



## **Marketing and Advertising Claims Management Services: Unenforceable Credit Agreements**

The MoJ Claims Management Regulation Monitoring and Compliance Unit is responsible for monitoring compliance with the Compensation Act 2006 and related legislation.

We are currently reviewing marketing in relation to unenforceable credit agreements. We have a number of concerns regarding the advertising which we have reviewed to date. In particular, our concerns relate to the use of potentially misleading statements or omissions.

### **Misleading Statements**

Below is a list of the types of statement that are causing concern, along with an example for each. If you make such statements, but are unable to provide evidence to justify them, they could be considered misleading.

***The use of misleading statements may lead to enforcement action being taken against you, and could put your status as an authorised business at risk.***

#### **Scale of unenforceability market**

“80% of credit agreements are unenforceable”; “50 million credit agreements are created every year, at least 25 million are unenforceable”.

#### **Volume of cases handled**

“We are currently handling over 5,000 cases!”; “We are currently managing £30m of claims!”

#### **Timescales**

“We’ll get your credit cards written off within 6 weeks!”; “Fast results guaranteed!”

#### **Success rates**

“We have a 100% success rate”; “A positive outcome is guaranteed”

#### **Potential outcomes**

“We can write off all your outstanding debt, all previous payments could be returned, and you could keep any goods purchased.”

#### **Affect on consumer's credit rating**

“Making a claim will not affect your credit rating or your ability to get credit in future”

#### **Unqualified use of “No win, no fee”-type statements**

“It is FREE to claim”; “It costs nothing to claim – what do you have to lose?”

#### **Testimonials**

“Fantastic service!”; “Wow, what a brilliant service, thank you very much!!”

## Marketing and advertising

The Conduct of Authorised Persons Rules 2007 make it clear that web sites are considered to be advertising and must comply with the British Code of Advertising, Sales Promotion and Direct Marketing ("The CAP Code"): [www.cap.org.uk/cap/codes/](http://www.cap.org.uk/cap/codes/).

Rule 3 of the CAP Code requires businesses to be able to justify claims they make in their advertising. The use of claims which cannot be justified is a breach of the CAP Code, and therefore a breach of the Conduct of Authorised Persons Rules.

Rule 14 of the CAP Code relates to testimonials. Most importantly, Rule 14.1 provides that "marketers should hold signed and dated proof, including a contact address, for any testimonial they use. Unless they are genuine opinions taken from a published source, testimonials should be used only with the written permission of those giving them." The use of testimonials which do not comply with the CAP Code is a breach of the Conduct of Authorised Persons Rules.

The use of "No win, no fee"-type statements should be qualified. Guidance is available from the CAP web site in the form of a Help Note: [www.cap.org.uk/cap/advice\\_online/help\\_notes/](http://www.cap.org.uk/cap/advice_online/help_notes/)

***Failure to comply with the Conduct of Authorised Persons Rules is likely to lead to enforcement action being taken against you, and could put your status as an authorised business at risk.***

## Misleading Omissions

In addition to the requirements authorised businesses must comply with under the Conduct of Authorised Persons Rules 2007 all businesses must comply with the Consumer Protection from Unfair Trading Regulations 2008 which came in to force on 26<sup>th</sup> May 2008. The Regulations create a number of offences in relation to unfair commercial practices, misleading actions, and misleading omissions. The Regulations are available online at: [www.opsi.gov.uk/si/si2008/uksi\\_20081277\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20081277_en_1).

The Regulations make it an offence to omit, or otherwise present in an unclear manner, information that consumers need in order to be able to make an informed decision when choosing a product or service.

Guidance on the Consumer Protection from Unfair Trading Regulations 2008 is available on the Office of Fair Trading web site:

[http://www.offt.gov.uk/advice\\_and\\_resources/small\\_businesses/competing/protection](http://www.offt.gov.uk/advice_and_resources/small_businesses/competing/protection)

***The omission of important information may be a breach of the Consumer Protection from Unfair Trading Regulations 2008.***