonstrate, and where practicable, document that it complies with the rules.

4. The CMR Unit generally expects that CMCs should be able to evidence that they comply with the rules and regulations. Although this would seem self-evident, the CMR Unit has encountered CMCs with business practices that do not include reasonable standards of documentation.
5. The proposal seeks to clarify this requirement. Before a CMC becomes authorised to carry out claims management services, it must certify that it complies with the rules relevant to it (General Rule 6), that it will comply with the monitoring and enforcement arrangements of the Regulator (General Rule 11) and that it shall supply information upon the request of the Regulator (General Rule 17).
6. It may not be practicable for a CMC to seek to fully document its compliance with General Rule 5 (*A business shall observe all laws and regulations relevant to its business*). Likewise it may be difficult to document compliance with General Rule 1 (*A business shall conduct itself with honesty and integrity*), unless the CMR Unit requests specific information to investigate a suspected breach under this rule.
7. The insertion of 'where practicable' in the proposal is intended to mitigate the possibility of the rules being mis-construed as exemplified in paragraph (6). Overall where the proposed requirement cannot be complied with, it will be for the CMC to explain to the CMR Unit, when asked, why it was impracticable to document its compliance.

8. The amendments to the following General Rules are proposed:

Expand General Rule 2 from

'A business shall conduct itself responsibly' to:

'A business shall conduct itself responsibly overall including, but not limited to, acting with professional diligence and carry out the following:

- a) Take all reasonable steps to investigate the existence and merits of a potential claim before presenting it to a third party.
- b) Make representations to a third party that substantiate and evidence the basis of the claim, are specific to each claim and are not fraudulent, false, or misleading.
- c) Claims referred to any recognised Ombudsman or dispute resolution scheme must comply with those organisations' procedures, include specific, appropriate and relevant information on individual claims and take account of relevant past decisions.
- d) Maintain appropriate records and audit trails.
- e) Take all reasonable steps in relation to any arrangement with third parties to confirm that any referrals, leads or data have been obtained in accordance with the requirements of the legislation and Rules.
- f) Have an appropriate procedure in place for early identification and protection of vulnerable consumers and give due consideration to obligations under any relevant legislation'.

9. Sections a) – f) are introduced to provide a working definition of the requirement for business to be conducted 'responsibly'. They represent the most common areas of rule breaches; they are not meant as an exhaustive list. The CMR Unit anticipates that clarifying the most common requirements of 'responsibility' will lead to more transparent, consistent and targeted regulation.
10. The CMR Unit currently uses the basic expectations/examples of responsible behaviour set out at sections a) – f) to enforce good practices; however it may have not always been crystal clear to CMCs that these expectations are what they were being assessed against. Under these proposals, the above specific parameters for measuring responsible conduct will be highlighted to drive up industry standards.
11. Financial services providers and their representatives, the British Bankers Association (BBA) in particular, have highlighted concerns over CMCs who submit large numbers of speculative, unsubstantiated claims. Rule breaches encountered by financial service providers include CMCs using standard/template claim letters covering every mis-selling eventuality, CMCs not exercising due diligence in substantiating and evidencing the existence of a claim, incomplete client questionnaires, lack of copies of agreements/policy numbers and significant numbers of claims generated by a small number of CMCs.
12. The Ombudsman reports that inadequate paperwork is submitted by some CMCs; forms are often incomplete and of poor quality. Specific complaints have included repeated failures to properly explain the nature of the complaint, inappropriate and consistent use of standard paragraphs or templates, and incomplete PPI questionnaires.

13. As complaints go to financial service providers before the Ombudsman, financial service providers are seeing the same issues as the Ombudsman which is hindering them dealing with the complaint within the required timeframes. This can result in the complaints being automatically referred to the Ombudsman once the time limit for the financial service provider to respond has lapsed; sometimes unnecessarily.
14. The proposal at General Rule 2c) will also apply if CMCs' clients file complaints with the Legal Ombudsman, when the jurisdiction of the Legal Ombudsman is extended to include consumer complaints regarding CMCs.
15. The proposed amendments to the rules are designed to ensure that CMCs present, as far as possible, only genuine evidence-based complaints where it is reasonably believed that mis-selling took place.
16. The proposal at General Rule 2d) clarifies the CMR Unit's expectation that CMCs should maintain appropriate records and audit trails. As the monitoring and enforcement arrangements of the Regulator requires the provision of documentary evidence, this requirement already exists in the Conduct Rules, the primary legislation (the Compensation Act 2006) and the secondary legislation (the Regulations). The CMR Unit therefore expects that CMCs abiding fully with the rules already keep an appropriate paper trail to audit. The rule change updates the rules so that the primary legislation and Conduct Rules are aligned.
17. The expansion at General Rule 2f) in respect of vulnerable consumers is included due to the instances where the CMR Unit has found that some CMCs do not have adequate procedures or policies in place. The requirement to identify and accommodate vulnerable consumers does not constitute a new burden as this is already a requirement under the Equality Act 2010 Section 20 'Duty to make adjustments'.

Amend General Rule 3 from:

A business shall be directed by people with the necessary competence.

To:

A business shall be directed by people with the necessary competence who must have a working knowledge of the legislation and rules relating to regulated claims management services.

18. The CMR Unit proposes to extend General Rule 3 to outline the minimum standard expected of a CMC director: essentially defining the term 'competence'. It should seem obvious that a working knowledge of the legislation and rules of claims management services is a basic requirement, however the CMR Unit has found instances where this has not been the case.
19. Directors should run CMCs compliantly; it is therefore expected that a working knowledge of the rules and legislation is a minimum requirement as those that fail to comply with this rule will be non-compliant against other rules.

Amend General Rule 6 from:

A business shall comply with the rules relevant to it and shall –

- a) on applying for authorisation certify that it does so, and
- b) certify annually that it has done so, when requested by the Regulator.

To:

A business shall comply with the rules relevant to it and shall –

- a) on applying for authorisation certify that it will do so, and
- b) certify annually that it has done so, when requested by the regulator

20. The words 'it has done so' are replaced by 'it will do so' to correct the tense of this requirement. This is a grammatical correction only; regulated businesses are not required to amend any existing compliant procedures.

Amend General Rule 7 from:

A business that provides representation in personal injury claims (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representation is made) must take out and maintain professional indemnity insurance in accordance with Regulations 21(a) and (b) of the Compensation (Claims Management Services) (Amendment) Regulations 2008.

To:

A business shall comply with the requirements of Regulations 21, 21A and 21B of the Compensation (Claims Management Services) Regulations 2006 (SI 2006/3322) for persons who provide representation to have and maintain professional indemnity insurance.

21. This rule is amended to correct a previous error in the statutory reference. No new provision or requirement is introduced.

Amend General Rule 12 from:

A business shall comply with the Regulator's disciplinary arrangements and shall comply with decisions of the Regulator subject to the right of appeal to the First-Tier Tribunal (Claims Management Services), and of the Tribunal.

To:

A business shall comply with the Regulator's disciplinary arrangements and shall comply with decisions of the Regulator subject to the right of appeal to the First-Tier Tribunal (Claims Management Services), and any subsequent decisions of the Tribunal.

22. As the rule stood its meaning was unclear; the proposed amendment outlines that businesses should comply with the decisions of the Tribunal subsequent to any appeal. This is a technical drafting clarification only; no new provision is introduced.

Amend wording in General Rule 13 from:

Financial Services Authority

To:

Financial Conduct Authority

23. This amendment represents an organisational change in the financial services regulator from the Financial Services Authority to the Financial Conduct Authority. This is a technical amendment only.

Amend wording in General Rule 14 from:

Consumer Credit Act

To:

Consumer Credit Act 1974

24. This rule contains a reference to an Act; the insertion of the year of Royal Assent is proposed bring the reference in line with standard convention. This is a technical amendment only; no new provisions are introduced.

Amalgamate General Rules 16 and 17 from:

16. A business shall provide to the Regulator the information requested on the application form for authorisation and shall notify the Regulator within 20 working days of any changes to the information provided on that form.

17. A business shall provide to the Regulator any additional information that the Regulator may reasonably request.

To:

16. A business shall provide to the Regulator the following information:

- a) notification within 20 working days of any changes to the information provided in the authorisation process or subsequently; and
- b) any additional information that the Regulator determines it is reasonable for the business to provide.

The information provided must not be false or misleading.

25. General Rule 16 addressed pre-authorisation behaviour; however the rules apply only to authorised businesses. The proposed amalgamated rules address this incongruity whilst also clarifying the existing expectation that information must not be false and not misleading; a requirement that ought to have been obvious but which has not always been the case.

26. The following amendment is proposed for insertion into the 'Client Specific Rules' section of the Rules:

From:

These rules set out how a business regulated under the Act must conduct its relationships with clients. The rules must be complied with at all times, and a business must be able to demonstrate that it complies with the rules.

To:

These rules set out how a business regulated under the Act must conduct itself. The rules must be complied with at all times, and a business must be able to demonstrate and, where practicable, document that it complies with the rules.

27. The intention of this amendment is to address the currently limited scope of 'relationships with clients'; the proposal will extend this protection to potential clients, and the requirement to document compliance where practicable intends to bring the Client Specific Rules in line with the General Rules to retain consistency.

28. The CMR Unit is subject to the current governmental policy of reducing regulation. Changes to the rules are subject to clearances from committees, and are potentially subject to reviews, the 'one-in-two-out' requirement for introducing new burdens and sun-setting clauses. Policy changes are carried out against a backdrop of the existing requirement for the MoJ to spend 23% less by 2014/15 and a three year moratorium on new regulation for micro businesses. The CMR Unit, like all regulators, is required to act proportionally.
29. Given these limitations for rules reform, the rationale used for the proposed rule changes is to draw out and clarify existing expectations and responsibilities on CMCs. This, along with the CMR Unit's wider enforcement reforms and strategy, will deliver a more transparent, targeted, consistent and effective regulatory regime.
27. In previous consultations, some respondents helpfully provided evidence and case studies to highlight the extent of issues that they faced. Such evidence, particularly if it details complaints and the number of businesses involved, is always welcomed and useful. The CMR Unit is committed to pursuing and implementing evidence-based policies and strategies.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q1. Do you have any suggestions or comments on the proposed statement that outlines how the rules should be followed? Do you agree with the definition of “document”?

Would it be beneficial for the CMR Unit to issue guidance on the requirement to ‘document’ to provide more detail on where documentary evidence is and is not required, and if so, can you anticipate any specific difficulties?

Q2. The proposed General Rule 2b) amendment requires CMC to ‘substantiate and evidence’ the basis of claims. The Ombudsman will consider a consumer’s oral evidence and recollections where documentation cannot be located. Do you think there is a risk that financial service providers will reject claims from CMCs as a result of this proposal if they interpret ‘substantiate’ to mean documentation? Can this be mitigated?

Q3. The list of specifications proposed in General Rule 2 from a)-f) are common breaches of the requirement to act ‘responsibly’; is it clear that these examples are non-exhaustive?

Q4. Do you have any comments or suggestions on the proposal to expand General Rule 3?

Q5. The proposals at General Rules 6, 7, 13 and 14 represent either technical corrections or grammatical clarifications. Do you agree with these proposed amendments?

Q6. In relation to the amalgamation and clarification of General Rules 16 and 17, do you agree with the proposal?

Q7. Do you have any views on the likely benefits or costs to CMCs and particularly small to medium sized CMCs?

Q8. The CMR Unit welcomes your views on the Equality Statement in terms of the potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence.

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 09 January 2014 to:

Kelly Whittle
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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>.

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

Publication of response

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

Impact Assessment

As this is a low-cost regulation measure, it is allocated to the Reducing Regulation Committee 'fast track' and so does not qualify for a full Impact Assessment.

The Equality Statement is attached at Annex A.

Any questions, suggestions or comments on the consultation, proposals or the Equality Statement will be welcomed.

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.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Annex A: Equality Statement

Policy change summary

The Code of Conduct of Authorised Persons Rules sets out how claims management companies (CMCs) are expected to conform to the regulatory regime. The Ministry of Justice's (MoJ) Claims Management Regulation Unit (CMR Unit) regulates six sectors in which claims management companies (CMCs) operate: personal injury, financial products and services (FPS), criminal injuries compensation, industrial disablement benefit, employment and housing disrepair.

Since the code was initially drafted, the claims market has undergone substantial changes since the PPI mis-selling scandal emerged in 2011. The CMR Unit proposes amending the Rules to deliver a more consistent, transparent and effective regulatory regime to combat the poor practice that a minority of firms specialising in the PPI market have brought to the claims industry.

In terms of the number of authorised businesses, personal injury remains the largest regulated sector. In terms of annual turnover, FPS is the largest regulated sector with 64% of CMC business; personal injury has 35% with the remaining 1% split between the other four sectors.

Methodology

Information collected from CMCs at authorisation and annual renewal on the ethnicity and diversity of directors operating CMCs² compared with data obtained from population estimates by ethnic group from the Office for National Statistics (2011 census) indicates that:

- 50% are White British - compared to 83% of the national UK population
- 24% are Pakistani - compared to 1.8% of the national UK population
- 6% are Indian - compared to 2.6% of the national UK population
- 3% Bangladeshi - compared to 0.7% of the national UK population

With the remaining 17% made up of Other.

Certain ethnicities are over-represented against the population, most notably Pakistani, Bangladeshi and Indian operated CMCs.

Although no data is collected, the CMR Unit extrapolates that individuals pursuing a personal injury claim may be more likely to have a disability compared to the population as a whole, as it can be reasonably assumed that a bodily accident would be the subject of their claim, and are potentially differentially affected by changes to the Conduct of Authorised Persons Rules.

² % based on number of CMCs that provided information on ethnicity: 2014 out of 2528 authorised businesses.

Analysis of the preferred option

Pakistani, Bangladeshi and Indian operated CMCs are over-represented in the market and therefore likely to be differentially impacted. The impact of the amendments is likely to vary; there is no discernable impact expected for CMCs already compliant with the existing regulatory regime, with only CMCs currently breaching Rules by applying a subjective interpretation to them likely to be affected. The CMR Unit does not hold data on the breakdown of CMC owners currently non-compliant with regulation and likely to be affected.

The insertion of General Rule 2 f) is expected to have a positive impact on vulnerable consumers. CMCs are already required to have regard to duties under the Equality Act 2010; the rule insertion clarifies expectations around how they should treat vulnerable consumers.

Equality considerations

The CMR Unit has considered the impact of the Rules changes against the statutory obligations under the Equality Act 2010.³

As minority ethnic groups running CMCs as outlined above are over-represented compared to the general population, there is the potential for a differential impact in relation to ethnicity, however this supposes that the number of non-compliant CMCs is directly proportionate to total number CMCs. The CMR Unit does not hold sufficient data to confirm this.

The CMR Unit holds data on the location of CMCs which demonstrates high concentrations in Wales, Yorkshire & Humberside and the North West; however as a regulated CMC can operate throughout the jurisdiction of England and Wales and offer online services or advertise through national media, it would not be reasonable to assume that consumers in differing geographical areas will be affected to lesser or greater degrees.

A lack of data means the CMR Unit is unable to assess the potential for the remaining protected characteristics; however we believe the proposals are not likely to have equality impacts. A specific equalities question will be asked in the consultation aimed at understanding more about potential equalities impacts of these proposals.

The assessment of the CMR Unit is that the proposed amendments to the Rules will impose no particular or substantial disadvantage, and therefore consider that the proposals and any resulting impacts remain a proportionate means of achieving the policy aim – clarifying the existing rules to shape a more transparent, consistent and effective regulatory regime.

³ Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

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