

Claims Management Regulation Newsletter

Issue 4, April 25 2007

Regulation fully commenced

DCA Minister, Bridget Prentice MP, announced the commencement of full claims management regulation on 23 April 2007. She said:

“I am delighted to announce today the full commencement of claims management regulation. Appropriate action will be taken against those who wilfully flout the law.

The strict rules with which authorised persons must comply will help raise consumer confidence. The regulation has put in place vital safeguards for consumers when using the services of claims management companies and I am confident that it will also help raise standards across the industry.

The regulation has been delivered in record time and I am grateful for the widespread support that has made this possible. I hope we can continue to work together to make regulation more effective.”

Enforcement policy published

On 23 April DCA published its Enforcement Policy for claims management regulation. It is available on the publications page of the website www.claimsregulation.gov.uk. The purpose of this Policy is to ensure that the law is applied in a fair, equitable and consistent manner and to guide the Regulator and officers acting on behalf of the Regulator into taking the appropriate action. This Policy is based on the following principles –

- It reflects the principles of the Cabinet Office Enforcement Concordat.
- The Regulator intends to work pro-actively with all stakeholders, in particular with businesses providing claims management services to help them comply with the legislation.
- In general, and where appropriate, consideration will be given to alternatives to formal action, for example giving advice and assistance, or obtaining undertakings about future conduct.
- Before formal action is taken, the Regulator will normally provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, to prevent evidence being destroyed).
- All decisions will be impartial and will not be influenced by race, politics, gender, sexual orientation, religious beliefs or any other belief or status of the alleged offender.
- The Regulator will take into account the comments of any consumer or other relevant person to establish -
 - his or her views about the circumstances in which enforcement action is deemed appropriate, and
 - the nature and extent of any consumer detriment and its significance relative to the individual circumstances.



*Mark Boleat, DCA Head of
Claims Management
Regulation*

Key Dates:

- 25 July 2006
Compensation Act became law.
- 30 November 2006
Application form published
- 8 December 2006
Claims Management Regulations and Scope Orders came into force
- 16 February 2007
Deadline for applications to ensure processing by April
- 23 April 2007
Prohibition on operating without authorisation commenced

Claims Management Regulation is undertaken by the Secretary of State for Constitutional Affairs. Monitoring and compliance services are provided by Staffordshire County Council under contract to the Department.

Baseline study published

On 23 April DCA published a Baseline Report, analysing the markets subject to regulation under the Act. The purpose is to help guide the regulatory regime by providing a sound analysis of the market and of malpractice in the market, and to facilitate the analysis of the impact of regulation. The report is available in the publications section of the website www.claimsregulation.gov.uk.

The main conclusions of the of the report are –

- The market in respect of **personal injury** is worth about £190 million a year. There is substantial scope for malpractice. There are two principal problems - selling practices, in particular cold calling, and misleading contracts. There are also two specific problems – marketing in hospitals and contrived accidents leading to fraudulent claims. Mystery shopping, surveys, inspections of businesses and intelligence information will be used to help enforce the rules. However, success is dependent on the solicitors' Practice Rules being more effectively enforced and the exempt introducer concept working satisfactorily. The Regulator will work closely with the Solicitors Regulation Authority to ensure that the work of the two regulators is complementary. Regulation is likely to have significant effects on the nature of the market, including on solicitors that specialise in handling personal injury claims. The market is also likely to be affected by the Government's proposed reforms to the claims process, published on 20 April.
- The turnover of businesses dealing with compensation for **endowment mis-selling** is estimated at about £75 million a year. The main problem areas are misleading information on websites, in particular the use of scare tactics, and contracts that are weighted against the consumer. These issues are being dealt with at the application stage. This, combined with scrutiny of contracts and the client account rules, should remove much of the scope for malpractice.
- Compensation for wrongly applied **bank charges** is a new and rapidly growing market. The issues are similar to those in endowment mis-selling and will be dealt with in the same way.
- Intermediaries play only a small role in respect of **criminal injuries compensation, Industrial Injuries Disablement Benefit, employment and housing disrepair** and it should be possible to deal with any malpractice.

Risk framework

The Regulator needs a framework to identify the factors associated with malpractice. The framework must influence the design of the application form, shape the authorisation process and guide monitoring, compliance and enforcement work.

The first version of this framework was published on 30 November. A new version, building on the experience with the authorisation process, was published on 5 April. The report is available in the publications section of the website www.claimsregulation.gov.uk.

The framework identifies the following as significant risk factors (involvement here means having a management or controlling function, not simply employment) –

- A history in respect of illegal activity, prosecutions, regulatory action etc.
- Involvement in a large number of different businesses undertaking similar activity, particularly where some of the companies have ceased trading.
- Involvement in businesses that have misleading marketing material or misleading contracts.
- Involvement in high pressure selling and the improper generation of leads.
- Involvement in businesses about which there have been a significant number of complaints.
- Lack of transparency and competence.
- Statements and/or actions that indicate that activities are being or will be carried out that would be in breach of the conduct rules.
- Involvement in an unsatisfactory application for authorisation, for example applying late and evidence of failure to comply with the Rules of Conduct, particularly on websites.

Applications

Around 800 businesses have been authorised. Over 200 applications received prior to 16 February have not yet been authorised as the businesses did not respond adequately or in time to queries. 300 applications have been received since the deadline, many from businesses that were not previously aware of the need to be authorised. In the very short term, while these applications are being processed, DCA will not be taking enforcement action against businesses that are trading without authorisation provided that they applied as soon as they knew they had to, their application is complete and does not raise any queries and they comply with the Rules of Conduct.