



# Ministry of JUSTICE

## Claims Management Regulation Bulletin – No 5 (March 2009)

### Financial Products and Services - Use of Agents

We have noticed a substantial increase in the number of businesses using agents as a means of marketing their services. This practice, if not properly supervised by the authorised business, has the potential to cause consumer detriment and would constitute a breach of businesses conditions of authorisation.

If you use or are planning to use agents as a means of marketing your services, then you must comply with the following:

- There is a legally constituted relationship of agency between the authorised business and the agent. This agreement should be in writing.
- Agents who advertise or otherwise seek out potential claimants must do so in the name of the authorised business only. Any person who advertises in their own name without authorisation would be committing an offence.
- Agents must comply with all the rules an authorised business is subject to.
- Authorised businesses will be held responsible for any rule breaches by agents purporting to be acting for them. Enforcement action will be taken against the authorised business.

### Potentially Unenforceable Consumer Credit Agreements (UCCA)

[Guidance on the use of misleading marketing](#) was published in January 2009 and is available on our website.

The Ministry of Justice and OFT issued a related [Press Release](#) on 17 February 2009 and was published on the Ministry of Justice website.

### Exempt Introducers

Enquiries from traders suggest that there is some confusion concerning the exempt introducer status. In order for a person to be considered an exempt introducer, they must fulfil **all** of the following criteria:

- a) the referral of claims must be incidental to the introducer's main business;
- b) the introducer provides no other regulated claims management service, which includes advertising the service, and advising on the merits of a potential claim
- c) of the cases that the introducer refers to such persons, he is paid, in money or money's worth, for no more than 25 cases per calendar quarter; and
- d) where cases are referred to authorised persons the authorised persons accept responsibility for ensuring that he complies with these rules.

Further guidance is available by contacting the Monitoring and Compliance Unit and in the ['Who needs to be authorised under the Compensation Act 2006 Guidance Note'](#) available on our website.

## **New Anonymous Reporting Hotline**

A new [Claims Management Anonymous Reporting Hotline](#) is now available. This telephone line has specifically been set up to allow businesses, consumers, individuals or other party's to report details of alleged malpractice, fraudulent activity, rule breaches or poor service in confidence and anonymously.

The number for this new line is **0333 200 0110**. You will not be able to obtain advice, or request feedback via this number. You can still use the main number to the Monitoring and Compliance Unit to complain or report such instances, in confidence, where you wish to be contacted further in respect to your call.

## **Telephone Cold calling**

There has been a recent increase in the telemarketing of regulated claims management services, i.e. telephone cold-calling for claims. Such telephone marketing is permitted provided it complies with other laws and rules on direct marketing. This is covered in the [Marketing and Advertising Claims Management Service guidance note](#) which was revised in November 2008.

Businesses are not permitted to make any cold calls to consumers where the intention is to refer those consumers claims to a solicitor, these would typically be claims for Personal Injury and also some claims in relation to financial products and services, in particular UCCA. This would be a breach of the Conduct of Authorised Persons Rules (Client Specific Rules, Rule 8) as it would serve to put the solicitor in breach of rule 7 of the Solicitor's Code of Conduct. We are scrutinising telemarketing arrangements and businesses should ensure that their records are sufficient to prove that their telemarketing is compliant.

## **Claims Management Tribunal - Consultation**

The Claims Management Services Tribunal is scheduled to become part of the new Unified Tribunals Service in January 2010. New rules will be prepared to govern the proceedings of the new tribunal structure. A consultation on the proposed new rules was launched in February 2009. The [Consultation papers](#) are available to view on the Tribunals Service website.

## **Amendment to Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

An [informal consultation on amendment to the Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975](#) to bring it in line with Compensation legislation has been published. This would enable the claims management regulator to request disclosure of all criminal convictions (including spent ones) of businesses applying for authorisation, and to have the right to take into account this information when considering applications for authorisation. Comments are requested by 13 March.

## **Information Gateway between FSA and Claims Management Regulator – Consultation**

HM Treasury has published a [consultation paper](#) inviting views on proposed changes to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 to introduce an Information Gateway between the Financial Services Authority and the Claims Management Regulator. The purpose of the information gateway is to enable the sharing of information between the two regulators for regulatory functions.

## **Bank Charges**

On 26 February 2009 the Court of Appeal issued a new ruling. Further details are available on the [FSA](#) and [OFT](#) websites.

## **Accountants Report Form**

Rule 9 of the Client Account Rules 2006 requires authorised claims management businesses that operate client accounts to deliver an Accountant's Report to the Regulator within six months of the end of each Accounting Period (Rule 9.2). The [Accountants Report Form](#) and [Checklist](#) were published on the website in November 2008.

## **Compromise Agreements**

We have received enquiries about whom, and more importantly, who cannot represent clients in Compromise Agreements. An "Acceptable Compromise Agreement" is a legally binding agreement to accept compensation from an employer instead of pursuing a tribunal case. Only a solicitor, a designated trade union officer or a designated advice bureau worker, can sign such agreements. The conditions regulating compromise agreements are set out in section 203 of the Employment Rights Act 1996.

## **Limitation Act 1980**

The Limitation Act specifies different periods for pursuing legal claims. For example, actions for damages in most personal injury cases must be brought within three years of either the date when the cause of action accrued (usually when the damage is suffered), or within three years of the claimant's 'date of knowledge', whichever is the later. There is discretion given to the court to disapply the limitation period in respect of claims for personal injuries when it considers it just and equitable to do so.

Each claim is considered on its merits and the court will take into account the interests of both parties. With this in mind, businesses should always carefully consider the legal and cost merits of each individual case before advising their client whether to bring any such action.

## **Claims Standards Council (CSC) May 2009 Conference**

The CSC is hosting a conference on 21 May 2009 to discuss claims process reform for personal injury claims. More details are available on the [CSC website](#).

### **Contact us**

Ministry of Justice

Claims Management Regulation Monitoring and Compliance Unit (MCU)

57 - 60 High Street, Burton on Trent, Staffordshire DE14 1JS

Telephone: 0845 450 6858 / 01283 233309, Fax: 0845 450 6866 / 01283 233335

Email: [info@claimsregulation.gov.uk](mailto:info@claimsregulation.gov.uk)

[www.claimsregulation.gov.uk](http://www.claimsregulation.gov.uk)

Produced by the Ministry of Justice – March 2009