



**Consultation**

**Part 2 of the Compensation Act**

Scope Order under Clause 3(2)(e)

Regulations under Clause 8 and  
the Schedule

Conduct Rules

**Response of Browne Jacobson LLP  
29 August 2006**

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## Introduction

### Browne Jacobson LLP

Browne Jacobson is a leading firm of solicitors in the Midlands, having offices in Nottingham, Birmingham and London. Among its clients the firm counts a number of national insurers, the Motor Insurers Bureau and the NHSLA. The firm deals with a substantial volume of litigation on behalf of these clients, including personal injury and employment claims.

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### Interest in the Consultation

Many of Browne Jacobson's clients are directly affected by the activities of claims management services and so have an interest in this consultation.

Further, it is understood that the Compensation Act and associated regulations are intended to address public concerns over the development of a 'compensation culture'. One aspect of this concern relates to increased demands on the pockets of the general public in the form of higher public spending on claims and insurance premiums. Such an effects result from the impact of claims management services' activities upon defendants.

As a firm which principally acts for defendants to litigation, Browne Jacobson is in a position to draw upon experience of dealing with a broad range of firms, businesses and other bodies representing claimants. It is therefore in a position to identify those practices which best promote the effective management and fair resolution of claims.

### The Response

This is a response to two consultations issued on 6 July 2006 in respect of the regulation of claims management services under the Compensation Act 2006 ('the Act'). **The Consultation Documents are included in the appendices to this response.**

Part A is a response to the consultation in respect of the draft Scope Order under Clause 3(2)(e) of the Act ('the Scope Order') and Regulations under Clause 8 and the Schedule to the Act ('the Regulations')

Part B is a response to the consultation in respect of draft Conduct Rules ('the Rules')

Within the response, the Act, Scope Order, Regulations and Rules taken together will be referred to as 'the Regime'. Our key proposals are highlighted by the use of bold text, with our reasoning set out in the remainder of the response.

## Summary

This summary sets out only the themes that run through the response. Specific provisions are set out within appropriate sections below.

- We consider that the Regime should aim to protect clients and potential clients of those providing claims management services and to address concerns over the development of a 'compensation culture'
- We consider that consumer protection is best ensured through:
  - Information
  - Transparency
  - Competence
  - Responsibility
  - Honesty
- We consider that concerns over a compensation culture will be addressed by
  - Information
  - Transparency
- We consider all those who provide claims management services and who are not already subject to a regulatory regime in respect of those services should be brought within the Regime
- We accept the appropriateness of initially focusing upon certain areas which most urgently require regulation
- We consider that Defendants and their representatives can offer knowledge and experience of responsible and effective practice and can therefore contribute to the success of the Regime. We believe that then Regime ought therefore to make provision permitting of Defendant's involvement.
- We believe openness and frankness at the early stages of litigation to be the most effective means of concluding a claim to the satisfaction of all parties. This extends to exchanges between parties and between one party and their representative/advisor.
- Recent case law has raised the possibility of increased referrals from case management companies abroad. We believe that provision should be made to ensure that those referred are adequately protected.

## **Part A : Consultation on Scope Order and Regulations**

### **Question 1 – Sectors and Areas Covered by Scope Order**

We consider that the sectors proposed are appropriate, subject to our response to question 2, below.

We welcome the proposed approach of focussing initially upon sectors in which there is the greatest risk of poor practice. A strong regime may be set out to address pressing concerns in these sectors and then applied to other sectors, as appropriate, at some future date.

Ultimately, we consider all claims management services ought to be subject to regulation, whether through the Regime or through other regulators and professional bodies. However, we believe that to attempt to draft regulations applicable to the whole field at this stage would lead to delay and, potentially, a weaker regime which will not meet the regulatory need in respect of the most problematic areas of the claims management industry.

### **Question 2 – Definitions of areas covered by Scope Order**

We consider that 'negligence' ought to be substituted for the term 'personal injury' in the draft Order

We understand that the term *personal injury* is likely to be intended to address those common claims relating to trips, slips, road traffic accidents and the like. Certainly we consider that this area ought to be regulated from the outset.

However a large number of road traffic accidents, for example, may give rise to a claim in respect of vehicle repairs or car hire costs only. Such claims can afford claims management services particular opportunities in respect of providing repair and/or hire services or for referral to other companies that do so. This is an area in which there is significant risk to the consumer and one which we consider ought to be regulated.

We do not believe that the term 'personal injury' clearly covers such cases. Although the term may be used loosely by many professionals, it is not a well defined term of art and it's clearest interpretation suggests that it relates to bodily injury of an individual.

We propose the use of the term 'negligence' to broaden the category to cover cases such as that described above. We recognise that the law of negligence is wide ranging and that this proposal has the potential to include within the Scope Order commercial claims in respect of which there is limited need for regulation. However, we consider that in reality such claims would very rarely be handled by a claims management service that was not subject to an exemption (for example, often such cases would go directly to solicitors). If a few commercial claims management services are not subject to this exemption, then we do not consider that compliance with the regulations would prove unduly onerous to them.

### **Question 3 – Activities to be regulated**

We consider that the following amendments to the Order are appropriate:

- Extension of the definition of all activities relating to 'claimants' so that potential claimants are expressly covered.
- Addition of the activity of 'commissioning investigations'
- Inclusion of "receiving referral of claimants or potential claimants"

We consider that it is appropriate to include within the scope of the regulations services such as those of investigators, agents etc., in accordance with the existing draft Order

We believe that expert witnesses regulated by their own professional bodies or other regulator ought, in due course, to be made subject to an exemption.

We do not consider that unions ought to be subject to an exemption

We note that the activities specified have the potential to cover a broad range of services. We consider this appropriate. Investigators, for example, have a significant role to play in advising claimants on the merits of a claim.

We consider that the provisions might also affect experts providing opinions for the purpose of claims or potential claims. We consider that where a professional body already regulates experts, further regulation is not necessary and we would propose that appropriate exemptions should be made in due course.

We consider that advice given before a claim is commenced is as important as that provided subsequent to commencement of a claim. Of course, the Civil Procedure Rules now place significant emphasis upon these early stages. In strict terms a claim does not exist and an individual is not, therefore, a claimant until proceedings are issued. For clarification we suggest that references to 'claims' should be replaced with words to the effect of 'claims or potential claims' and references to 'claimants' should be similarly supplemented.

Paragraph (g) refers to the carrying out of enquiries into the circumstances of a claim. We consider that the commissioning of such enquiries ought also to be included as a regulated activity.

We consider that receiving referrals of claimants or potential claimants ought to be included. We deal with this point further in our response to question 9, below.

We note that it is currently anticipated that unions exercising claims management functions will be subject to an exemption, although this will be determined following future consultation. We do not consider this appropriate. While many functions of unions may be regulated, individuals whose claims are managed by unions have little protection at present. We consider this ought to be rectified.

Further, we consider it an important element in ensuring public confidence in the Regime that bodies not otherwise regulated should be included.

We are particularly conscious of the recent investigations into activities of the Union of Democratic Mineworkers in dealing with claims for its members. We consider that the practices uncovered are illustrative of the need for regulation in this field.

## **Question 4 – Third party capture by insurers**

We consider that this activity should be excluded from the Scope Order.

Insurers, including many of our clients, are increasingly endeavouring to intervene in potential claims at an early stage in order to ensure that appropriate rehabilitation is provided at the earliest opportunity. In this situation the interests of the insurer and potential claimant are the same - the best possible rehabilitative outcome. For the potential claimant the benefits of this are obvious. For the insurer, they include the potential to reduce damages through improving the outcome and the knowledge that funds, where expended, are being appropriately applied. Insurers' clients may also benefit, particularly where the potential claimant is, for example, an employee of the client. The activities of the insurers are also consistent with the objectives of the Civil procedure rules and Rehabilitation Protocol. They are consistent with the principles of resolving claims early and at minimal cost.

As is mentioned in the consultation paper, there is little evidence that insurers carrying out such activities are providing poor service to consumers and there is a measure of regulation in place already. In all the circumstances we do not consider that regulation in this area is necessary for the protection of consumers.

Increasingly, defendants other than insurers are becoming involved in similar activities. We consider that any exemption ought to be broad enough to cover all defendants.

We understand that research in New Zealand, where rehabilitation is encouraged, suggests that long term disability rates can be halved within five years under an appropriate system.

The benefits of early intervention and rehabilitation are further demonstrated by information from one of our clients who inform us that their musculo-skeletal rehabilitation programme has secured an 85% return to work rate and savings of around £10m to date. Of course, these savings represent significantly improved clinical outcomes for claimants involved in the scheme.

Our client is currently in the process of further audits in respect of the outcomes achieved by their various rehabilitation programmes. We anticipate that the results of these audits may be of interest to those consulting and to the Regulator and, if this is the case, should be happy to pass relevant contact details to our client.

## **Question 5 – Factors relevant to authorisation**

We would propose the following approach to determining whether to grant authorisation

1. Applicants must be competent and suitable
2. Directors and members (as described in para. 11(3)) must be suitable
3. Those in influential positions vis a vis any applicant (including an individual) (as described in paragraph 11(4)(a) and (b)) must be suitable

4. Suitability in all cases be assessed against a single list of factors to be taken into account insofar as each is appropriate. We consider that list should be a composite of those at paragraphs 11(5) and 11(6) with the following additions:
  - a. Disqualification from any professional body
  - b. Any other relevant factor (for example, consumer complaints etc)

Paragraph 11(2) sets out conditions of competence and suitability for applicants seeking authorisation, the latter being applicable to only applicants who are individuals. Factors to be taken into account in assessing suitability for this purpose are set out at paragraph 11(5). Many of those factors are applicable to applicants other than individuals and we do not consider that there is any benefit to be gained from applying the suitability test only to individuals.

Indeed, we consider that the test of 'competence' which is the only one to be applied to applicants who are not individuals is too narrow to provide adequate protection to consumers. Factors such as arrangements for management, training and providing information to clients (all of which appear under paragraph 11(5)) are essential considerations in assessing the appropriateness of granting authorisation.

We note that a separate test of suitability is to be applied to individuals in positions of responsibility or influence in respect of applicants that are not individuals. However the considerations to be applied in assessing suitability for this purpose (paragraph 11(6)) do not include all those factors mentioned above.

We consider that those able to exert a significant influence on the policy or management of any applicant (including an individual) should be suitable

We would suggest that the lists utilised for assessment of suitability and set out at paragraphs 11(5) and 11(6) of the current draft regulations might conveniently be set out in a single list. This would provide a single test of suitability which may make the regulations a little more clear. Insofar as a particular criterion is not applicable to a particular applicant, this may be disregarded.

## **Question 6 – Factors relevant to suitability of individuals**

Please refer to the response to question 5, above.

## **Question 7 – Mandatory requirements for authorisation**

We consider that an additional requirement should be added that the business: "take reasonable steps to ensure that any other person from whom the authorised person receives referrals of clients under an agreement (whether contractual or otherwise) :

- a) if required to be authorised, is in receipt of current authorisation
- b) if not required to be authorised, acts in accordance with Part 2 of the Rules "

We consider that the remainder of the mandatory requirements are generally appropriate, however we would propose the deletion of the word "clients" from paragraph 13(5)(d)

We set out in response to question 9 the reason for our proposed addition to the mandatory requirements.

For reasons set out in more detail below, we consider that the requisite complaints scheme should extend to individuals other than clients. In any event, the omission of the word "clients" will allow further flexibility to the regulator to enforce the Rules insofar as they relate to complaints schemes.

## **Question 8 – Professional Indemnity Insurance Requirement**

We consider that the requirement of PI insurance will be an essential element of any regulatory regime aimed at improving consumer protection.

We would suggest a minimum requirement of £2 million.

Our proposed minimum requirement is consistent with the PI insurance requirement imposed by the Law society on solicitors. We consider that consumers ought to be equally protected in this regard whether they pursue claims through solicitors or through claims management companies.

## **Question 9 – Other Comments**

### **Role of Defendants and their representatives**

We have previously commented upon our belief that defendants and their representatives have a role to play in ensuring the effectiveness of any regime for the regulation of claims management services. We have made proposals intended to facilitate this role at appropriate points in this response.

We have also referred to the effect of the activities of claims management services upon defendants and to the fact that this effect is often ultimately felt by the general public. We consider that Defendants ought to receive protection against the activities of claims management services which do not comply with the regulations in appropriate circumstances. The most likely effect upon defendants of such behaviour will be the inflation of litigation costs.

Of course, in certain circumstances it may fall to a claimant who has been a client of a claims management service to bear costs. In such cases, the claimant may suffer as a result of any increase in costs caused by the behaviour of the claims management service.

We consider that this issue should be addressed through the regulations. We believe that the most convenient and appropriate means by which parties to litigation can be protected is through the use of the courts' powers in awarding costs. In addition to the more usual costs orders, the courts' ability to award wasted costs against representatives or costs against third parties ought to provide adequate scope for costs to be pursued in appropriate cases.

We would suggest that regulation 27 should be supplemented with words to the effect that "The Regulator may make a formal declaration that an authorised person has failed to comply with the regulations and that, in the opinion of the regulator, this has led to the expenditure of significant costs in respect of litigation

(by any party to a claim) which may not otherwise have been incurred. In dealing with issues of costs, the Courts shall be entitled to take any such declaration into account.”

It may also be considered appropriate, if this approach is adopted, to supplement relevant parts of the Civil Procedure Rules in order to mirror this provision.

We do not anticipate that these provisions will be frequently utilised, but envisage that there may be circumstances in which they provide the most appropriate form of redress. For example, if a claims management company acts improperly in respect of a group action involving a number of claimants then the resulting costs may be substantial. The regulator may find it necessary to investigate and may conclude that there has been a breach of the rules. It appears appropriate that the relevant Court should be able to take this conclusion into account.

### Claims referred from abroad - protection of claimants

There has been much concern recently in respect of the possibility of claimants who have suffered accidents in foreign countries (including foreign nationals) bringing claims in the English Courts in order to take advantage of higher awards of damages. This concern has arisen in response to the recent case of *Harding v Wealands*. There has been speculation that claims management companies may seek to establish bases in resorts popular with British tourists in order to capture clients to bring claims in British Courts.

Of course, in many cases it will not be possible to regulate services provided in a foreign jurisdiction. However, it seems that the most convenient manner in which claims management services could be provided in these circumstances would involve a referral to a practice based within this country. We consider that individuals who come to make claims in this country through whatever avenue should have protection of the regime. In order to ensure that those claimants and potential claimants who are 'captured' in foreign jurisdictions are protected, we consider that some amendment to the regime will be appropriate.

1. We have proposed in response to question 3 that the regulated activities should include the receipt of referrals.
2. We have proposed in response to question 7 a mandatory requirement that is intended to ensure that where a claims management service in this jurisdiction has an agreement with a similar service in another for the provision of referrals, then it should take reasonable steps to ensure that the service in the other jurisdiction provides the same level of client care as is required here.
3. We have proposed below in response to question 13 of the consultation on the Rules that additional requirements be included in the Rules for the provision of information where referrals are received.

## **Part B - Consultation on Draft Conduct Rules**

### **Question 1 – Additional Points**

Our comments in response to question 9 of the consultation relating to the Scope Order and Regulations (above) is also relevant to the proposed rules.

### **Question 2 – Distinction between parts 1 and 2 .**

We agree that there is a need to provide rules specifically dealing with businesses' relationships with their clients. The distinction used in the draft rules is an appropriate one.

We consider that it is also appropriate to make certain specific rules in respect of businesses' relationships with other parties to litigation. Our proposals below include modifications to specific rules which are intended to achieve this end.

We recognise the importance of protecting consumers in this field and in the circumstances welcome the adoption of particular rules relating to businesses' relationships with their clients.

However, regulates businesses' clients will often not be best placed to identify bad practice or poor service on the part of businesses. For example, within Part 2, rule 1 (f) requires that where advice is given, clients should only be advised to pursue a claim if it is in the client's best interests. Most claimants are reliant upon their advisors for information as to the merit and value of claims and so clients will often be unable to identify breaches of this rule. Defendants and their representatives will be better placed to identify unmeritorious claims and to draw these to the attention of the business and, if appropriate, the regulator. Defendants can therefore play a significant part in the achievement of the objectives of the regulatory regime.

We have included below various proposals which will allow parties other than clients with an interest in claims arising as the result of claims management services' activities to play a part in the regulatory regime.

### **Question 3 – General Principles**

We consider that the inclusion of general principles, including those set out in the draft, is appropriate

We would suggest that the second principle be supplemented to emphasise responsibility to the client and to the Court. A further principle requiring that businesses act in the furtherance of the administration of justice might also be appropriate.

We consider that a statement of principles can give a useful guide to the ethos behind the regulations. We consider that consumer protection is an essential element of the regime and that this should be emphasised.

We also consider it important that businesses be made expressly aware that if they are to play a part in the legal system then they must, like other professionals in this field, recognise a responsibility to the system. We consider that a responsibility to the court should be set out. We also consider that in order to reinforce the overriding objective of the Civil Procedure Rules it may be appropriate to include a responsibility to act in the furtherance of the administration of justice.

### **Question 4 – Factors excluding authorisation**

In place of paragraph 5 we would suggest the following regime:

1. The rule applies in assessing the suitability of a person under paragraph 11 of the regulations
2. Persons falling within the categories set out at the current rule 5(a) to (d) will be presumed unsuitable to be involved in the provision of claims management services.
3. The presumption can be disapplied by the regulator in considering an individual case
4. The regulator may consider any relevant material in order to disapply the presumption, but the burden is on the individual to provide submissions and evidence in support of disapplication.

We have some concern over the potential of this rule in its current form being challenged. The rule could cover a broad category of persons, a number of whom may be able to show that they are suitable to be involved in providing claims management services.

In particular, disqualification from the bar (disbarment) was, until fairly recently, required of barristers wishing to qualify as solicitors. The provisions of rule 5 would appear to include such individuals.

However, an absolute prohibition on involvement in providing claims management services in the circumstances set out may also be open to challenge on administrative law and/or human rights grounds. Of course, such a challenge would be disruptive to the proposed regime and we consider that the rules should be modified to reduce this risk.

We do not consider it unreasonable to set out a presumption against individuals caught within the proposed categories and to require the individual concerned to provide submissions and evidence in support of disapplication of the general rule.

Finally, in order to clarify the relationship between the regulations and the rules, we would suggest that this rule be linked back to the test of suitability under paragraph 11 of the regulations.

### **Question 5 – Tied Agents**

We consider that all businesses providing claims management services ought to be individually regulated. We consider that a tied agency arrangement is likely to reduce the protection to consumers provided by the regulations

We are concerned that tied agency arrangements could lead to those involved in providing claims management services (including tied agents) operating on a costs/benefit basis rather than adopting best practice. An agent may be able to provide a cheaper service by paying little heed to certain of the regulations. If the risk of detection or redress is relatively small, this approach may be seen as a worthwhile gamble to the agent and those services using it.

Further, we consider that while a tied agency arrangement would allow consumers to seek redress from an authorised business in the event of an agent providing inadequate service, consumers will feel better protected if they have direct redress from the agent. For example, if an investigator as a tied agent provides poor service, then the most useful remedy to a consumer may be exercise of the regulators power to order that the work be carried out again. This could not be provided if the investigator was not within the Regime.

We believe that the only means of enforcing best practice on the part of all those involved in claims management and best possible consumer protection is to require each business to be individually authorised.

### **Question 6 – Professional Indemnity Insurance**

Please see our response to question 8 of the consultation in respect of the Regulations.

### **Question 7 – Model Complaints Scheme**

We consider that the requirements set out should be the minimum standard necessary.

We would suggest that the following provisions ought to be added to the scheme:

- Clarification that a complaint made by any individual or body (not only clients) should be dealt with under the scheme
- A requirement that, where the conduct of an agent or other party commissioned or instructed by the business might reasonably be expected to be relevant to the complaint, that agent or party's details should be provided

to the complainant, together with an explanation as to why the agent or party's conduct might be relevant to the complaint.

- Further details regarding the requirements relating to reporting to complainants including requirements that:
  - The complainant be informed whether the complaint is upheld or not
  - Details of any recompense to be made
  - Reasons for the decision
  - Contact details in case of queries relating to the decision
  - Notification that if the complainant is not satisfied with the manner in which the complaint was dealt with or with the outcome of the investigation, he may wish to pursue the matter further via the regulator.

We consider that the first bullet point of rule 14 should be amended so that references to "the client" are replaced with references to "the person".

We consider a complaints scheme to be an important factor in ensuring the proper conduct of businesses to be regulated. The effectiveness of a complaints scheme will be dependant upon ease of access for complainants and on transparency of the scheme and decisions under it. Our proposals are intended to promote these ends.

In particular, as we have indicated above, we consider it essential that complaints schemes should be accessible to individuals and bodies other than clients of claims management companies. Defendants and their representatives can play an important role in regulation, as can members of the general public who do not become clients of regulated businesses but who come into contact with them.

We suspect a typographical error in rule 14, which initially refers to any person in a contractual relationship and then refers more particularly to a client. We consider it appropriate that all those in contractual relationships with businesses should be provided with the information set out under that rule.

## **Question 8 – Training and Competence.**

We consider that specific basic competence requirements ought to be included within the rules at this stage. In particular, an authorised person should be required to take reasonable steps to ensure that employees:

- Are familiar with the regulations and code of conduct
- Where providing advice, have sufficient legal knowledge to give accurate advice
- Are aware of any other regulations, rules or codes of conduct applicable to their role (eg the advertising code)

We would suggest that it may be appropriate in due course to introduce a qualification which will be required of those providing claims management services.

We consider that the requirements set out above are implicit in the requirements of the regulations and the rules. For example, if a business is to comply with the rule requiring that advice on whether to pursue a claim should be based on the interests of a client (Part 2 Rule 1 f) then the employee advising is likely to require some appreciation of the relevant law. It will impose no additional burden upon a business to

make it clear that this may require a certain level of competence and, perhaps, training.

We would suggest that it would be appropriate to introduce a qualification system to ensure the competence of employees of businesses who are involved in claims management activities. A basic requisite might be a qualification establishing an understanding of the Regime. We do not consider that this would prove unduly onerous for businesses to implement. Indeed, a prescribed standard may assist businesses in ensuring compliance.

## **Question 9 – Basic Principles Relating to Clients**

We agree that the principles are generally appropriate, but would propose the following amendments:

- A definition of conflict of interests. We would suggest use of the definition similar to that developed by the law society: "*a conflict between the duty to act in the best interests of two or more clients in the same or a related matter (or between solicitor and client)*"
- Modification of rule f) to state that any advice given should be based on the best interests of the client (not only that in respect of whether to pursue a case)
- Addition of a principle reminding the business that in all activities and particularly in advising the client, the business should be mindful of its responsibility to the client and the court.

The term 'conflict of interests' has recently been defined by the law society for the purpose of the regulation of solicitors due to difficulties relating to uncertainty as to its precise meaning. We consider that the Law Society's experience favours the inclusion in the rules of a specific definition of this term.

We consider it important that, like other legal professionals, businesses are required to put a client's interests and also the interests of the administration of justice before their own. This will, of course, be particularly important when advising clients. Unscrupulous advice given to clients at an early stage may raise unrealistic expectations or lead clients themselves to act unscrupulously.

A particular concern in this respect is in regard to the possibility that in the past claimants have been advised by unscrupulous individuals to invent or exaggerate symptoms. This is likely to hinder just resolution of a claim and will often ultimately prove damaging to the interests of claimants. Emphasis of a businesses responsibility to the claimant and to the court at this stage in the regulations is appropriate to discourage such activities.

## **Question 10 – Extent of Prohibition on Cold Calling**

We consider that cold calling generally ought to be prohibited. We also consider that this prohibition should extend to approaching individuals in public areas.

The practice of approaching individuals with a view to establishing whether they may have a claim (often through indirect questions such as "have you had an accident within the last 3 years") appears often to be used as a means of 'capturing' a potential client who will then be encouraged to provide further details with the promise of compensation at no risk to themselves. Such approaches inevitably involve an element of pressure on the individual approached.

Indeed, we have specific experience of a claimant who complained to a judge that she had no thoughts of litigation following a particular incident until she was approached in the street by a representative of a claims management company. She stated that, in hindsight, she wished she had not been persuaded to take up the action.

Further, we consider that such public manifestations of claims management practices is a significant element in public concerns over a 'compensation culture'.

The general public is well aware of the possibility of a claim following an accident which is the fault of another. Any individual wishing to pursue legal action is in a position to approach a suitable representative or service. Businesses have adequate opportunities of promoting their services by other forms of advertising, in particular through television, newspapers and magazines. Cold calling in any form is not necessary in order to inform the public or for the legitimate promotion of businesses.

## **Question 11 – Other Advertising Practices**

Subject to our response to question 10, we consider that the remainder of the guidance regarding advertising is appropriate.

## **Question 12 – Cooling Off Period**

We consider that the proposed cooling off period is appropriate. Business ought to be required to inform the new client in clear terms of the cooling off period as part of the information to be provided under rule 9. We would suggest that the period should run from the date on which this information is provided.

We note that rule 9(m) does require that a client be informed of rights of cancellation. However, we consider that the cooling off period is of particular importance in protecting the consumer and accordingly that notification should be unambiguous. We consider that there is the potential for rule 9(m) to lead to details of the cooling off period being lost among complex terms as to the possibility of cancellation.

## **Question 13 – Taking on Business**

Our response to question 12 proposes a modification to these provisions

We also consider that provision ought to be added for updating of relevant information upon receipt of a referral. We would propose the following " upon taking on a client as a result of a referral from another business (whether or not the other business is subject to these rules) a business must ensure that the client is in receipt of up to date and accurate information and advice as required by rule 9 and, where applicable, rule 15"

The proposed addition is intended to protect individuals in the circumstances discussed in our response to question 9 of the consultation in respect of the Scope Order and Regulations, above.

## **Question 14 – Managing a Claim**

For completeness, we suggest that rule 15 c) might also indicate that answers and statements (including pleadings) ought to be truthful.

We also consider that clients should be informed of the need to give full and frank disclosure of any potentially relevant information to experts instructed in respect of a claim.

We have experience of a number of claims in which claimants in attendance on experts have not disclosed information relevant to the experts' report. For example, medical history may often be a significant factor in assessing causation. The relevant information may only come to light when disclosure takes place, for example through provision of medical records. Where this occurs, it is often necessary to refer the documents back to the expert for further comment. This is likely to lead to unnecessary delay and increased costs.

With a view to reducing cost and delay in relatively low value claims, the ABI has reached an agreement with the Law Society and APIL that there ought to be a general presumption in sub £10,000 claims that GP records will not be necessary for the purpose of a medical report. This will increase the reliance of experts upon information provided by claimants in such cases. This measure will only save costs if claimants give full and frank disclosure to experts. If they do not, costs may in fact be increased due to the need to obtain records and refer the matter back to the expert.

In order to combat this, we consider that businesses managing claims should be required to emphasise to claimants the need to provide all relevant information to experts.

### **Question 15 – Steps to ascertain the existence of BTE insurance**

We do consider these this rule to be adequately clear

### **Question 16 – provisions in respect of ATE insurance**

We consider that businesses should be required to make all reasonable enquiries into alternative funding options before arranging ATE insurance. Clients should be made aware that they may be at risk if they do not select cost effective funding options.

Claimants may be at risk on costs if they do not explore less expensive funding options before resorting to a particular policy of ATE insurance. They should be clearly informed of this. Businesses, who will have a much better understanding of funding options than clients, should be required to make reasonable enquiries to establish the least expensive funding option available if their clients are to be protected.

### **Question 17 – Provision of Loans**

We do consider the rules in respect of this activity to be appropriate.

### **Question 18 – Arrangements for Handling Money**

We consider the proposed rules in respect of this activity to be appropriate

### **Question 19 – Notification of suspension, cancellation or variation of authorisation**

We consider the proposals in this regard to be appropriate.

## Appendix 1

### Summary of consultation questions



# dca

Department for  
Constitutional Affairs  
Justice, rights and democracy

## Compensation Bill – Regulation of Claims Management Services – Consultation on Part 2

### List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: [ [katherine.macgregor@dca.gsi.gov.uk](mailto:katherine.macgregor@dca.gsi.gov.uk) ], or fax to: [ 020 7210 0613 ]. **Thank you!**

Question 1. **[Are there any other sectors that should be included and why? If there are any specific areas that should be included please give details and relevant evidence to substantiate this.]**

Comments:

Question 2. **[What comments do you have (if any) on the precise definitions for the areas to be covered?]**

Comments:

Question 3. **[What comments do you have (if any) on how the activities should be defined? What other activities (if any) should be specified in the Order and why?]**

Comments:

Question 4. **[Is it appropriate to exclude third party capture by liability insurance companies? It would be helpful to have evidence to support any arguments.]**

Comments:

Question 5. **[Paragraph 11 (5) sets out the factors that the Regulator may take into account in assessing whether to grant authorisation to an applicant. Are there any additional factors that should be included?]**

Comments:

Question 6. **[Does paragraph 11 (6) set out all the factors that the Regulator should take into account in deciding whether an individual is suitable to provide regulated claims management services or to be involved in the management or ownership of a claims management business?]**

Comments:

Question 7. **[Are the mandatory requirements for obtaining authorisation sufficient? Please give reasons for your answer]**

Comments:

Question 8. **[What should be the minimum requirements for PI insurance? What types of claims management businesses will have difficulty in obtaining the appropriate cover?]**

Comments:

Question 9. **[What other comments (if any) do you have on the draft Regulations?]**

Comments:

# Compensation Bill - Regulation of Claims Management Services - Consultation on draft conduct rules for authorised persons

## List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: [ [katherine.macgregor@dca.gsi.gov.uk](mailto:katherine.macgregor@dca.gsi.gov.uk) ], or fax to: [ 020 7210 0613 ]. **Thank you!**

Question 1. <b>[Are there any additional points that should be included in the conduct rules? ]</b>
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Comments:
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Question 2. <b>[Is the distinction provided for in the rules between all businesses, those that have a contractual relationship and those that manage claims, a sensible one?]</b>
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Comments:
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Question 3. <b>[Are the general principles in paragraphs 1 to 4 appropriate?]</b>
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Comments:
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Question 4. <b>[Are all the factors that would exclude a person from being involved in claims management services appropriate?]</b>
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Comments:
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Question 5. <b>[Should the tied agent concept be provided for or should any individual or business that provides claims management services be authorised in its own right?]</b>
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Comments:
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Question 6. **[Should holding professional indemnity insurance be a requirement for authorisation? Would it be possible in practice for authorised businesses to obtain such insurance from the outset or should requirements be phased in to allow sufficient time for a market to develop?]**

Comments:

Question 7. **[Are the requirements in paras 11-14 sufficient or would more guidance be helpful in respect of a model complaints scheme?]**

Comments:

Question 8. **[Should specific rules on training and competence be developed? If so, are there suitable models which could be considered for a small sector?]**

Comments:

Question 9. **[Are the general principles in paragraph 1 appropriate?]**

Comments:

Question 10. **[Should only cold calling in person be prohibited or should this be a wider prohibition?]**

Comments:

Question 11. **[Are the proposals on advertising and sales generally appropriate?]**

Comments:

Question 12. **[Is 14 days appropriate for a cooling off period?]**

Comments:

Question 13. **[Are the requirements for the taking on of business generally appropriate?]**

Comments:

Question 14. **[Are the arrangements for managing a claim appropriate?]**

Comments:

Question 15. **[Is the provision in respect of taking reasonable steps to ascertain whether the client has BTE insurance sufficiently clear?]**

Comments:

Question 16. **[Are the provisions in respect of arranging ATE insurance appropriate?]**

Comments:

Question 17. **[Are the arrangements for providing loans reasonable?]**

Comments:

Question 18. **[Are the arrangements for handling money appropriate?]**

Comments:

Question 19. **[Are the proposed arrangements for informing clients of the Regulator's decision to suspend, cancel or vary authorisation appropriate?]**

Comments:

## Appendix 2

### Consultation in respect of Scope Order and Regulations

***Compensation Bill***

**Regulation of Claims Management Services**

**Consultation on Part 2**

**Scope Order under Clause 3(2)(e);  
Regulations under Clause 8 and the  
Schedule; and the Conduct Rules**

**July 2006**

CP(L) 12/06

**COMPENSATION BILL**  
**Consultation on Part 2**  
**Scope Order under Clause 3(2)(e);**  
**Regulations under Clause 8 and the Schedule; and**  
**the Conduct Rules**

**Introduction**

1. This paper seeks views on two key aspects of the proposed regulation of claims management services: the draft Scope Order due to be made under Clause 3(2)(e) of the Compensation Bill to define the activities and sectors covered by the legislation: and the draft regulations that will be made under Clause 8 and the Schedule which cover the requirements for authorisation and other related matters. A copy of the Scope Order is at **Annex A** and a copy of the draft regulations is at **Annex B**.
2. The Compensation Bill is in two parts; part 1 covers the law of negligence and part 2 covers the regulation of claims management services. A copy of the Bill can be found on the DCA website at:  
(<http://www.dca.gov.uk/legist/compensation.htm>).
3. The statutory regulation of claims management services will tackle poor practice in the claims management sector and provide additional safeguards for the public against rogue companies. Statutory regulation will increase consistency in the regulatory framework - bringing claims management more into line with other services such as those provided by legal professionals. This course of action was recommended by the Better Regulation Task Force<sup>1</sup> and has the support of key stakeholders across the financial services, legal and insurance industries and among consumer bodies.
4. We are also consulting on the draft conduct rules the Regulator will prescribe under paragraph 8 of the schedule to the Bill.
5. All references to a clause in this paper are references to clauses as set out in the Compensation Bill as it left the House of Lord's (Bill 155 – 54/1). Need to be aware of this when cross-referencing as further changes could be made to the Bill before it completes its parliamentary passage which may affect the clause numbering.

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<sup>1</sup> "Recommendation 1: Claims Management Companies...if, by December 2005, progress is not made: - the Department for Constitutional Affairs should step in and regulate the sector." (Better Regulation Task Force, *Better Routes to Redress*, May 2004)

## Scope

6. The Bill provides for the regulation of the activity of providing claims management services. Those carrying out the activity will need to be either:
  - authorised to do so by the regulator;
  - subject to exemption under an Order made by the Secretary of State;
  - subject to a temporary waiver provided by the regulator; or
  - an individual providing claims management services but not in the course of a business (such as a volunteer in a legal advice centre).
7. The Secretary of State intends to exempt from the requirement for authorisation:
  - solicitors, barristers and legal executives to the extent that they are already regulated in the provision of the services;
  - those already regulated by the Financial Services Authority (FSA) in respect of services provided to their own policy holders;
  - charitable organisations providing claims advice; and
  - trade unions offering services to their own members or members' families.

An exemption from the need to seek authorisation is a privilege, not a right and will only be granted where an individual/organisation is either already subject to appropriate regulation in the provision of claims management services, or there are clear reasons for doing so (for example the individual or organisation is not providing the services on a commercial basis).
8. The Bill also excludes from the need for authorisation those persons established or appointed under an enactment (e.g. statutory ombudsman). There will be a formal consultation on the exemptions shortly.

### Definition of claims management services

9. Claims management services are defined in clause 3 of the Bill as “advice or other services in relation to the making of a claim”. The claim may be for compensation, restitution, repayment or other remedy or relief in respect of loss or damage or in respect of an obligation – whether pursued through the courts or by other means (for example the Employment Tribunals, Criminal Injuries Compensation Scheme or complaints about the mis-selling of financial products such as endowment policies).
10. The definition in the clause is wide to ensure that all areas where there is a risk to consumers can be captured, and there is no risk of loopholes. The prohibition in clause 3(1) of the Bill is limited to “regulated claims management services”, and services are regulated only if they are of a kind prescribed by order of the Secretary of State under clause 3(2)(e).
11. The Bill has been designed in this way to give flexibility and provides the ability to target areas at risk. The breadth of the definition has been

welcomed by Citizens Advice. The Order making power will allow for areas to be brought quickly within the regulatory net if there is evidence that consumers are being abused by the activities of those providing claims management services. It also allows for particular markets to be removed from regulation if they no longer present risks to consumers.

### **Clause 3(2)(e) Order**

12. This part of the paper seeks views on the precise areas and activities to be regulated and specified under the first Order to be made under Clause 3(2)(e) of the Compensation Bill. The Bill (clause 14(3)) requires the Secretary of State to consult:
  - the Office of Fair Trading, and
  - such other persons as he thinks appropriate
13. The activities that could potentially fall within the regulatory regime and therefore subject to regulation are described very broadly - as “claims management services” but the precise areas and activities to be regulated will then be specified in an Order made under the Bill. The potential reach of the regulatory net is therefore wide so that any person providing claims services within the definition is captured. Targeting specific areas provides the flexibility to ensure that action can be taken quickly to impose regulation upon specified areas immediately an issue arises. Conversely, this approach avoids the need to regulate sectors where there is no evidence of detriment to consumers.
14. The intention is to specify initially as regulated areas those sectors where we believe there is greatest evidence or risk of poor practice and consumer detriment. We envisage the first order under clause 3(2)(e) will bring the following areas within the regulatory net:
  - personal injury
  - mis-selling of financial products, such as endowment policies
  - criminal injuries compensation
  - housing disrepair
  - employment
15. We have had discussions with many stakeholders who have an interest in these specific areas and they have agreed that these areas should be subject to regulation. It is important that the Order is specific and precise about the relevant areas that will be included in the Order to avoid any loopholes. This paper therefore confirms our intention to include the above areas in the first scope order. The proposed Order has been modelled on the FSA’s regulated activities Order. The Draft Order at Annex B sets out in more detail the activities that will be subject to regulation and the specific sectors.

**Question 1: Are there any other sectors that should be included and why? If there are any specific areas that should be included please give details and relevant evidence to substantiate this.**

**Question 2: What comments do you have (if any) on the precise definitions for the areas to be covered?**

**Specified activities**

16. Activities will include those specified in clause 3 of the Compensation Bill. Claims management services are defined as:

**Clause 3(2)(b)** – “claims management services” means advice or other services in relation to the making of a claim”

**Clause 3(3)(a)** – a reference to the provision of services includes, in particular:

- (i) the provision of financial services or assistance,
- (ii) the provision of services by way of or in relation to legal representation,
- (iii) referring or introducing one person to another, and
- (iv) making inquiries.

The list is not exhaustive and could include any aspect of advice or service in respect of making a claim. The provision of claims advice and services does not extend to those giving or preparing to give evidence.

17. Claims management activities include:

- Seeking out claimants to whom to provide services, by advertising or direct marketing
- Advice to a claimant on the merits or handling of the claim
- Making representations (whether in writing, or spoken, and regardless of the body or person to or before which or whom the representations are made) on behalf of a claimant
- Referral of a claim or claimant’s details to a person with a right to conduct litigation or to any other person
- Making arrangements for the provision of, or direct selling of, after-the-event insurance to a claimant (but only in so far as not covered in so doing by FSA authorisation)
- Providing, or referral to a provider of, loan arrangements for the purpose of pursuing a claim, to a claimant or a person with a right to conduct litigation
- Enquiring into the circumstances of the claim
- Carrying out or commissioning investigations into the merits of or foundation for the claim

- Commissioning expert medical or other opinion for the purpose of pursuing the claim or assessing the quantum of compensation.

18. The Order will specify the above as regulated activities where they are provided in connection with a claim of a specified type. The Draft Order at Annex B sets out in more detail the activities that will be subject to regulation and the specific sectors.

**Question 3: What comments do you have (if any) on how the activities should be defined? What other activities (if any) should be specified in the Order and why?**

### **Third party capture by insurance companies**

19. A number of interested parties have identified the position of liability insurers who seek to capture a person injured by their policy holder and provide a package of services including rehabilitation before settlement of the claim. As this activity involves a third party rather than the insurer's policy holder, it is not fully regulated by the FSA. However, the FSA's rules do state that in its dealings with a third party an insurer "should have regard to Principle 1 (Integrity), Principle 2 (skill, care and diligence) and Principle 5 (Market conduct)" and "should not deal with the claim in any way less favourably than it would have done had the claim been proceeded against its customer."<sup>2</sup> Those insurers providing this service will come within the definition of claims management services and as it is suggested that personal injury will be included in the Scope Order would be required to seek authorisation unless specifically exempted. There is a strong case for exempting liability insurers in respect of this activity in order that we can focus the regulation initially on the real problem areas – commercial claims management companies. There is no evidence of consumers receiving poor service from liability insurers in this respect; in fact the provision of earlier rehabilitation and settlement of claims is a positive step.

**Question 4: Is it appropriate to exclude third party capture by liability insurance companies? It would be helpful to have evidence to support any arguments.**

## **Regulations on authorisation and functions of the Regulator**

### **Clause 8 and Schedule Regulations**

20. Clause 8 requires the Secretary of State to make regulations about –

- authorisations under section 4(1); and
- the functions of the regulator.

The draft regulations include the detailed process for granting authorisations and other functions of the regulator including:

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<sup>2</sup> FSA Handbook, ICOB 7.2.2

- Granting waivers
- Fee charging
- Indemnity insurance
- Rules and code of practice
- Complaints schemes
- Routine audits
- Investigations (non-authorised and authorised)

21. Much of the detail in the regulations is about the process for carrying out the regulatory functions. The regulations also include the detailed safeguards for carrying out investigations.

### **Part 2 – Waiver of requirement for authorisation**

22. This part sets out the process for granting a waiver pending the making of an exemptions order. Waivers will be granted by the regulator if he considers the person does not need to make an application for authorisation as there is sufficient evidence for granting an exemption. The regulator will inform the Secretary of State of his opinion and if he agrees the person will be informed of his decision. The full exemption will be made in the next Order but no later than 6 months after the Secretary of State makes his decision.

23. The regulator can impose conditions on the waiver. He can also rescind the decision if information becomes available which indicates that the waiver is no longer applicable. The regulator will inform the person and the Secretary of State of his decision to revoke the waiver. The person can then make an application for authorisation if he wishes to provide a regulated claims management service.

### **Part 3 – Grant of Authorisation**

24. Part 3 sets out the process for making an application for authorisation, the information that the Regulator will require in order to make a decision and the criteria he will apply. If a person is providing a regulated claims management service he will need to apply on the specified form and pay an application fee. The Regulator will carefully consider the application, making any checks as necessary against the information provided. He will inform the applicant of his decision within 3 months of the person making the application; if no formal notification has been made, the person can take it that his application has been refused. When the Act comes into force the Regulator will set a date for submitting initial applications. He will ensure that all applications are determined before the date of introduction of the offence of operating without authorisation. If necessary the Regulator will do this by granting authorisation for a short period or by requiring a business to reapply for authorisation.

25. If an application is granted to provide a regulated claims management service the Regulator will issue a written instrument of authorisation. If any conditions are being attached this will be included in the written instrument.

26. DCA will conduct a separate consultation on the authorisation application form later in the summer.
27. Part 3 permits the Regulator to specify the information that will be required from applicants. The Regulations therefore give guidance on what could be required. The views of respondents would be welcome on whether any other factors should be taken into account in defining what the Regulator may seek and also on whether there are any areas listed where it may not be appropriate to seek information. This would help the regulator when he finally determines the information he will be seeking.

**Question 5: Paragraph 11 (5) sets out the factors that the Regulator may take into account in assessing whether to grant authorisation to an applicant. Are there any additional factors that should be included?**

28. Paragraph 11 (6) deals with individuals, either those running the claims management service as a sole practitioner or those involved in the ownership or management of a corporate body.

**Question 6: Does paragraph 11 (6) set out all the factors that the Regulator should take into account in deciding whether an individual is suitable to provide regulated claims management services or to be involved in the management or ownership of a claims management business?**

29. Paragraph 13 sets out conditions of authorisation and is largely permissive. However, paragraph 13 (5) sets out some mandatory requirements including establishing a scheme to deal with complaints, and requiring annual confirmation by the authorised institution that it has complied with all of the rules.

**Question 7: Are the mandatory requirements for obtaining authorisation sufficient? Please give reasons for your answer.**

#### **Part 4 – Fees**

30. Part 4 sets out the provisions for the determination of fees for making an application and for annual authorisations. Fees for authorisation will most likely be determined in accordance with a company's turnover for the regulated claims management services they provide, and the regulations provide for this. DCA will be consulting on a proposed scale of fees before the end of July.

#### **Part 5 – Indemnity Insurance**

31. Part 5 allows the Regulator to require authorised persons to hold professional indemnity (PI) insurance. The indemnity insurance requirements may differ between companies. This will depend on the type of service they provide and will be determined by the Regulator.

**Question 8: What should be the minimum requirements for PI insurance? What types of claims management businesses will have difficulty in obtaining the appropriate cover?**

### **Part 6 – Conduct Rules and Codes of Practice**

32. This part sets out the procedure for consultation and approval of the draft conduct rules by the Secretary of State. DCA published Model Rules in March 2006 for Parliament to provide guidance on the likely content of the Rules. A revised draft of the proposed conduct rules for authorised persons together with a covering explanatory note is referred to in paragraph 43 below and is attached to this pack at **Annex C**.

33. Consultation and approval of any code of practice that applies to authorised persons providing regulated claims management services is similar to that provided for the conduct rules. It is unlikely that the Regulator will publish a Code in the first instance and will instead concentrate on producing a comprehensive set of conduct rules. The provision in the regulations is necessary for the time when a code of practice is developed.

### **Part 7 – Complaints Schemes**

34. All authorised persons will be required to provide a scheme for dealing with complaints. Part 7 sets out the key provisions that must be included in any complaints scheme. Authorised persons will be required to publicise details of their schemes and when entering into a contract with a client provide written detail of the scheme.

35. Part 7 also sets out details of the Regulator's review of the authorised persons handling of a complaint (the regulator will also have the power to investigate a complaint under paragraph 38 of the regulations). The Regulator can make directions about the complaint handling which the authorised person must implement promptly and in full.

### **Part 8 – Routine Audit**

36. Part 8 provides details of the restriction placed on the regulator in terms of times of day and provision of reasonable notice to conduct a routine audit. This is a routine regulatory function that we anticipate the Regulator will use on a risk-assessed basis.

### **Part 9 – Investigation**

37. Part 9 covers investigations of:

- Unauthorised persons where there is an allegation or suspicion that they are providing a regulated claims management service; and
- Authorised persons in relation to the investigation of complaints or assessing compliance with the terms and conditions of authorisation..

38. The Regulator can investigate any suspicions or allegations of wrong doing, by unauthorised persons providing regulated claims management services. The regulations detail the steps the Regulator needs to consider in determining if an offence has been committed and give him the power to

request the provision of papers and documents as evidence from the person under scrutiny.

39. Should such papers not be made available to the Regulator within a prescribed time frame, the regulations set out the further action, which the Regulator may take. The Regulator may request a warrant from a judicial officer to enter and search the business premises of the person concerned and copy or remove such papers or documents relevant to the investigation. Such a search would only be undertaken at a reasonable time. The regulations give guidance on the correct conduct of searches.
40. There are similar provisions for the regulator to require information or documents from authorised persons when investigating a complaint or assessing compliance with terms and conditions of authorisation, and for obtaining a warrant to enter and search business premises.
41. Chapter 4 of Part 9 sets out general provisions which apply to the issuing of warrants. This included the basis for issuing a warrant to enter and search residential premises; this would apply to unauthorised and authorised persons. Certain provisions of the Police and Criminal Evidence Act 1984 will apply with modifications as set out in paragraph 43.

#### **Part 10 – Cancellation, suspension and variation of authorisations**

42. The final Part of the regulations sets out the procedure that applies if a person's authorisation is cancelled, suspended or varied in anyway. An authorised person will be able to appeal a decision to cancel, suspend or vary authorisation to the Claims Management Services Tribunal. We will be consulting on the Tribunal Rules in the autumn.

#### **Question 9: What other comments (if any) do you have on the draft Regulations?**

### **Conduct Rules**

43. As the Secretary of State will regulate claims management services he will be required to consult on the conduct rules that will be prescribed under Paragraph 8 of the Schedule to the Bill. DCA published Model Rules on 2 March to inform Parliament's consideration of the Bill. A new version of the draft conduct rules and covering explanatory note is attached at **Annex C** on which we would also welcome further comments.

#### **Comments**

44. Comments on the Clause 3(2)(e) Order or/and the regulations should be sent by **Tuesday 29 August 2006**. Comments can be sent by post or e-mail to:

Katherine MacGregor  
Private Funding Regulation Branch  
Department for Constitutional Affairs  
3<sup>rd</sup> Floor Selborne House

54-60 Victoria Street  
London SW1E 6QW

E-mail: [Katherine.Macgregor@dca.gsi.gov.uk](mailto:Katherine.Macgregor@dca.gsi.gov.uk)

## Appendix 3

### Draft Scope Order



- (b) advising claimants or potential claimants on the merits or handling of claims;
  - (c) making representations (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representations are made) on behalf of claimants;
  - (d) referring claim details or claimants' details to other persons, including persons having the right to conduct litigation;
  - (e) making arrangements for the provision, or direct sale, of after-the-event insurance to claimants (to any extent not covered by an authorisation of the Financial Services Authority);
  - (f) providing loan facilities, or making arrangements to provide such facilities, for the purpose of pursuing claims, to claimants or to persons having the right to conduct litigation, or referring claimants or persons having the right to conduct litigation to providers of such loan arrangements;
  - (g) enquiring into the circumstances of claims;
  - (h) carrying out or commissioning investigations into the merits of, or foundation for, claims;
  - (i) commissioning expert medical or other opinion for the purpose of pursuing claims or assessing the quantum of compensation.
- (3) The kinds of claim are the following:
- (a) claims for personal injury, including work-related injury, disease or disability;
  - (b) claims for criminal injuries compensation (that is, claims under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995);
  - (c) claims in relation to employment (including claims in relation to wages and salaries and other employment-related payments, and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment);
  - (d) claims for housing disrepair (that is, claims under section 11 of the Landlord and Tenant Act 1985(a) or section 4 of the Defective Premises Act 1972(b), claims in relation to the disrepair of premises under a term of a tenancy agreement or lease or under the common law relating to nuisance or negligence, but not claims for statutory nuisance under section 82 of the Environmental Protection Act 1990(c));
  - (e) claims in relation to the sale of financial products including but not limited to endowment policies.

Signed by the authority of the Secretary of State

*Cathy Ashton*  
Parliamentary Under Secretary of State  
Department for Constitutional Affairs

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Part 2 of the Compensation Act 2006 (“the Act”) regulates claims management services.

Claims management services include services in relation to claims for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage, or in respect of an obligation. A person who provides “regulated claims management services” must be authorised under the Act to do so, or be exempted, or have the benefit of a waiver of the obligation to be authorised. Under

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(a) 1985 c. 70.  
(b) 1972 c. 35.  
(c) 1990 c. 43.

section 3 of the Act a regulated claims management service is one declared to be regulated by order by the Lord Chancellor.

This Order declares the services mentioned in paragraph 4(2) to be regulated when provided in connection with certain kinds of claim listed in paragraph 4(3). The services include advertising for claimants, referral of claimants to legal practitioners, advice in relation to claims, provision of loans for the purposes of pursuing claims, investigation of claims and commissioning reports by experts. The kinds of claim include: personal injury claims and criminal injuries compensation claims; employment-related claims such as claims for wages, unfair dismissal and discrimination; claims for housing disrepair; and claims relating to the mis-selling of certain financial products.

A person who provides “regulated claims management services” must be authorised under the Act to do so, or be exempted, or have the benefit of a waiver of the obligation. Legal practitioners (barristers, solicitors and legal executives), who are already regulated by their respective professional bodies, are exempted by order<sup>(a)</sup> under section 5 of the Act. Persons and bodies who provide such services without charge are also exempted by that Order.

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(a) The Compensation (Exemption) Order 2006, SI2006/...

**Appendix 4**  
**Draft Regulations**



“the Act” means the Compensation Act 2006(a).

(2) A reference in these Regulations to a document includes a document or record of information stored or recorded by means of a computer.

### **Electronic communication**

4.—(1) If, under a provision of these Regulations, a notice is required to be served or information given in writing, then, unless the provision expressly states otherwise, the requirement is taken to have been met if the notice is served or information given by means of—

- (a) fax transmission; or
- (b) an electronic communication.

(2) In paragraph (1)(b), “electronic communication” means—

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy; or
- (b) a communication of information in the form of speech by means of guided or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

(3) Without limiting paragraph (2), “electronic communication” includes an electronic mail message and an electronic attachment to such a message.

(4) If a notice is served, or information is given, by means of fax transmission or an electronic communication, unless the contrary is proved the notice is taken to have been served or the information given on the working day (that is, a day that is not a Saturday, Sunday or bank or other public holiday) following the day on which the fax or electronic communication was sent.

## **PART 2**

### **WAIVER OF REQUIREMENT FOR AUTHORISATION**

#### **Circumstances in which Regulator may waive requirement for authorisation**

5. The Regulator may waive the requirement for authorisation in relation to a person if the Regulator is satisfied that—

- (a) requiring the person to become authorised would be unduly burdensome to the person, or would not contribute to achieving the objectives of the Act;
- (b) the waiver would not result in undue risk to persons whose interests the Act is intended to protect; and
- (c) the Secretary of State intends to exempt the person under section 5 of the Act.

#### **Procedure for waiver**

6.—(1) If a person asks the Regulator to waive the requirement for authorisation in relation to the person, the Regulator must consider whether, having regard to the person’s activities, the person should apply for authorisation, and for that purpose may require the person to provide the Regulator with any information or documents reasonably necessary for the Regulator’s consideration.

(2) If the Regulator considers that the person should apply for authorisation, the Regulator must so inform the person in writing, setting out the reasons why the person should do so.

(3) If the Regulator considers that section 3(1) of the Act should not prevent the person from providing regulated claims management services, the Regulator must immediately so notify the

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(a) 2006 c.

Secretary of State in writing, setting out his reasons for that opinion and a summary of the evidence on which the opinion is based.

(4) If the Secretary of State considers that section 3(1) of the Act should not prevent the person from providing regulated claims management services, and so notifies the Regulator in writing, the Regulator must, within 14 days, notify the person in writing that the Regulator waives the requirement for the person to become authorised.

(5) The Regulator may impose a condition on the waiver and, if he does so, must include a statement of the condition in the notice.

(6) In particular, and without limiting the effect of paragraph (5), such a condition may be to the effect that—

- (a) the person tells clients or potential clients in writing that the person is providing a regulated claims management service within the meaning of section 3(2)(e) of the Act;
- (b) the person tells clients or potential clients in writing that the person is providing that service subject to the waiver, pending an exemption by order under section 5 of the Act;
- (c) the person attempts to meet standards of service recommended by the Secretary of State in his notice of his or her decision to exempt the person from authorisation.

(7) If the Regulator imposes on a waiver a condition of the kind referred to in paragraph (6)(c), the Regulator must set out the standard in the notice of the waiver.

(8) The waiver has effect for 6 months from the date of the notice, and cannot be renewed.

(9) If order is made under section 5 of the Act in relation to the person, the waiver ceases to have effect when the order comes into effect.

#### **Effect of regulation 5 when Secretary of State exercising functions of Regulator**

7. At a time when the Secretary of State is exercising the functions of the Regulator, regulation 6 has effect as if—

- (a) “the Regulator”, in each place where it occurs in paragraphs (1) and (2) of that regulation, were omitted and “the Secretary of State, in his exercise of the Regulator’s functions” were substituted;
- (b) paragraphs (3) and (4) of that regulation were omitted and the following paragraph substituted—

“(3) If the Secretary of State considers that section 3(1) of the Act should not prevent the person from providing regulated claims management services, he must, within 14 days, notify the person in writing that he, in his exercise of the Regulator’s functions, waives the requirement for the person to become authorised.”; and
- (c) “the Regulator”, in each place where it occurs in paragraphs (5) and (7) of that regulation, were omitted and “the Secretary of State, in his exercise of the Regulator’s functions” were substituted.

#### **Revocation of waiver in certain circumstances**

8.—(1) If, after the Regulator has waived the requirement for a person to become authorised, further information becomes available to the Regulator that satisfies the Regulator that the requirement should not have been waived, the Regulator may revoke the waiver by notice in writing.

(2) Before revoking the waiver, the Regulator must give the person notice in writing that the Regulator is considering revoking the waiver, setting out his reasons for doing so, and give the person a reasonable opportunity of making a submission in relation to the proposed revocation.

(3) If the Regulator decides that the waiver should be revoked, he must so notify the Secretary of State.

## PART 3

### GRANT OF AUTHORISATIONS

#### Application for authorisations

**9.**—(1) A person must apply for authorisation in writing in the form approved by the Regulator for the purpose.

(2) The person must supply the information required by the form in accordance with any directions on it.

(3) If the Regulator reasonably requires—

- (a) more information than that given in the application; or
- (b) another document;

to consider an application, the Regulator may ask for the information or document by notice in writing to the applicant.

(4) In particular, the Regulator may ask for more information or a document about any of the matters mentioned or referred to in paragraph (5) or (6) of regulation 11.

(5) If the Regulator makes a request under paragraph (3), the period between when the Regulator makes the request and when the applicant provides the information or document requested does not count for the purposes of regulation 11(1).

(6) If the Regulator has contracted with another person, body or authority to carry out tasks of collecting information or otherwise processing applications, that other person, body or authority may make a request under paragraph (3), and a request so made, if signed by or on behalf of the other person, body or authority, is as effective as if signed by the Regulator.

#### Payment of application fee

**10.** An application is not taken to have been made if the applicant has not paid the applicable application fee.

#### Decisions about authorisations

**11.**—(1) If the Regulator has not, within 3 months after the making of an application, given the applicant a notice of the Regulator's decision on the application, the Regulator is taken to have refused the application on the last day of that period.

(2) The Regulator must not approve the grant of an authorisation to an applicant unless he or she is satisfied that—

- (a) the applicant is competent; and
- (b) in the case of an applicant who is an individual, the applicant is suitable;

to provide the regulated claims management service to which the application relates.

(3) In the case of an applicant other than an individual, the Regulator must not approve the grant of the authorisation unless he is satisfied that—

- (a) in the case of an applicant that is a body corporate, each of the applicant's executive directors, or
- (b) in the case of an applicant that is a partnership or other body of persons, each of its members;

is suitable to be associated with the provision of the regulated claims management service to which the application relates.

(4) In the case of an applicant other than an individual, the Regulator must not approve the grant of the authorisation if he has reason to believe that—

- (a) in the case of an applicant that is a body corporate, any of the applicant's non-executive directors, or
- (b) any other person who is able to exert significant influence on the applicant's policy or management;

is unsuitable to be associated with the provision of the regulated claims management service to which the application relates.

(5) For the purpose of forming an opinion regarding an applicant's suitability to provide a regulated claims management service, the Regulator may take into account—

- (a) the applicant's criminal record (if any), and in particular any conviction for an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection;
- (b) any 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;
- (c) the applicant's financial circumstances;
- (d) the applicant's management arrangements, including—
  - (i) how financial and other control is exercised or to be exercised;
  - (ii) who is responsible for the applicant's financial and other management;
  - (iii) measures to maintain its solvency;
  - (iv) the provision of verified, certified or audited accounts;
  - (v) any previous relationship with a company that has become insolvent, or against which an insolvency petition has been brought;
- (e) the applicant's actual or proposed connections or arrangements with other persons, (including, in the case of an applicant that is a body corporate, its relationship with any parent or subsidiary company) and the applicant's arrangements to avoid conflicts of interest;
- (f) the applicant's policies and arrangements or proposed arrangements for training, and monitoring the competence of, its staff, and for recruiting;
- (g) the applicant's practice or proposed practice in relation to providing information to clients about fees;
- (h) if the applicant holds or proposes to hold clients' money, the applicant's arrangements or proposed arrangements for holding such money (in particular, whether the applicant has established or will establish a separate account for such money);
- (i) the applicant's arrangements or proposed arrangements for professional indemnity insurance.

(6) For the purpose of forming an opinion regarding the suitability of an individual who is a member, director or associate of an applicant to be associated with the provision of regulated claims management services, the Regulator may take into account—

- (a) the individual's criminal record (if any), and in particular any conviction for 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 withdrawal or revocation of his right to practice a profession, engage in a business or provide a service;
- (d) 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 practice a profession, engage in a business or provide a service;
- (e) his financial circumstances;

- (f) his qualifications and experience.

### **Grant of authorisations**

**12.**—(1) If the Regulator has approved the grant of an authorisation to a person, and the person has paid the fee for the first year of the authorisation's currency, the Regulator must grant the authorisation by giving the person a written instrument of authorisation.

(2) An authorisation has effect from the day on which it is granted, and continues in effect until revoked or surrendered.

(3) If the Regulator grants an authorisation subject to a condition, the Regulator must set the condition out in the instrument of authorisation.

### **Conditions of authorisation**

**13.**—(1) The Regulator may grant an authorisation subject to a condition or conditions.

(2) In particular, and without limiting the effect of paragraph (1), a condition may be—

- (a) if the authorised person was granted authorisation despite not satisfying a requirement for authorisation—that the person satisfies the requirement within a specified period;
- (b) a condition as to the way in which the person provides the service;
- (c) that the person provides only a specified service or services; or
- (d) that the person provides the service only in specified circumstances.

(3) The Regulator may revoke the imposition of a condition on an authorisation if he is satisfied that it is no longer necessary for the authorisation to be subject to the condition.

(4) If the Regulator revokes the imposition of a condition, the Regulator must give the authorised person a new instrument of authorisation that does not show the condition.

(5) In addition to any condition imposed by the Regulator, the following are conditions of an authorised person's authorisation—

- (a) that the person complies with the rules;
- (b) that the person complies with any applicable code of practice;
- (c) that the person complies with any direction of the Regulator under Part 5 (which deals with indemnity insurance);
- (d) that the person establishes a scheme, approved by the Regulator, for dealing with clients' complaints, and operates the scheme, in compliance with Part 7;
- (e) that the person permits inspection by the Regulator under Part 8 (which is about routine audit);
- (f) that in each year, no later than the anniversary in that year of the day on which the authorisation commenced, the person certifies in writing to the Regulator that during the past year the person has complied with—
  - (i) the conditions of the authorisation;
  - (ii) the rules; and
  - (iii) any applicable code of practice;
- (g) that in each year, if the Regulator so requires by notice in writing, the person produces to the Regulator, within a reasonable period specified by the Regulator, a set of audited accounts of the authorised person's business as an authorised person, showing the turnover of that business for the previous year;
- (h) that no later than the due date for payment of the annual fee, the authorised person pays the Regulator the amount of that fee in accordance with the Regulator's invoice.

(6) For paragraph (5)(h), the payment of an authorised person's annual fee is due 1 month after the date of the invoice issued by the Regulator for the fee.

### **Surrender of authorisations**

**14.**—(1) An authorised person may surrender his authorisation by notice in writing to the Regulator.

(2) Such a notice has effect from the day it is given or a later day stated in it.

(3) An authorised person that surrenders his authorisation must, if the Regulator so requires by notice in writing, produce to the Regulator, within 1 month after the surrender, a set of audited accounts for the authorised person's business as an authorised person for the current year, or that part of it up to the surrender.

## **PART 4**

### **FEEs**

#### **Determination of fees**

**15.**—(1) The Regulator must, by written instrument, determine—

- (a) fees, or a scale of fees, for the making of applications under Part 3; and
- (b) annual fees, or a scale of annual fees, for authorisations.

(2) A determination under paragraph (1)(b) may provide for the fee to be calculated by reference to the annual turnover or expected annual turnover of the business of the applicant or authorised person concerned.

(3) A determination under paragraph (1)—

- (a) may make provision that applies generally, or only in specified cases or circumstances;
- (b) may make different provision for different cases or circumstances; and
- (c) may include transitional, incidental or consequential provisions.

(4) Before making such a determination, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such consumer organisations, as he considers appropriate.

(5) A determination under paragraph (1) has no effect unless—

- (a) except in the case of a determination by the Secretary of State while exercising functions of the Regulator, it has been approved in writing by the Secretary of State; and
- (b) the instrument has been published, and notice has been given of it, in accordance with paragraph (6).

(6) The Regulator must publish the determination on its website, and must—

- (a) send a copy to each authorised person; or
- (b) notify each authorised person by email that the determination has been made and is published on the Regulator's website.

#### **Amendment etc of determination of fees**

**16.**—(1) The Regulator may, by instrument in writing, revoke or amend any determination in force from time to time under regulation 15, but—

- (a) such a revocation or amendment has no effect until—
  - (i) it has been published, and each authorised person has been notified of it, as required by regulation 15(6); and
  - (ii) except in the case of a revocation or amendment by the Secretary of State while exercising the functions of the Regulator, it has been approved by the Secretary of State; and

- (b) if a determination is amended, the Regulator must, as soon as practicable, publish the text of the determination as so amended in the same way as that of a new determination, and notify each authorised person that the text as amended is available.
- (2) A revocation or amendment may include transitional, incidental or consequential provisions.

**Refund etc of fees**

**17.**—(1) The Regulator may refund all or part of a fee to an applicant or authorised person if he or she is satisfied that—

- (a) where the fee was calculated by reference to the applicant’s or authorised person’s expected turnover from claims management activities during a period—the actual turnover for the period was less than the expected turnover;
- (b) the applicant or authorised person has been otherwise overcharged; or
- (c) in the case of an applicant for authorisation—the applicant is entitled to be granted an exemption under section 5 of the Act.

(2) If an authorised person surrenders his authorisation, the Regulator may refund so much of the fee for that year as represents the difference between the amount paid and the amount that the Regulator is satisfied was properly due for the part of the year until the surrender.

**Payment of fees by cheque**

**18.** If the Regulator accepts a cheque in payment of a fee, the fee is taken not to have been paid unless the cheque is honoured in full on first presentation.

**Payment of application fee to contractor**

**19.** If the Regulator has contracted with another person, body or authority to carry out the task of receiving applications, payment of the application fee to that other person, body or authority has the same effect as payment to the Regulator.

**Cancellation for non-payment of fee**

**20.**—(1) The Regulator may cancel an authorised person’s authorisation if the Regulator issues an invoice for a fee to the person and the person does not pay the fee within 1 month after the date of the invoice.

(2) For paragraph (1), invoices may be sent electronically, and regulation 4 applies to an invoice so sent.

**PART 5**

**INDEMNITY INSURANCE**

**Directions about indemnity insurance**

**21.** The Regulator may, by written notice, require an authorised person to take out a policy of professional indemnity insurance in a specified amount in respect of the person’s actions in providing regulated claims management services.

## PART 6

### RULES AND CODES OF PRACTICE

#### Rules

**22.**—(1) The Regulator must prescribe, by instrument in writing, rules for the professional conduct of authorised persons.

(2) Before prescribing such rules, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such consumer organisations, as he considers appropriate.

(3) The rules—

- (a) may make provision that applies generally, or only in specified cases or circumstances;
- (b) may make different provision for different cases or circumstances; and
- (c) may include transitional, incidental or consequential provisions.

(4) The Regulator must not prescribe such rules unless the Secretary of State has approved a draft of the proposed rules.

(5) Paragraph (4) has no effect while the Secretary of State is exercising the functions of the Regulator.

(6) The Regulator must publish the approved rules—

- (a) on the Regulator's website; and
- (b) in printed form.

(7) A rule has no effect to the extent (if any) that it has, or purports to have, effect from a time before it is published in accordance with paragraph (6).

#### Matters that the rules must cover

**23.** The rules must make provision regarding the giving of notice to clients by an authorised person whose authorisation has been suspended or cancelled, or varied in such a way that the authorised person can no longer provide a regulated claims management service to one or more clients.

#### Codes of practice

**24.**—(1) The Regulator may issue, by instrument in writing, a code of practice for the professional conduct of authorised persons or a specified class or group of authorised persons.

(2) A code of practice—

- (a) may make provision that applies generally, or only in specified cases or circumstances;
- (b) may make different provision for different cases or circumstances; and
- (c) may include transitional, incidental or consequential provisions.

(3) Before issuing such a code, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such consumer organisations, as he considers appropriate.

(4) The Regulator must not issue a code of practice unless the Secretary of State has approved a draft of the proposed code.

(5) Paragraph (4) has no effect while the Secretary of State is exercising the functions of the Regulator.

(6) The Regulator must publish an approved code of practice—

- (a) on the Regulator's website; and
- (b) in printed form.

### **Amendment etc of rules or code of practice**

**25.**—(1) The Regulator may amend or revoke rules or a code of practice.

(2) The procedure for amending or revoking rules or a code of practice is the same as the procedure for prescribing rules or issuing such a code<sup>(a)</sup>.

(3) Such an amendment or revocation may include transitional, incidental or consequential provisions.

(4) An amendment or revocation of rules or a code of practice has no effect to the extent (if any) that it has, or purports to have, effect from a time before it is published.

(5) If the Regulator amends rules or a code of practice, the Regulator must, as soon as reasonably practicable, publish, in the ways set out in regulation 24(6), the text of the rules or code as amended.

### **Charge for supply of copies**

**26.** The Regulator may make a reasonable charge for supplying a printed copy of rules or a code of practice or an instrument amending or revoking rules or a code of practice.

### **Redress**

**27.**—(1) The Regulator may order an authorised person who has failed to comply with the rules or a code of conduct to make redress, in a specified way or form, to a person aggrieved by that failure.

(2) The forms of redress may include, but are not limited to—

- (a) an apology;
- (b) the re-doing, without charge to the aggrieved person, of work improperly done; or
- (c) in cases in which the failure consists of the charging of an unjustifiable fee, the refund of all or part of the fee.

(3) Before making such an order, the Regulator—

- (a) must notify the authorised person of the proposed order, and the reasons for making it;
- (b) must give the authorised person a reasonable opportunity to make submissions in relation to the order; and
- (c) must take any such submission into account in deciding whether to make the order.

(4) It is a condition of an authorised person's authorisation that the person complies with any order under this regulation.

### **Review by the Regulator of complaint handling**

**28.**—(1) If an authorised person and a client cannot agree on how to resolve a complaint by the client that the authorised person has failed to comply with the rules or a code of practice, either the client or the authorised person may ask the Regulator to review the authorised person's handling of the complaint.

(2) If a client of an authorised person is dissatisfied with the handling by the authorised person of such a complaint, the client may ask the Regulator to review the authorised person's handling of the complaint.

(3) For the purpose of such a review, the Regulator may direct the authorised person in writing to give the Regulator information or documents (being information or documents concerning either the handling of the complaint, or the conduct of the matter out of which the complaint arose) to the Regulator, and the authorised person must give the information or documents to the Regulator without delay.

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(a) The procedure is set out in regulation 24.

(4) A request under paragraph (1) or (2) by a client of an authorised person need not be in writing, but the Regulator may decline to act on such a request if insufficient information is provided to enable the Regulator to investigate the handling of the complaint.

### **Directions of the Regulator about complaints handling and related matters**

**29.**—(1) Based on his or her investigations of the handling of a complaint that an authorised person has failed to comply with the rules or a code of conduct, and of the matter out of which the complaint arose, the Regulator may give a direction to the authorised person about the further handling of the complaint or matter.

(2) The Regulator may also give a direction about the future handling of complaints, or about any other aspect of the authorised person’s business in relation to claims management.

(3) Before giving such a direction, the Regulator—

- (a) must notify the authorised person of any direction that the Regulator proposes to give, and the reasons for giving it;
- (b) must give the authorised person a reasonable opportunity to make submissions in relation to the direction; and
- (c) must take any such submission into account in deciding whether to give the direction.

(4) It is a condition of the authorised person’s authorisation that the authorised person implements, promptly and in full, a direction referred to in paragraph (1) or (2).

## **PART 7**

### **COMPLAINTS SCHEMES**

#### **Requirement about complaints schemes**

**30.**—(1) This regulation sets out the requirements for the complaints scheme that an authorised person must establish and operate.

(2) A complaints scheme—

- (a) must identify a person, by name or position, within the authorised person’s organisation to receive complaints and be responsible for dealing with them;
- (b) must provide for the acknowledgement of complaints within a reasonable period after their receipt;
- (c) must provide for the investigation of complaints and reporting to the authorised person on the outcome of the investigation;
- (d) must provide for keeping proper records of investigations and the complaint-handling process;
- (e) must provide for reporting to complainants; and
- (f) must provide for proper recompense in appropriate cases.

#### **Details of scheme to be published and given to clients**

**31.**—(1) An authorised person—

- (a) must publish details of its complaints scheme on its website, if any; and
- (b) must give a printed copy of the scheme to anybody who asks for it.

(2) When a person enters into a contract with an authorised person, the authorised person must immediately—

- (a) tell the client in writing—
  - (i) about the authorised person’s complaints scheme and the client’s rights under it; and

- (ii) the name or title of the person to whom complaints should be made, and that person's address, telephone number and email address (if any); and
- (b) give the client a printed copy of the scheme.

## PART 8

### ROUTINE AUDIT

#### **Routine audit on notice**

**32.**—(1) The Regulator may, at a reasonable time and on reasonable notice, inspect the records of an authorised person for the purposes of assessing the authorised person's compliance with—

- (a) the rules and any applicable code of practice; and
- (b) the terms and conditions of authorisation.

(2) Nothing in this regulation requires an authorised person to produce, or authorises the Regulator to require an authorised person to produce, any document or thing that is an item subject to legal privilege (within the meaning given by section 10 of the Police and Criminal Evidence Act 1984)(a).

## PART 9

### INVESTIGATION

#### CHAPTER 1

#### PRELIMINARY

#### **Definitions for this Part**

**33.** In this Part—

“judicial officer” means—

- (a) a Judge of the High Court;
- (b) a circuit judge; or
- (c) a justice of the peace(b);

“premises” has the same meaning as in the Police and Criminal Evidence Act 1984(c);

“the Tribunal” means the Claims Management Services Tribunal established by section 11 of the Act.

#### **Basis of investigation**

**34.**—(1) The Regulator may investigate a person's conduct under this Part on the basis of reasonable suspicion.

(2) Nothing in this Part requires there to have been an allegation of misconduct or impropriety against a person before the Regulator may exercise his or her powers of investigation.

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(a) 1984 c. 60.

(b) A District Judge (Magistrates' Courts) is by virtue of his or her office a justice of the peace—see s 25 of the Courts Act 2003 (2003 c. 39).

(c) 1984 c. 60.

## CHAPTER 2

### INVESTIGATION—OFFENCES BY UNAUTHORISED PERSONS

#### **Investigation of offences against s 3(1) of Act: requirement to provide information**

**35.**—(1) Before requiring a person to provide information or documents for the purpose of investigating whether a person has contravened section 3(1) of the Act, the Regulator must consider whether investigation is justified.

(2) If an allegation of such a contravention has been made the Regulator must consider whether the allegation—

- (a) is on its face credible; and
- (b) taken with any information offered by the complainant in support of it, is sufficiently detailed and specific for an investigation to be practicable.

(3) In all cases the Regulator must take into account—

- (a) if the person alleged or suspected to have contravened that subsection has applied for an authorisation under section 3(1)(a), or has sought exemption under section 5, of the Act, the application or request, its result and anything else in the Regulator's records about it; and
- (b) anything else in the Regulator's records that is relevant (for example, anything that tends to establish a pattern of allegations against, or apparent contraventions by, the person).

(4) For the purposes of paragraph (3)(a) the Regulator may consider material in, or the result of, an application or of a request for exemption even if the application was for authorisation to provide, or the exemption was sought in relation to, another kind of regulated claims management service than that in relation to which the contravention is alleged or suspected to have occurred.

#### **Requirements for information under s 7(4) of Act**

**36.**—(1) The Regulator may require a person to give the Regulator information or documents for the purpose of investigating an alleged or suspected contravention of section 3(1) of the Act, if the person—

- (a) is the person alleged or suspected to have contravened the subsection; or
- (b) is otherwise likely to be able to provide information relevant to the investigation of the alleged or suspected contravention.

(2) Such a requirement is to be by notice in writing, signed by the Regulator.

(3) Such a notice—

- (a) must specify or describe the information or documents that are to be given to the Regulator;
- (b) must specify the place at which, and the period within which, the information or documents are to be given to the Regulator; and
- (c) may specify the form in which the information or a document is to be given.

(4) If such a notice specifies that information or a document is to be given in a particular form, it has not been complied with until the information or document is given in that form.

(5) The period specified must be a period that is, in all the circumstances, reasonable.

(6) The Regulator may allow more time for the giving of the information or documents if—

- (a) the person required to give the information or documents so requests in writing; and
- (b) the Regulator is satisfied that, because of exceptional circumstances, it is reasonable to allow the extra time.

(7) To avoid doubt, a requirement under this regulation may be for both information and documents.

(8) Nothing in this regulation authorises a search of any premises.

## **Search warrants under s 7 of the Act**

**37.**—(1) For the purposes of section 7(8) of the Act, the matters of which a judge or justice of the peace must be satisfied when considering an application under section 7(5) are that—

- (a) there is reason to believe that information or documents relevant, and of substantial value, to the investigation of an alleged or suspected contravention of subsection 3(1) of the Act are likely to be found at the premises; and
- (b) paragraph (2), (3) or (5) applies in the particular case.**(a)**

(2) This paragraph applies if there is reason to believe that if the Regulator were to require, under regulation 36, to be given the information or documents, the information or documents would be removed, tampered with or destroyed.

(3) This paragraph applies if the person has been required to provide information or documents to the Regulator under regulation 36, and has not done so within the period permitted by the requirement.

(4) An application for a search warrant in relation to which paragraph (3) applies must set out the steps taken to require the person to provide information or documents under regulation 36, and of the person's response, if any.

(5) This paragraph applies if the Regulator is satisfied, after considering information or documents provided to him or her in answer to a requirement under regulation 36, that—

- (a) further investigation is justified of the alleged or suspected contravention in relation to which the requirement was made; and
- (b) there are further documents relevant to the investigation; and
- (c) there is reason to believe that if the Regulator were to require, under regulation 36, to be given the documents, the documents would be removed, tampered with or destroyed.

## **CHAPTER 3**

### **INVESTIGATION—FAILURES BY AUTHORISED PERSONS TO COMPLY WITH RULES OR CODES OF PRACTICE**

#### **Regulator to investigate complaints or suspicions of unprofessional conduct**

**38.**—(1) If a person complains to the Regulator about the professional conduct of an authorised person, the Regulator may investigate the complaint.

(2) The Regulator may also investigate the professional conduct of an authorised person if the Regulator has grounds, otherwise than as a result of an allegation or complaint, to suspect that the authorised person has failed to comply with the rules, a code of practice or a condition of the person's authorisation

(3) Before undertaking such an investigation, the Regulator must decide whether—

- (a) there are reasonable grounds to suspect that the authorised person concerned has failed to comply with the rules, an applicable code of practice or a condition of authorisation, and
- (b) the alleged or suspected breach is serious enough to justify investigation.

(4) In making that decision, the Regulator must take into account—

- (a) the origin of any allegation made against the person, and whether the allegation is credible; and
- (b) if the grounds for the suspicion are not an allegation or allegations against the person, what those grounds are and the credibility of their source; and
- (c) whether the person also engages in another business activity and, if so, what that activity is and its relationship to the business of claims management; and

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(a) Certain provisions of the Police and Criminal Evidence Act 1984 apply to a search warrant under this Chapter—see regulation 43.

- (d) whether there have been other credible allegations against or suspicions about, the person of such failures; and
- (e) anything in the Regulator's records about the person that is relevant to the person's conduct as an authorised person, including, in particular—
  - (i) the person's application to become an authorised person; and
  - (ii) the record of his or her agreement to observe the Rules and any code of practice; and
  - (iii) any audit and inspection reports held by the Regulator; and
  - (iv) any previous allegations against, or suspicions about, the person that have been substantiated; and
- (f) any report in the media that appears to be credible; and
- (g) any advertising by the person; and
- (h) any other apparently credible publicly available information about the person; and
- (i) any information or documents provided by the person in answer to a requirement under regulation 39.

**Breaches by authorised persons of rules, code of practice or condition: requirement to provide information etc**

**39.**—(1) For the purpose of making a decision under regulation 38, the Regulator may require an authorised person to give the Regulator information or documents relevant to the decision.

(2) The requirement must be by notice in writing, signed by the Regulator.

(3) Such a notice—

- (a) must specify or describe the information or documents to be given to the Regulator; and
- (b) must specify the place at which, and the period within which, the information or documents are to be given to the Regulator; and
- (c) may specify the form in which the information or a document is to be given.

(4) If such a notice specifies that information or a document is to be given in a particular form, it has not been complied with until the information or document is given in that form.

(5) To avoid doubt, a requirement under this regulation may be for both information and documents.

(6) The period specified must be a period that is, in all the circumstances, reasonable.

(7) The Regulator may allow more time for the information or documents to be provided if—

- (a) the person required to give the information or documents so requests in writing; and
- (b) the Regulator is satisfied that, because of exceptional circumstances, it is reasonable to allow the extra time.

(8) Nothing in this regulation authorises a search of any premises.

**Search warrants**

**40.**—(1) The Regulator may apply to a judicial officer for a search warrant to authorise a search of, and the seizure of documents from, premises if the Regulator is satisfied, on the basis of information available to the Regulator as a result of a request for information or documents under regulation 39, that—

- (a) an authorised person has failed to comply with the rules, an applicable code of practice or a condition of authorisation; and
- (b) information or documents relevant to the investigation of the apparent failure are likely to be found at the premises.

(2) The Regulator may apply to a judicial officer for a search warrant to authorise a search of, and the seizure of documents from, premises if—

- (a) there is reason to believe that—
    - (i) an authorised person has failed to comply with the rules, a code of practice or a condition of authorisation; and
    - (ii) information or documents relevant to the investigation of the apparent failure are likely to be found at the premises; and
  - (b) paragraph (3) or (4) applies in the particular case.
- (3) This paragraph applies if—
- (a) the Regulator has required the authorised person to give the Regulator information or documents under regulation 39; and
  - (b) the authorised person has not done so within the period permitted by the requirement.
- (4) This paragraph applies if there is reason to believe that if the Regulator required the authorised person to give information or documents under regulation 39, documents relevant to the investigation of the apparent failure would be removed, concealed or destroyed.
- (5) An application under paragraph (2) for a search warrant must set out the steps taken to require the authorised person to give information or documents under regulation 39, and the authorised person’s response, if any.

## CHAPTER 4

### SEARCH WARRANTS GENERALLY

#### **Application generally**

**41.**—(1) An application for a warrant must also state that no judicial officer has refused to issue a warrant based on another application that is in substance the same.

(2) A judicial officer must not issue a warrant in response to an application unless he is satisfied that no judicial officer has refused to issue a warrant based on another application that is in substance the same.

#### **Issue of warrants for entry to residences**

**42.** A judicial officer must not issue a search warrant under these Regulations to authorise entry to, a search for documents in, or the seizure of documents from, premises that are used exclusively as a residence unless he is satisfied that there is reason to believe that—

- (a) documents have been removed to the premises with the intention of placing them beyond the reach of the warrant; or
- (b) an occupier of the premises has provided or offered to provide a regulated claims management service from the premises.

#### **Application of certain enactments**

**43.**—(1) Sections 8 to 16, and sections 19 to 23, of the Police and Criminal Evidence Act 1984<sup>(a)</sup> apply in relation to the issue and execution of a search warrant under this Part, but with the following modifications—

- (a) references to a constable are taken to be references to a person authorised by the Regulator to apply for and execute search warrants;
- (b) references to a justice of the peace are taken to be references to a Judge of the High Court, a circuit judge or a justice of the peace, and references to a judge are taken to be references to a Judge of the High Court or a circuit judge;

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(a) 1984 c. 60.

- (c) references to an indictable offence, a serious arrestable offence, or an offence, are taken to include references to a failure to comply with the rules, an applicable code of practice or a condition of authorisation;
  - (d) subsections (1A) to (1D) of section 8 are taken to be omitted and the following subsection substituted—
    - “(1A) The premises referred to in subsection (1)(b) above are one or more sets of premises specified in the application.”
  - (e) subsections (4), (5) and (6) of section 8 are taken to be omitted and the following subsections substituted—
    - “(4) In this section, ‘relevant evidence’—
      - (a) in relation to an offence, means anything that would be admissible in evidence at a trial for the offence; and
      - (b) in relation to an alleged or suspected failure to comply with the rules, a code of practice or a condition of authorisation, includes anything that would be admissible in evidence before the Tribunal in proceedings in relation to the failure.
    - (5) In subsection (4)—
      - ‘authorised person’ has the same meaning as in the Compensation Act 2006(a);
      - ‘code of practice’, ‘condition of authorisation’, ‘rules’ and ‘Tribunal’ have the same respective meanings as in the Compensation (Claims Management Services) Regulations 2006.”;
  - (f) subsections (1) and (2) of section 9 are taken to be omitted;
  - (g) subsections (1), (2) and (2A) of section 16 are taken to be omitted and the following subsections substituted—
    - “**16.**—(1) A warrant to enter and search premises may be executed by any officer of the Regulator authorised by the Regulator to execute search warrants.
    - (2) An officer of the Regulator so authorised has the same powers, in relation to—
      - (a) the execution of a search warrant; and
      - (b) the seizure of anything to which such a warrant relates,
 as if he or she were a member of a police force executing the warrant.”
  - (h) subsections (3A), (3B) and (4) of section 16 are taken to be omitted and the following subsection substituted—
    - “(4) Entry and search under a warrant must be at a reasonable hour.”
- (2) To avoid doubt, the provisions of Part 2 of the Criminal Justice and Police Act 2001(b) apply in relation to search and seizure under this Part.
- (3) For the application of Part 2 of that Act, references in that Part to a constable are taken to be references to a person authorised by the Regulator to apply for and execute search warrants;

## PART 10

### CANCELLATION, SUSPENSION AND VARIATION OF AUTHORISATIONS

#### **Cancellation etc of authorisations**

**44.**—(1) If, after investigation of an alleged or suspected failure by an authorised person to comply with the rules, a code of practice or a condition of authorisation, the Regulator is satisfied that—

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(a) 2006 c. ...  
 (b) 2001 c. 16.

- (a) the person has failed to comply with the rules, code or condition; and
- (b) cancellation, suspension or variation of the person’s authorisation is appropriate,

the Regulator may—

- (c) cancel the authorisation, or suspend it for a period; or
- (d) vary the authorisation by limiting the classes of claims management that the person may undertake, or otherwise varying the conditions of the authorisation (including by imposing an additional condition).

(2) The cancellation of, or the proposed suspension or variation of, the person’s authorisation under paragraph (1)(b) is appropriate only if the nature and seriousness of the person’s failure to comply with the rules, code or condition is such that, to protect the public, it is reasonably necessary to cancel the authorisation, suspend it for the proposed period or vary it in the proposed way, as the case may be.

(3) Before cancelling, suspending or varying an authorised person’s authorisation, the Regulator must give written notice to the authorised person—

- (a) stating that the Regulator proposes to cancel, suspend or vary the authorisation, as the case may be;
- (b) in the case of suspension or variation, setting out the terms of the proposed suspension or variation;
- (c) setting out the reasons for the Regulator’s decision, and a summary of the evidence on which the Regulator relies;
- (d) inviting the person to make a written submission in relation to the proposed cancellation, suspension or variation; and
- (e) specifying a reasonable period within which the person must do so.

(4) Before cancelling, suspending or varying the authorisation, the Regulator must take into account any submission made by the authorised person within the period allowed (or any further period allowed by the Regulator).

### **Procedure for cancellation etc**

**45.**—(1) If the Regulator decides to cancel, suspend or vary an authorised person’s authorisation, the Regulator must give written notice to the authorised person of the cancellation, suspension or variation.

(2) The cancellation, suspension or variation has effect from the day of its receipt by the authorised person, or a later day specified in the notice.(a)

Signed by the authority of the Secretary of State

*Cathy Ashton*  
Parliamentary Under Secretary of State  
Department for Constitutional Affairs

Date

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Regulations are made under the Compensation Act 2006 (the Act). Under the Act, “regulated claims management service” means a claims management service of a kind prescribed by order by the Secretary of State(b), and “claims management services” include services in relation to claims

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(a) The Tribunal has the power to suspend the operation of the Regulator’s decision—see the Act, s 11(4).  
(b) See the Compensation (Regulated Claims Management Services) Order 2006, SI 2006/...

for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage, or in respect of an obligation.

Part 1 of the Regulations provides for preliminary matters such as definitions.

Part 2 of the Regulations makes provision about waiver, by the Regulator appointed under the Act, of the requirement for a person who provides regulated claims management services to be authorised. Such a waiver will be granted to a person only if the Regulator is satisfied that the Secretary of State intends to exempt the person from that requirement under section 5 of the Act, and only for a maximum period of six months. A waiver cannot be renewed.

Members of certain professions whose professional conduct is already regulated (in particular, barristers, solicitors and legal executives), and certain other classes of person that are regulated in other ways, have been exempted from Part 2 of the Act by order by the Secretary of State. Certain persons or bodies that provide regulated claims management services on a not-for-profit basis are also exempted.<sup>(a)</sup>

Part 3 of the Regulations deals with applications for authorisation to provide regulated claims management services.

Part 4 of the Regulations authorises the Regulator to prescribe fees for application for and grant of authorisations and the renewal of authorisations.

The Act requires the regulations to require the Regulator to prescribe rules, and to authorise the Regulator to issue a code or codes of practice, with which authorised persons must comply (see paragraph 8 of the Schedule to the Act). Part 6 of the Regulations sets out the requirements for those rules and codes of practice.

Part 9 of the Regulations provides for enforcement. Chapter 1 of that Part is preliminary, setting out definitions of terms used in the Part.

Chapter 2 of Part 9 deals with the investigation of allegations or suspicion that a person has breached section 3 of the Act. A person who provides a regulated claims management service commits an offence under section 3 of the Act unless he or she is authorised under Part 2 to do so, is exempt under that Part or has the benefit of a waiver of the requirement to be authorised.

If a person is alleged or suspected to have breached section 3 of the Act, the Regulator may require a person to provide information or documents to enable the Regulator to investigate the allegation, but must first decide whether the allegation or suspicion is credible and sufficiently detailed and specific to justify investigation.

Chapter 3 of Part 9 deals with the investigation of allegations or suspicion that authorised persons have failed to comply with the Rules or a code of practice.

If an authorised person is alleged or suspected to have failed to comply with the Rules or a code of practice, the Regulator may require a person to provide information or documents to the Regulator for the purposes of investigation of the allegation or suspicion, but must first decide whether the allegation or suspicion is credible and justifies investigation.

If information or documents are not provided in answer to a written request, if there is reason to suspect that documents may be concealed or destroyed, or if there is reason to believe that further documents may be obtained by search under warrant, the Regulator may apply to a Judge of the High Court, circuit judge or justice of the peace for a search warrant.

Chapter 4 of Part 9 deals with search warrants generally. The rules that apply to search warrants generally also apply to a search warrant issued under the Regulations except that such a warrant is to be applied for and executed by an officer of the Regulator authorised for the purpose by the Regulator, and that the Regulator's officer who executes the warrant must be accompanied by a member of the police force for the police area in which the premises to be entered and searched

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(a) See the Compensation (Exemptions) Order 2006, SI 2006/....

are located. The premises to be searched under the authority of such a search warrant must be business premises, and the search must be carried out at a reasonable hour.

Part 10 deals with suspension and cancellation of an authorisation. The Regulator can cancel, suspend or vary an authorised person's authorisation to the extent necessary to protect the public, but such a cancellation, suspension or variation does not take effect until the end of the period within which the matter may be referred to the Claims Management Services Tribunal established under section 11 of the Act (and if it is so referred, until the matter and any resulting appeal is finally disposed of).

## Appendix 5

### Consultation in respect of Rules

## **Compensation Bill**

### **Regulation of Claims Management Services**

# **Consultation on draft conduct rules for authorised persons**

**July 2006**

## **Introduction**

1. The Schedule to the Compensation Bill requires the Secretary of State for Constitutional Affairs to require the regulator to prescribe rules for the professional conduct of authorised persons. As the Secretary of State will initially exercise the functions of the regulator he will be responsible for drawing up, consulting on and issuing the rules. Any reference to the regulator in this document should be taken to mean the Secretary of State/DCA unless otherwise stated.
2. The Schedule sets out the procedure to be followed for making the rules. The draft Compensation (Claims Management Services) Regulations 2006 make a number of specific provisions in respect of the rules, including the giving of notice to clients by an approved person whose authorisation has been suspended, cancelled or varied.

## **Previous consultation**

3. We published a pre consultation set of model rules on 2 March to inform the House of Lords consideration of the Bill. While not a formal consultation we did discuss the model rules with key stakeholder representative organisations from the consumer, legal, insurance, claims and financial sectors.

## **The proposed rules**

4. The proposed conduct rules are attached to this paper. For completeness we have tried to bring together all the relevant provisions that apply to the conduct of authorised persons whether they are provided for in the primary legislation or secondary legislation.
5. The rules are in two parts
  - Part 1 - General requirements
  - Part 2 - Rules governing the relationship with clients.
6. It is recognised that there are different contractual relationships between companies providing claims management services and the people with whom they deal. The rules recognise this by stipulating that some sections apply only to businesses that either have a contractual relationship with the client or which manage a claim.

## **Consultation process**

7. The purpose of this consultation is to seek views on the proposed rules. We are interested not only in the views of interested parties on how the rules would

affect them but also views on the effectiveness of the rules in securing the desired objective of the legislation which is to curb malpractice in the provision of claims management services. To facilitate the consultation process a number of specific questions are asked. However, they should not constrain respondents. Comment on any of the principles underlying the rules and on the detailed wording would be welcome.

8. Responses to this consultation exercise should be made by Tuesday 29 August 2006 and submitted to

Katherine MacGregor  
Private Funding Regulation Branch  
Department for Constitutional Affairs  
3rd Floor Selborne House  
54-60 Victoria Street  
London SW1E 6QW  
Tel 0207 210 1407  
E-mail: [Katherine.Macgregor@dca.gsi.gov.uk](mailto:Katherine.Macgregor@dca.gsi.gov.uk)

9. If you would like to discuss any elements of content or other matters related to the introduction of regulation you should also contact Katherine in the first instance, unless you already have other contacts within the Private Funding Regulation Team who have previously dealt with who of course you can contact directly.

## **The rules - general issues**

10. Before turning to specific issues there are two general questions

*Question 1. Are there any additional points that should be included in the conduct rules?*

*Question 2. Is the distinction provided for in the rules between all businesses, those that have a contractual relationship and those that manage claims, a sensible one?*

## **Part 1 General Rules**

### **General principles**

11. Part 1 paragraphs 1 – 4 set out for general principles covering honesty and integrity, acting responsibly, management of the business and a requirement to observe all laws and regulations.

*Question 3. Are the general principles in paragraphs 1 to 4 appropriate?*

### **Disqualification from working in claims management**

12. Part 1 paragraph 5 sets out the factors that would exclude a person from being involved in the provision of claims management services.

*Question 4. Are all the factors that would exclude a person from being involved in claims management services appropriate?*

### **Conduct of business**

13. Paragraph 6 requires a business to certify that it has arrangements to comply with the rules when it applies to authorisation and annually to certify that it is done so. In the model draft rules authorising via a tied agency arrangement was floated. This would allow an authorised business to take responsibility for those introducing business to it and who would therefore not require their own authorisation. There has been general adverse reaction to this concept with a view that all individuals and businesses undertaking claims management services should be authorised. Paragraph 7 therefore provides for this and requires an authorised person to supply to the regulator details of its agents and person who introduce business to it.

*Question 5. Should the tied agent concept be provided for or should any individual or business that provides claims management services be authorised in its own right?*

## **Finance**

14. The section requires a business to always maintain its solvency and to maintain appropriate internal systems and controls. The previous draft envisaged that businesses would have to supply audited accounts to the regulator. This would be an additional burden, in particular for sole traders, and also the audited accounts would be of little use to the regulator because they are available only after a delay and may cover business that it not regulated. In any event the regulator has the power to require any information that he requires from any authorised business.

## **Professional indemnity insurance**

15. The rules allow the regulator to make specific rules in respect of holding professional indemnity insurance. It is not the intention to make this a requirement immediately as this would be impractical and would leave a number of businesses unable to comply with the rules. Rather, the regulator will, after considering the responses to this consultation exercise, consider whether professional indemnity insurance should be required and if so what the minimum requirements should be.

*Question 6. Should holding professional indemnity insurance be a requirement for authorisation? Would it be possible in practice for authorised businesses to obtain such insurance from the outset or should requirements be phased in to allow sufficient time for a market to develop?*

## **Complaints and redress**

16. Part 1 paragraphs 11-14 sets out the requirements that authorised businesses must meet in respect of a complaints mechanism. These are reproduced from Part 7 of the Regulations. The main issue is whether what is provided for in paragraph 11-14 is sufficient or whether more detailed guidance should be provided by the regulator, for example a model scheme. Sole practitioners may also wish to consider how they would deal with these requirements.

*Question 7. Are the requirements in paras 11-14 sufficient or would more guidance be helpful in respect of a model complaints scheme?*

## **Competence and training**

17. The principles in the general rules require that those providing claims management services must be competent and capable. This is of course a general principle and a key question is how competence is measured, if it should be prescribed in more detail and whether specific requirements on training should be stipulated.
18. In practice, it may not be possible to stipulate training requirements that would have to be met before the regulatory regime comes into operation. Similarly, it is difficult to see how meaningful competence requirements can be stipulated in a way that can be objectively tested.
19. We will consider this further in the light of responses to this consultation exercise and as the regulatory regime develops whether it is appropriate to prescribe either or both of training and competence requirements.

*Question 8. Should specific rules on training and competence be developed? If so, are there suitable models which could be considered for a small sector?*

## **Compliance and enforcement**

20. Part 1 paragraph 16 requires a business to co-operate with the monitoring and compliance arrangements of the regulator.

## **Disciplinary arrangements**

21. Part 1 paragraph 17 requires unauthorised business to comply with the Regulator's disciplinary arrangements.

## **Provision of information**

22. Part 1 paragraphs 18 to 23 set out the information that businesses must provide to the regulator. Some of this will also be prescribed in the application form. There is a catch all provision allowing the regulator to request specific information from authorised businesses either individually or collectively. Paragraph 23 requires authorised businesses to notify the Regulator within one month of changes in certain specified information.

## **Part 2 Client specific rules**

### **General principles**

23. Part 2 paragraph 1 sets out general principles in respect of dealing with clients.

*Question 9. Are the general principles in paragraph 1 appropriate?*

### **Advertising and sales**

24. Part 2 paragraphs 2 - 8 set out requirements in respect of advertising and sales. These include a number of important provisions –

- The banning of cold calling in person. The previous model draft considered whether all cold calling should be banned. The general view was that this would be an unreasonable restriction on a specific group of businesses.
- A ban on soliciting business in or near medical facilities other than advertising explicitly approved by the facility concerned.

*Question 10. Should only cold calling in person be prohibited or should this be a wider prohibition?*

*Question 11. Are the proposals on advertising and sales generally appropriate?*

### **Taking on business**

25. This section sets out the information that must be provided to a client before he is asked whether he wishes to go ahead, and provides for a cooling off period of 14 days. These arrangements would apply only where the business is seeking to have a contractual relationship with the client. For example, an introducer would not be required to provide all of this information; indeed it would be impractical if not impossible for him to do so.

*Question 12. Is 14 days appropriate for a cooling off period?*

*Question 13. Are the requirements for the taking on of business generally appropriate?*

### **Managing a claim**

26. The section covers how a claim should be managed and includes provision for the client to be allowed to withdraw from a contract at any time subject to any penalty being reasonable in the circumstances.

*Question 14. Are the arrangements for managing a claim appropriate?*

## **Insurance**

27. This section requires a business to take reasonable steps to ascertain whether a client has any before the event insurance and makes requirements in respect of the provision of ATE insurance by the authorised business.

*Question 15. Is the provision in respect of taking reasonable steps to ascertain whether the client has BTE insurance sufficiently clear?*

*Question 16. Are the provisions in respect of arranging ATE insurance appropriate?*

## **Loan finance**

28. Part 2 paragraph 23 makes initial provisions in respect of arranging loans, in particular the requirement to advise the client that he has the option to pay for insurance directly rather than by taking out a loan.

*Question 17. Are the arrangements for providing loans reasonable?*

## **Handling client money**

29. Part 2 paragraph 24 makes arrangements for providing client money, similar to those that apply in other sectors.

*Question 18. Are the arrangements for handling money appropriate?*

## **Informing clients when authorisation is suspended, cancelled or varied**

30. The draft Rules do not specifically provide for this but it is a necessary and important safeguard for consumers where a business has a contractual relationship with a client and authorisation is to be suspended, cancelled or varied. We therefore suggest inserting a paragraph under managing a claim as follows:

“If the Regulator informs a business that authorisation is to be suspended, cancelled or varied it must make immediate arrangements to inform all clients of the decision. It should also inform clients of steps they might take to ensure their claim is not affected. This would include referring them to the Regulator’s register of authorised person for alternative providers.

If the approved person is to appeal to the Claims Management Services Tribunal they should also make this clear to the client, and subsequently inform them of the Tribunal’s decision.”

*Question 19. Are the proposed arrangements for informing clients of the Regulator's decision to suspend, cancel or vary authorisation appropriate?*

**DCA  
Conduct rules consultation paper  
July 2006**

## Appendix 6

### Draft Rules

## **Compensation Bill**

### **Regulation of Claims Management Services**

# **Draft conduct rules for authorised persons**

**Version 1.0**

**July 2006**

## **Introduction**

An essential part of the claims management regulatory framework will be the rules governing the conduct of authorised persons. Compliance with these rules would be a condition of authorisation, and applicants will be required to sign a declaration that they will continue to comply with them. The Secretary of State for Constitutional Affairs will for an interim period exercise the functions of the regulator.

### **The current draft**

The draft rules are in two parts –

- General requirements
- Rules governing the contact with clients

The client rules cover the relationship between the claims management business and the claimant. The general requirements cover everything else.

The Compensation Bill (Schedule paragraph 4(3)) and the Compensation (Claims Management Services) Regulations 2006 set out the matters the regulator should take into account when assessing applicant's fitness to be permitted to carry out claims management services.

### **Interpretation**

All references to business in the Rules should be taken to be a reference to an authorised person as specified in section 13 of the Compensation Act 2006.

DCA  
July 2006

# Model rules

## Part 1 – General rules

### Principles

1. A business shall conduct itself with honesty and integrity.
2. A business shall act responsibly
3. A business shall be directed by people with the necessary competence and they shall employ competent and capable staff.
4. A business shall observe all laws and regulations relevant to its business.

### Disqualification from working in claims management

5. No person shall be involved in the provision of regulated claims management services as a sole trader, partner in a partnership, director of a limited company, significant shareholder or chief executive who either -
  - a) Is disqualified from being a director of a company in the UK, or
  - b) Has been removed from the list of persons authorised by the FSA or has been refused authorisation, or
  - c) Had been disqualified from acting as a solicitor, barrister or other [legal services professional], or
  - d) Has been convicted of any offence involving fraud, theft, false accounting or other dishonesty or an offence relating to companies, financial services, and consumer credit or consumer protection.

### Conduct of business

6. A business shall comply with the rules relevant to it and shall –
  - a) On applying for authorisation certify that it has arrangements in place to do so, and
  - b) Annually certify it has done so.

7. A business shall ensure that any agent and any other person who introduces business to it is authorised under the Act to do so and shall supply to the regulator in a form and a time prescribed by the regulator the names, addresses and national insurance numbers of all such people and the payments made to them.

### **Finance**

8. A business shall always maintain its solvency.
9. A business shall maintain appropriate internal systems and controls.

### **Professional indemnity insurance**

10. A business shall maintain professional indemnity insurance in accordance with any specific requirements made by the Regulator.

### **Complaints and redress**

11. A business shall operate a complaints mechanism in accordance with the statutory requirements and rules.
12. The full requirements are set out below. A complaints scheme must:
  - Identify a person, by name or position, within the authorised person's organisation to receive complaints and be responsible for dealing with them;
  - Provide for the acknowledgement of complaints within a reasonable period after their receipt;
  - Provide for the investigation of complaints and reporting to the authorised person on the outcome of the investigation;
  - Provide for keeping proper records of investigations and the complaint-handling process;
  - Provide for reporting to complainants; and
  - Provide for proper recompense in appropriate cases.
13. An authorised person must
  - Publish details of its complaints scheme on its website, if any; and
  - Give a printed copy of the scheme to anybody who asks for it.

14. When a person enters into a contract with an authorised person, the authorised person must immediately
  - Tell the client in writing about the authorised person's complaints scheme and the client's rights under it; and
  - The name or title of the person to whom complaints should be made, and that person's address, telephone number and email address (if any); and
  - Give the client a printed copy of the scheme.

### **Competence and training**

15. A business shall comply with any directions given by the regulator in respect of training and competence.

### **Compliance and enforcement**

16. A business shall comply with the monitoring and compliance arrangements of the Regulator.

### **Disciplinary arrangements**

17. A business shall comply with the Regulator's disciplinary arrangements and shall comply with decisions of the Regulator subject to the right of appeal to the Claim Management Services Tribunal, and of the Tribunal.

### **Provision of information**

18. A business shall provide to the Regulator its business name (and any other trading names), business address, telephone number and any other contact details.
19. A partnership shall provide to the Regulator the names, addresses and dates of birth of all partners and details of other partnerships or directorships they have held in the previous five years.
20. A limited company shall provide to the Regulator the names, addresses and dates of birth of all directors and significant shareholders and the chief executive of the business and details of directorships all those persons have held in the previous five years.
21. A sole trader shall provide to the Regulator his address, telephone number, date of birth and details of directorships he has held in the previous five years.

22. A business shall inform the regulator of any other material changes in respect of its organisation and the provision of regulated claims management services. The information should be supplied one month before the material change occurs. The business should also inform clients if the change has an impact on any contractual arrangements.
23. A business shall provide to the regulator any other records and information that the regulator may request.

## **Part 2 – Client specific rules**

### **Introduction**

These rules set out how a business regulated under the Act must conduct its relationship with clients. The rules must be complied with at all times and a business must be able to demonstrate that it complies with the rules.

### **General principles**

1. A business shall –
  - a) Act fairly and reasonably in dealings with all clients.
  - b) Ensure that any service offered is one that meets the need of the client and satisfies the requirements of these rules.
  - c) Ensure that all information given to the client is clear, transparent, fair and not misleading.
  - d) Avoids conflicts of interest.
  - e) Where advice is given, advise the client unambiguously of ombudsman schemes or other official means of obtaining redress.
  - f) Where advice is given, advise the client to pursue cases only if it is in the interests of the client to do so.

## **Advertising and Sales**

2. A business must not engage in 'high pressure selling'.
3. Cold calling potential clients in person is prohibited. Any other cold calling (by telephone, by e-mail, by fax, by text) shall be in accordance with the appropriate industry code.
4. Business must not be solicited in any way in or in the immediate vicinity of public or private medical facilities (hospitals, surgeries etc) and other public buildings other than through advertising which has been specifically approved by the facility concerned.
5. All advertising must conform to the British Code of Advertising, Sales Promotion and Direct Marketing or the relevant code covering broadcast advertising and any other code of advertising practice or statutory requirement.
6. Advertising by authorised businesses must –
  - a) Not make misleading or exaggerated statements.
  - b) Not use expressions such as 'no win, no fee' without qualification unless there is no possibility of the client having to meet any costs he may have incurred in connection with the claim, including the purchase of an insurance policy or interest on a loan taken out to fund the purchase of an insurance policy.
  - a) Clearly identify the name of the advertiser.
  - c) Not offer an immediate cash payment or a similar benefit as an inducement for making a claim.
  - d) Not seek to imply that compensation may be used in a way that is inconsistent with the cause of the claim.
  - e) Not seek to imply a relationship with any official or other organisation where no such relationship exists.
  - f) In the case of all written advertising and promotional material state that the business is regulated under the Compensation Act 2006 and give the authorisation number.
7. If the sale or marketing of any service has occurred via the Internet or mail order it must comply with the Consumer Protection (Distance Selling) Regulations 2000.

8. A business must try to ensure that any publicity for its services issued by a third party and which is intended to solicit business for it complies with these Rules.

### **Taking on business**

*(This section applies only where the business is seeking to have a contractual relationship with the client)*

9. A business must provide the client with the following information in writing or electronically before he is asked to confirm that he wishes to go ahead –
  - a) Honest, comprehensive and objective written information to assist the client to reach a decision including the risks involved in making a claim, in particular the possibility of losing money and, in the case of legal action, appearing in court.
  - b) The services that will be provided, in a way that does not misrepresent, either by implication or omission, any term or condition.
  - c) The procedures that will be followed.
  - d) Contracts, including for insurance or loans, that the client will be asked to agree to.
  - e) Any charge the business makes. Where this is a percentage of compensation payable the percentage must be indicated together with a typical example of the actual cost in pounds, or more than one example if the company makes differential charges.
  - f) Any costs that the client may have to pay, including the purchase of a legal expenses insurance policy and loan repayments and whether the client will be liable to pay any shortfall in recoverable of costs or premiums from the losing defendant party.
  - g) How the business is remunerated.
  - h) Commission or fees paid to any other person in respect of the claim.
  - i) Documentation needed to pursue the claim.
  - j) Any relationship to a particular Solicitor or panel of Solicitors.
  - k) A copy of consumer information.

- l) Procedures to follow in the event of a complaint and a copy of the business complaints scheme.
  - m) How the client may cancel the contract and the consequences of cancellation including the reimbursement of any costs paid during the cancellation period and any costs or penalty that has to be paid after the 14 day cooling off period.
10. Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, the Housing Ombudsman Service or any other recognised dispute resolution procedure the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.
  11. A business must make explicit to the client his right to have as much time as he wants to seek further advice or to shop around, subject to any time limits within which a claim must be made.
  12. A business must ensure that the client is able to understand the contract that he is being asked to agree to.
  13. As far as is reasonably possible a business must establish the client's identity prior to the signing of any agreements or contract.
  14. A business must allow a 'cooling off' period of at least 14 days after signing any agreement during which period the client may cancel the agreement and be entitled to a refund of any payments made to the business or in connection with any insurance policy, loan or other agreement taken out in relation to the agreement.

### **Managing a claim**

*(This section applies only where businesses manage claims)*

15. In seeking information to help pursue a claim a business shall –
  - a) Advise the client that any claims documentation should be read carefully and retained.
  - b) Assist the client to fill in any necessary forms, or check details that have been provided, but not "coach" the client to answer questions inaccurately in a way to maximise possible compensation.
  - c) Make it clear that all the answers or statements given are the client's responsibility.

- d) Request the client to make true, fair and complete disclosure in support of a claim and obtain a statement of truth.
  - e) Disclose all material facts within the knowledge of the business that may have an effect upon the personal injury claim including full disclosure of any Legal Indemnity cover under an existing BTE policy or any other support for pursuing a claim.
  - f) Not seek to influence the way solicitors handle cases referred to them.
16. A business must permit the client to withdraw from a contract at any time, and if he wishes to pursue the claim in another way, any penalty shall be limited to what is reasonable in the circumstances.
  17. A business must keep the client informed of the progress of the claim, including any changes to costs, and must forward any relevant information received from the client without delay.
  18. A business must give prompt advice to the client about any requirements concerning the claim and advise the client without delay of any demands for additional information that may have been requested by any party via the business.
  19. A business must avoid conflicts of interest. If an unavoidable conflict arises the business must take steps to remove the conflict.

## **Insurance**

*(This section applies only where businesses manage claims)*

20. A business must take reasonable steps to ascertain whether the client has any Before the Event Insurance (BTE) or other insurance cover which may assist him to pursue any claim (and must adhere to applicable case law in doing so)
21. Where ATE insurance is arranged the business must –
  - a) Make clear that it is authorised by the FSA or exempt as an appointed representative of an authorised firm.
  - b) State whether it is providing advice or information from the whole insurance market, a limited market of providers or a single provider.
22. If the business provides the client with an insurance contract it must –
  - a) Discuss with the client, in accordance with insurance conduct of business rules, any insurance proposed and why it may help.

- b) Identify any insurer or insurers (including the underwriting organisation) being used to provide cover and provide the client with a policy summary, setting out key details of the policy.
- c) Explain the essential provisions of the cover provided and the cost.
- d) Disclose to the client any commission or other remuneration received as a result of affecting the insurance.

### **Loan finance**

23. If loan finance is arranged to pay for an insurance policy –
- a) The business must have a consumer credit licence from the OFT and must comply with any relevant rules of guidance issued by the OFT or other government department or agency.
  - b) The client must be advised in writing that he has the option to pay for the insurance directly rather than by taking out a loan.
  - c) The business must provide details of the interest payable on the loan.

### **Handling client money**

24. If the business handles client money it must –
- a) Maintain a separate account called the “client account” for any money received from or on behalf of clients, including pre-payments for services.
  - b) Not mix client monies with those of the business. Any money held on behalf of a client must be clearly identified within the business accounts and must not be accessible to any of the creditors of the business or used in any way to support, maintain or expand the business.
  - c) Ensure that all money received from clients or on behalf of clients is paid into the “client account” and will remain there until passed to the client or any other agreed recipient who is entitled to receive the money.
  - d) Refund immediately any and all pre-payments received from the client should the business fail to fulfil its obligations to the client.
  - e) Not require unreasonable procedures that the client must meet in order to receive a refund of any payment that the client has made.

- f) Provide clients with printed receipts for any payments received in connection with a claim and the nature and purpose of that payment.

### **Data Protection**

- 25. If required to do so the business must be registered under the Data Protection Act 1998 as amended and comply with obligations imposed by that legislation.

### **Complaints and Conciliation**

- 26. A business must handle complaints fairly and promptly in accordance with rules made by the regulator.
- 27. A business must advise the client that if he is not satisfied with the outcome of the complaint it can be referred to the [Regulator].
- 28. A business must implement promptly and fully any decision of the Regulator. This includes any order made in relation to redress.