



Claims Management Regulation Bulletin – No 3 (August 2008)

A Regular Bulletin

Claims Management Regulation (CMR) Bulletins and Newsletters have been published on an ad hoc basis since regulation began. At the recent MoJ hosted regulation workshops businesses said that communications with us could be improved and that a more regular update on news items would help. We will therefore be issuing bulletins covering items of interest on a quarterly basis and will continue to issue separate bulletins as and when urgent issues arise. If you have any comments or items for inclusion please let us know - our contact details are at the end of this document.

The first CMR Annual Review and Impact Study published

We published our 1st Annual Review and Impact of Regulation One-Year Assessment on 22 May 2008. These documents give a comprehensive picture of the first year of regulation. The Annual Review highlights progress against the regulatory objectives and sets out key future priorities. The Impact Assessment, prepared by Mark Boleat the first Head of Regulation, builds on his August 2007 report in looking at how regulation has impacted each of the sectors subject to it. Both these documents can be found in the Publications section of the dedicated website - www.claimsregulation.gov.uk.

Regional Workshops

142 businesses attended the workshops that took place in Leeds, London, Manchester and Birmingham in April and May 2008. They provided delegates with the opportunity to share their experiences of regulation – both the positives and the negatives - and enabled them to question the regulation team on issues of concern. Information from the individual events and a summary evaluation can be found in the 'Feedback' section of the website. We have considered those points made, and our responses will also be published in the new 'Feedback' section very shortly.

Professional Indemnity Insurance (PII) requirement came into force on 1 July

Following Parliamentary approval of the Compensation (Claims Management Services) (Amendment) Regulations 2008, the PII requirement came into force on 1 July 2008. New and existing businesses in the personal injury sector that represent clients will now need to obtain the relevant cover. More information on who needs to obtain PII can be found in the guidance note – 'Who needs to obtain Professional Indemnity Insurance' available in the 'Publications' section of our website.

FOS Annual Review

The Financial Ombudsman Service (FOS) has commented on the role of claims management companies in claims brought before it by consumers. Their 2007/8 annual review noted that in some pension-related complaints involving SERPs referred to them, claims management companies had raised unrealistic expectations. You are reminded that the Conduct of Authorised Persons Rules 2007 (again available on our website) require authorised persons to inform clients of alternative routes of redress, such as approaching the FOS directly, and to provide clear information about the costs or fees.

Bank Charge Test Case Update

In the Office of Fair Trading(OFT) test case against the main banks to establish whether their terms and conditions could be assessed for fairness under *The Unfair Terms in Consumer Contracts Regulations (1999)*(UTCCR) the High Court ruled in April that UTCCR do apply to bank charges, and such penalties could be 'unfair'. Following this judgment the OFT commenced an investigation to assess whether it believes such charges are 'unfair' and what the real costs of current account penalty charges are. The banks have launched an appeal against this judgment and the verdict is expected at the end of the year. Businesses in this market should continue to provide existing and potential clients with accurate information regarding the case. This can be done by monitoring FOS and OFT announcements accessible at; <http://www.fos.org.uk/faq/bank-charges.html> and <http://www.of.gov.uk/news/press/2008/55-08>

Marketing Calls and Emails

We continue to receive complaints about telephone cold calling by businesses. Consumers find such calls intrusive and disturbing and have made particular complaints about automated calls and

- businesses that call them but refuse to give a business name or address; and
- businesses that call them despite the consumer being registered with the Telephone Preference Service.

These practices contravene the Privacy and Electronic Communications Regulations 2003 (which set out the legal rules that govern electronic marketing) and breach the Direct Marketing Association's Code of Practice. This applies to subcontractors acting on your behalf, as well as to your own staff. Non compliance with these provisions breaches our Conduct of Authorised Persons Rules and could jeopardise your authorisation.

Information on the relevant requirements is available on the Information Commissioner's website at www.ico.gov.uk/for_organisations.aspx (click on the "marketing" link). The full Code of Practice can be found at <http://www.dma.org.uk/content/pro-code.asp>

Regulation alerts

We are issuing a public alert in relation to a business or businesses which we believe may be providing regulated claims management services without authorisation and which we have not been able to contact. We believe the business or businesses are trading by the following name(s)

- *National Compensation Consumer Line*
- *Compensation Consumer Survey Line*
- *Personal Injury Hotline*

The full notice is appended to this bulletin. Further notices in respect of other businesses where we wish to alert the public and seek information will be published as necessary.

Client Accounts

Businesses operating client accounts are required to deliver an accountant's report to the Regulator within six months of the end of their accounting period under Rule 9 of the Client Account Rules 2006 – available to view on the 'Publications' section of our website. The report should summarise the business's accounting records and be prepared by a qualified accountant. We will shortly begin reminding those who handle client money that the report is due. A checklist and report format will be published to help you meet requirements, but if you, or your accountant, wish to discuss the requirements in the meantime, please contact us on the number at the end of this bulletin.

Fees Consultation

We are currently reviewing the fees structure for the next regulatory year, 2009-10. A consultation paper with proposed changes to the fees and policy was published on 4th August. The paper will shortly be emailed to all authorised businesses. This will be your opportunity to comment on fee levels and how we enforce payment, so we encourage you to respond to the paper, which is currently available at:

<http://www.justice.gov.uk/docs/claims-management-regulation-fees.pdf>.

Major Change to Unfair Trading Laws

May 2008 saw a major change in consumer protection law affecting all businesses dealing with consumers. The Consumer Protection from Unfair Trading Regulations 2008 replaces previous legislation and widens the application of the law by introducing a **general duty not to trade unfairly**. Regulations prohibit the following where these effect decisions that a consumer makes and cover actions by a trader before, during and after any contract is formed.

- **Misleading actions** (e.g. saying your claim service is suitable for a customer when it is not, or overstating the likely claim value).
- **Misleading omissions** (e.g. claiming a “success rate” without making it clear that you restrict your clients to those with a good chance of a successful claim).
- **Aggressive practices** (e.g. exploiting any misfortune or circumstance which would impair your client’s judgement, or threatening to sue when you can not legally do so)

They also create an outright ban on 31 specific unfair practices including

- Claiming a trader or his service has been approved, endorsed or authorised by a public body (such as the MoJ) when it has not. You should never make such claims about yourself or your service.
- Describing a service as “free” or “without charge” if the consumer has to pay anything other than the unavoidable cost of responding.
- Making persistent unwanted contact by telephone, fax, e-mail or other remote media.

Claims management businesses must be aware of the new regulations. Guidance, and the full list of banned practices, is available on the Office of Fair Trading website at:

www.offt.gov.uk/advice_and_resources/small_businesses/competing/protection

Contact us or your local trading standards service for advice on specific practices.

No win-no fee help note has been revised

The Advertising Standards Authority (ASA) Help Note has been revised to make it clear where additional charges need to be indicated. This is in line with advice consistently given by the Monitoring & Compliance Unit, so provided you have followed our advice, you will be complying with the help note. The new version can be found on the ASA website, www.asa.org.uk by searching for “no win no fee” or click for on-line guidance and select “Litigation: no win no fee claims” from the alphabetic index.

The next regular bulletin will be issued in November.

Contact us

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