

Claims Management Regulation Bulletin – No.2 (January 2008)

Professional Indemnity insurance requirement finalised

The final conclusions on the requirement for authorised businesses to hold professional indemnity insurance was published in November. The requirement will initially apply only to businesses that represent clients in the personal injury sector and is due to come into effect on 1 July 2008, subject to approval by Parliament of the relevant statutory instrument. Representation of a client means the making of allegations, submissions (by way of argument and/or evidence) or other representations, on a client's behalf, to an insurer or other body or organisation in relation to a claim. The full terms of the requirement is available at www.justice.gov.uk/publications/cp0407.htm

Regulation fees in 2008/09

The claims management regulation fees determination applicable for application and annual fees in 2008/09 was published on 14 December 2007. This followed a consultation exercise carried out between August and October 2007. For 2008/09 the application fees will remain at their 2007/08 levels. The annual regulation fee scale will also be unchanged, except that the minimum fees payable will be reduced for those with a low turnover. The paper setting out the responses to the consultation and the full fees determination for 2008/09 is available at www.justice.gov.uk/publications/cp1807.htm

Obligations under the Data Protection Act 1998

Businesses that process personal data are required to be registered under the Data Protection Act 1998 and comply with the obligations imposed by that legislation. Failure to register when required to do so would also be a breach of Claims Management Conduct Rules. Further information can be found in the regulation notice we issued in November www.claimsregulation.gov.uk/userfiles/file/obligations_under_the_DPA_.pdf and on the Information Commissioner's Office website: www.ico.gov.uk/what_we_cover/data_protection/notification.aspx

'Unfair' bank charges - obligations towards consumers

The High Court is due to hear the test case brought by the Office of Fair Trading (OFT) between January 14 and February 28 2008. The OFT has issued updated information on the case and consumer's position, available at www.offt.gov.uk/advice_and_resources/resource_base/market-studies/personal2

We issued a guidance note "[Claims in respect of bank charges](#)" which provided details about the original announcement and reminded authorised businesses of the requirement to keep their clients informed about the progress of their claims and to ensure marketing and advertising material is not misleading. Business may find it useful to send a copy of the Financial Ombudsman Service consumer fact sheet with such communications. The fact sheet is accessible at www.financialombudsman.org.uk/faq/bankcharges-testcase-quickguide.pdf

Courts Rules and Rights of audience & rights to conduct litigation

Some authorised businesses are failing to comply with court rules when submitting consumers' claims for unfair bank charges by incorrectly entering their business details in the space reserved for claimant's details. Only the details of a party (claimant or solicitor) to the proceedings should be entered on the claim form. If an incorrectly completed claim has been submitted it should be replaced immediately. Businesses should also note they do not have any rights to conduct litigation or rights of audience. A full regulation notice on these points is available by clicking below.

www.claimsregulation.gov.uk/__wysiwyg/UploadedFiles/File/submitting_a_claim_at_a_court.pdf

Implying that the business is approved by the Government in tele-marketing

We have become aware that some authorised businesses are using their authorised status as a marketing tool. Businesses may only refer to the fact they are regulated by the Ministry of Justice in the specific circumstances as detailed below in Rule 6.d) of the Conduct (Client Specific) Rules. This states that:

"In soliciting business through advertising, marketing and other means a business must not imply that the business is approved by the Government or is connected with any government agency or any regulator." The rule goes on to say that if a business wishes to mention in advertising and marketing material that it is authorised it may use only the following words which must be used in their entirety "Regulated by the Ministry of Justice in respect of regulated claims management activities."

Authorised businesses should ensure that staff who carry out telemarketing are aware of this rule and any scripts used are amended to comply. Breach of the rules may result in action from the Regulator that ultimately could result in removal of authorised status. If any business needs advice on how to comply with this rule they can contact the Monitoring and Compliance Unit (MCU) for help.

The Ministry of Justice took over the regulation of claims management services from the Department of Constitutional Affairs (DCA) in May 2007. Authorised businesses should ensure that any remaining references in marketing material to DCA are changed as soon as possible to the Ministry of Justice.

Do you need to be VAT registered?

During recent audits of authorised businesses it has become apparent that some businesses with an annual turnover in excess of the current £64,000 threshold for VAT registration have not registered for VAT. Information on the legal requirements for VAT registration is available at www.hmrc.gov.uk. Businesses are reminded that The Conduct of Authorised Persons Rules 2007, General rule 5, requires a business to "observe all laws and regulations relevant to its business". Failing to register for VAT when required to do so is a breach of this rule. Breach of the rules may result in action from the regulator that ultimately could result in removal of authorised status. Any business found not to be VAT registered when they should be will also be reported to Her Majesty's Revenue and Customs.

Contracts

During the second half of 2007 we carried out a review of client contracts from a selection of authorised businesses providing regulated claims management services in the financial products and services sector. We assessed the contracts against the requirements set out in the Claims Management Regulation Client Specific Rules (Conduct of Authorised Persons Rules 2007) and the Unfair Terms in Consumer Contracts Regulations 1999. We found that very few of the contracts fully met these requirements - failings included not providing a 14 day cooling off period, unfair penalty clauses and unintelligible language. We will publish shortly a general help note for businesses that sets out the problems identified in more detail and will help all businesses ensure that their client contracts are compliant.

Request for Information and Declaration of Compliance Forms

All businesses that were authorised before 13 November 2007 have been sent Request for Information and Declaration of Compliance Forms. The deadline for the return of the forms was 31 December 2007. Businesses authorised after 13 November will shortly be receiving their forms for return by the 8 February 2008. It is a condition of authorisation that all businesses return the completed forms by the specified date. Authorised business certificates for the period of March 2008 to February 2009 can only be issued once these forms have been received and the appropriate annual fee has been paid. Invoices for the 2008 annual fee will be issued shortly. Please contact the MCU if you have any questions.

Contact us

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