

12 February 2009

Dear Consultee,

## **Claims Management Regulation**

### **Informal Consultation on a proposal to seek an amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

The Claims Management Regulator is responsible for regulating claims management services - essentially this means regulating the activities of claims management companies when making claims for compensation in certain sectors.

The Compensation (Claims Management Services) Regulations 2006, dictates that the Regulator must not grant an application for authorisation unless he is satisfied that the applicant is competent and suitable to provide the regulated claims management service to which the application relates. One of the criteria laid down for assessing suitability is that the applicant does not have a history of committing relevant criminal offences. The fact that an individual has, a criminal conviction does not automatically mean that we will propose to refuse an application. Applications will be considered in the light of all the relevant circumstances and judgements made on a case-by-case basis.

This informal consultation paper invites views on the proposal to seek an amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order in order to bring it in line with Compensation legislation and enable the regulator:

- to request the disclosure of all criminal convictions (including spent ones) from Individual Controllers (and Persons of Significant Influence) of Firms that apply to him for authorisation.
- to have the right to take into account any criminal convictions (including spent ones) that Individual Controllers (and Persons of Significant Influence) may have when considering applications for authorisation.

Views are invited from all those authorised to provide regulated claims management services, members of the Claims Management Regulatory Consultative Group and bodies representing the interests of Offenders/ex Offenders. However, responses are also welcomed from anyone with an interest in, or views on, claims management regulation and offender Management. All written responses will be collated and made public on the Claims Management Regulation website.

I would be grateful if you could submit your comments by Friday 13 March to:

Olukemi Yusuph  
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Email: [olukemi.yusuph@justice.gsi.gov.uk](mailto:olukemi.yusuph@justice.gsi.gov.uk)

Yours faithfully



—  
Kevin Rousell  
Head of Claims Management Regulation



**Informal Consultation by the Claims Management Regulator  
on a proposal to seek an amendment to the Rehabilitation of  
Offenders Act 1974 (Exceptions) Order 1975**

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## Summary of Proposal

This informal consultation paper invites views on the proposal to seek an amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order in order to bring it in line with Compensation legislation and enable the regulator:

- to request the disclosure of all criminal convictions (including spent ones) from Individual Controllers (and Persons of Significant Influence) of Firms that apply to him for authorisation.
- to have the right to take into account any criminal convictions (including spent ones) that Individual Controllers (and Persons of Significant Influence) may have when considering applications for authorisation.

## **Background Information**

### **What is the Rehabilitation of Offenders Act?**

The Rehabilitation of Offenders Act 1974 (“ROA”) provides that, following a certain period of time after conviction, an ex-offender should be treated as a ‘rehabilitated person’ and his conviction considered ‘spent’ for purposes of employment etc. A spent conviction does not have to be disclosed in reply to questions about his past, and the existence of a spent conviction may not prejudice him getting or keeping a job.

The aim of the ROA is to increase the employment prospects of ex-offenders and, in turn, reduce their propensity to re-offend.

### **What is the Exceptions Order?**

Whilst the aim of improved resettlement is important, it is also recognised that certain positions, responsibilities, bodies and proceedings are of such sensitivity as to warrant an exception from the general rules. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 contains a comprehensive list of these exceptions.

### **Claims Management Regulation**

The Claims Management Regulator is responsible for regulating claims management services - essentially this means regulating the activities of claims management companies when making claims for compensation in certain sectors. The legislative framework is provided –in the Compensation Act 2006, which received Royal Assent in July 2006 and regulation commenced in April 2007.

The regulatory framework is set out in the primary legislation and the detail is in secondary legislation. The framework is described fully on the Claims Management Regulation website.

<http://www.claimsregulation.gov.uk/index.aspx>

In summary –

- The Compensation Act 2006 is the primary legislation.
- The Compensation (Claims Management Services) Regulations 2006 set out much of the detail including the requirements that have to be met in order to obtain authorisation.
- Other statutory instruments prescribe the activities and sectors covered by regulation, exemptions from the need to be authorised and appeals procedures
- The Regulator has made rules covering the conduct of authorised persons and complaints handling.
- He also issues annually a Fees Determination setting out the application and annual fees payable.

## Policy background and legislative framework

1. The development of statutory regulation followed persistent concerns (expressed in various reports most notably those produced by the Citizens Advice Bureau and the Better Regulation Task Force) and evidence that the then non regulated claims management companies were:
  - Using aggressive marketing techniques
  - Misleading advertising
  - Misleading consumers about funding options
  - Providing poor quality advice
  - Opaque and unfair contracts concealing the nature of arrangements between client and claims management business and the costs that have to be paid
  - Opaque business arrangements between claims companies and solicitors
  - Insurance fraud
2. Part 2 of the Compensation Act 2006 provides the legislative framework for regulating the claims management sector. The Compensation Act defines claims management services as “advice or other services in relation to the making of a claim”. Secondary legislation defines the scope of regulation including the regulated sectors and the regulated activities subject to the authorisation regime. Trading without authorisation or exemption is a criminal offence.
3. The types of claims management activities regulated include:
  - Advertising for, or seeking out (for example by canvassing or direct marketing), persons who may have a cause of action;
  - Advising a claimant or potential claimant in relation to his claim or cause of action;
  - Referring details for a fee of a claim or claimant, or cause of action or potential claimant, to another person, including a person having a right to conduct litigation;
  - Investigating or commissioning the investigation of the circumstances, merits or origins of a claim with a view to using the results in pursuing the claim;
  - Representing a claimant
4. The claims sectors currently subject to Compensation Act regulation are:
  - Personal injury
  - Financial products/services
  - Employment
  - Criminal injuries compensation
  - Housing Disrepair
  - Industrial Injuries Disablement Benefit
5. Any business wanting to provide regulated claims management services in England and Wales is, unless exempt, required to be authorised irrespective of their registered place/country of business. Exemptions under the Compensation

Act include those already regulated like solicitors and insurers - independent trade unions are also exempt and the voluntary sector. Businesses authorised under the Compensation Act are subject to a range of statutory conditions including compliance with conduct rules which are geared firmly towards consumer information and safeguards. Businesses that do not comply with conditions of authorisation/conduct rules will be subject to appropriate enforcement action ranging from compliance education and formal warnings to suspension or cancellation of authorisation.

### Regulatory objectives

6. The regulatory objectives underpinning the claims management regulation regime are:
  - Protecting and promoting the public interest
  - Improving standards of competence and conduct of authorised persons
  - Improving access to justice
  - Promoting practices likely to facilitate competition between different providers of regulated claims management services

### The Regulatory Framework

- The Secretary of State of the Ministry of Justice is the Regulator and formal decisions are taken in his name.
- Kevin Rousell is the Head of Regulation and is supported by a dedicated HQ team. The Ministry of Justice (MoJ) claims management team (CMR) are responsible for the policy, funding and regulatory function. The Head of Regulation also makes regulatory decisions on behalf of the Secretary of State on authorisations, suspensions, cancellations of authorisation and certain enforcement actions. The CMR team handle all appeals against regulatory decisions to the Claims Management Services Tribunal and any prosecutions against unauthorised businesses.
- A Claims Management Services Tribunal has been established to consider appeals in respect of authorisation and other decisions of the Regulator. The members of the Tribunal are the members of the Financial Services and Markets Tribunal.

## Basis of Proposal

Paragraph 10 of the Compensation (Claims Management Services) Regulations 2006 requires the regulator to consider whether an applicant is suitable to provide claims management services:

10 - :

(1) The Regulator must not grant an application for authorisation unless he is satisfied that the applicant is competent and suitable to provide the regulated claims management service to which the application relates.

(2) For the purposes of making a decision regarding the suitability of an applicant, the criteria are the following—

(a) **that the applicant does not have a history of committing relevant criminal offences (in particular, perjury or an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection) or breaches of any law or rule of practice regulating the provision of financial, legal or other relevant services;**

(b) there are no relevant proceedings (whether completed or not) in any court or tribunal, and in particular any proceedings in relation to financial services, consumer credit or consumer protection, against the applicant;

(c) if the applicant holds or proposes to hold clients' money, the applicant has appropriate arrangements or proposed arrangements for holding such money; and

(d) that the applicant has no arrangements with another person that might expose it to any conflict of interest.

(5) For the purpose of making a decision regarding the suitability of an individual to be associated with the provision of regulated claims management services, being an individual who is a director or partner of an applicant, or is otherwise able to exert significant influence on the applicant's policy or management, the Regulator may have regard to—

(a) **the individual's criminal record (if any), and in particular any conviction for perjury, or an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection;**

(b) whether the individual has ever been disqualified as a company director;

(c) any relevant proceedings (whether completed or not) of a body exercising functions in relation to a trade or profession, and in particular any proceedings that may result in the withdrawal or revocation of the right to practise a profession, engage in a business or provide a service;

(d) any withdrawal or revocation of his right to practise a profession, engage in a business or provide a service;

(e) his financial circumstances;

(f) his qualifications and experience.

**We believe that the amendment will help ensure that the Regulator is fully informed whilst judging the suitability of applicant firms.**

## Our Proposed Approach

The fact that an individual has, a criminal conviction does not automatically mean that we will propose to refuse an application. We will consider it in the light of all the relevant circumstances and make judgements on a case-by-case basis. When we make such judgements, we will look at several factors. These include:

- the nature of the crime(s) that resulted in the criminal conviction(s) – the scale and impact and relevance to the function(s) that the individual is to be approved to perform and the responsibilities that will come with that function(s);
- whether the nature of the crime and/or its circumstances raises questions of honesty, integrity and/or competence;
- whether the appropriate penalty, restitution or other remedial steps required have been carried out; and
- the record of the individual since the relevant crime(s), including employment history and personal conduct.

When we consider these types of application, we will also take into account the time that has passed since the criminal conviction(s). Generally the more time that has passed, the less weight we will attach to that criminal conviction. However, we will consider any subsequent misconduct and, for example, whether the offender has taken any steps to provide compensation or restitution to anyone who lost out because of his/her offence(s).

In addition, it is worth noting that as a further safeguard, the Act also established a Claims Management Services Tribunal to hear appeals on decisions by the Regulator. Its members are the members of the Financial Services and Markets Tribunal. Appeals can be made to the tribunal if the Regulator:

- refuses a person's application for authorisation;
- grants authorisation on terms or subject to conditions;
- imposes conditions on a person's authorisation.

## **Precedents**

The Financial Services Authority (“FSA”) and the Financial Services Firms it regulates are able to consider all spent offences committed by individuals applying for approved person's status and other specified roles as a result of an amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. The CMR is proposing to seek an amendment similar to that granted to the FSA as he believes that we face similar regulatory issues to the FSA.

Legislation requires the CMR to consider whether an applicant is suitable to provide claims management services and one of our key regulatory objectives (as is the Financial Services Authority's) is protecting and promoting the interests of consumers. We believe that this amendment will help us to improve our consumer protection capabilities by ensuring that we are fully informed whilst judging the suitability of applications for authorisation to provide regulated claims management services.

## Responding to the Consultation

- ◆ Do you agree that the Claims Management Regulator should be able to request the disclosure of all criminal convictions (including spent ones) from Individual Controllers (and Persons of Significant Influence) of Firms that apply to him for authorisation?
- ◆ Do you agree that the Claims Management Regulator should be able to take into account any criminal convictions (including spent ones) that Individual Controllers (and Persons of Significant Influence) may have when considering applications for authorisation?

We welcome the views of all stakeholders on the issues raised in this informal consultation. Please ensure that your responses reach us by **13 March 2009**. Responses should be sent to:

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When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the view of members were assembled.

All written responses will be collated and made public on the Claims Management Regulation website. If you would not like your response to be made public, we ask that you specifically request that in writing. In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

Even where confidentiality is requested, if a request for disclosure of the consultation response is made in accordance with the freedom of information legislation, and the response is not covered by one of the exemptions in the legislation, we will have to disclose the response in whole or in part.

Copies of the consultation paper are being sent to:

- Advertising Standards Authority (ASA)
- Association of British Insurers (ABI)
- Association of Independent Financial Advisers (AIFA)

- Association of Personal Injury Lawyers (APIL)
- British Insurance Brokers Association (BIBA)
- Citizens Advice Bureau (CAB)
- Claims Standards Council
- Financial Ombudsman Service (FOS)
- Financial Services Authority (FSA)
- Forum of Insurance Lawyers (FOIL)
- Law Society
- Legal Complaints Service (LCS)
- Legal Expenses Insurance Group
- Motor Accident Solicitors Society (MASS)
- National Association for the Care and Resettlement of Offenders (Nacro)
- National Association of Reformed Offenders (Unlock)
- Office of Fair Trading
- Solicitors Regulation Authority (SRA)
- Trade Union Congress
- Which?

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.