

Dear Sir/Madam

Review of Claims Management Regulation

The Legal Services Consumer Panel welcomes the opportunity to respond to the Ministry of Justice (MOJ) and the Treasury's review of the regulation of Claims Management Companies (CMCs).

Understanding the market

The regulatory landscape for CMCs has changed considerably in recent years showing a concerted effort to tackle problems in the market. Some of the changes that have already taken place include:

- A ban on personal injury referral fees
- Fines of up to 20% of a company's turnover in case of misconduct.
- Imposition of fines by the Information Commissioner's Office to punish firms who make nuisance calls.
- New rules, with additional requirements regarding: investigating the merits of a potential claim, maintaining records, ensuring data from third parties is obtained legally, and having competent staff and management.
- The referral of CMC complaints to the Legal Ombudsman, if clients disagree with the company's resolution of the issue.

There are also different types of CMCs, even in financial services. Beyond the PPI-focused firms, there are those specialising in investment, who offer services which are much closer to traditional legal representation – reflecting the more complex products and transactions at issue. There is a concern that the regulatory proposals do not take account of this differentiation and could become a barrier to innovation in the delivery of different, more value-added services.

Capping

In the context of the cap we would want to see a number of factors considered. We would want to see policy makers balance access to redress against the risks and the costs – clearly many consumers feel they are getting value for money, even if an external view is that CMCs do not represent good value relative to other similar services. That said, a Citizens Advice Bureau report¹ found that there were some problems with CMCs charging upfront fees before going on to provide substandard service. Evidence from the same CAB's research also showed that some clients were not aware of how much, and when they would be charged.

The Panel would not wish to see the implementation of a cap that renders the business models of many providers unviable, causing a mass exit from the market. We note the FCA's announcement that it will consult on a PPI time bar later this year. If the cap and time-bar proceed, it's difficult to see how many CMCs with financial services practices will be left for the FCA to regulate, potentially leading to a perverse outcome where the FCA regulates personal injury and other CMC practitioners.

Minimising regulatory confusion

It is important to note that the regulatory landscape remains largely invisible to consumers, who focus on the provider of service or the firm they deal with, until something goes wrong. At this point they may then need to navigate through the system, so minimising confusion is important. With this in mind, we note that the legislation applicable to the regulation of Claims Management Companies is the Compensation Act 2006.

However, there are significant interplays between the regulation of CMCs and the Legal Services Act 2007². First, consumer complaints about CMC's are handled by the Legal Ombudsman which primarily deals with complaints about individuals or entities providing reserved legal activities³. Second, the Legal Services Act 2007 gives the Legal Services Board (LSB) oversight responsibilities over the entity that would eventually regulate CMCs outside of the MOJ. Should the regulation of CMC's move to another existing regulator, this new regulator or body will become an 'approved regulator' for the purposes of the Legal Services Act, and thus fall within the remit (to a degree) of the LSB. If this existing regulator sits outside of the legal services regulatory framework, then there risks creating a complex regulatory landscape with the regulation of, and redress for, CMCs inadvertently straddling two different sectors. How this would be managed without the common failings of dual regulation would need to be worked through.

In the course of our deliberations we have heard strong arguments that as CMCs provide access to legal redress and are not a financial service, the logical conclusion is that regulation should be rooted in the legal services framework. It is difficult not to be sympathetic to this argument when one

¹ The Cost of Redress: Lessons to be learnt from the PPI mis-selling Scandal, February 2014.

² The Act which governs the regulation of legal services.

³ The Legal Services Act 2007 authorises the Legal Ombudsman (LeO) to deal with complaints about CMC's

considers that CMCs operate across many sectors outside of financial products and services, for instance;

- Personal injury
- Employment
- Industrial Injuries Disablement Benefit
- Criminal injuries compensation
- Housing disrepair

Indeed we note that the Personal Injury sector remains the largest in this market with 979 of a total 1,752 authorized CMCs at the end of March 2015.

Consumer outcomes

Nevertheless, the Panel is primarily interested in the ability of regulation to secure good outcomes for consumers wherever it ends up, although we accept that a flawed regulatory architecture can itself inhibit effectiveness and increase the costs for consumers. Consumers need assurance that regulatory institutions are protecting their interests. We have a legitimate interest in knowing that the CMC regulator would have the capacity and capability to do an effective job. We urge policy makers to give careful consideration to minimising an already muddled landscape or one that inadvertently leads to regulatory arbitrage. More importantly, the Panel would also like to suggest the following success criteria to inform options for a future system:

1. A simple system that starts from a consumer journey perspective
2. Consumer focused regulatory objectives
3. A flexible regime better targeted at the risks facing consumers; one focused on the activity rather than the person doing the work
4. Strong and effective consumer representation
5. Works transparently and is accountable for its performance.
6. Avoids duplication of processes yet respects the diversity of providers
7. Access to the Legal Ombudsman for services transactions
8. Sustainably resourced and capable of delivering effective regulation with a level of investment that reflects the contribution which the sector makes to GDP and its importance to wider societal objectives

We hope you find this helpful, and we look forward to further engagement on this important topic. If you have any queries please contact Lola Bello, Consumer Panel Manager.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elisabeth Davies', with a long horizontal flourish extending to the right.

Elisabeth Davies
Chair