

Preliminary consultation and call for evidence from members of the Regulatory Consultative Group-proposals to amend the Conduct of Authorised Persons Rules



A response by the Association of Personal Injury Lawyers

August 2011

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have over 4,500 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

David Bott- President

John Spencer- Additional officer

Any enquiries in respect of this response should be addressed, in the first instance, to:

Abi Jennings

Head of Legal Affairs

APIL

Unit 3, Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

Tel: 0115 9435403; Fax: 0115 958 0885

e-mail: abi.jennings@apil.org.uk

Introduction

APIL remains concerned that rules governing claims management companies, insurers and solicitors are unequal. These businesses all operate within the personal injury market and regulators should be insisting on parity. There should be liaison between the Financial Services Authority (FSA), Solicitors Regulation Authority (SRA) and Claims Management Regulator (CMR) to ensure that this happens.

There should also be the same level of protection offered to the consumer, whether they choose to be represented by a CMC or solicitor, in the event that they are misadvised. The maximum level of compensation currently possible of being awarded by the Legal Ombudsman (LeO) is £30,000. There is currently no statutory power for the CMR to award compensation. With CMCs offering more and more by way of legal services, the regulation of CMCs and the protection offered to consumers must be comparable with that provided by solicitors.

Vulnerable people continue to be subjected to unsolicited approaches to persuade them to make compensation claims. A person injured as a result of negligence should make a choice of representation based on expertise and the quality of service they will receive.

Greater policing of CMCs could also assist with tackling fraud and poor CMC behaviour. The fees payable by a CMC should be increased to allow for greater number of compliance officers.

As our remit only extends to personal injury cases our response only deals with this sector.

General rule 8

It is essential that the regulator can fully investigate any complaint against a CMC. However, it is only reasonable for businesses to be required to keep paper work for a specific period of time. We would suggest that where a complaint has been made directly to the CMC, its file of papers should be kept for 12 months. In addition basic details of the complaint should be kept in house on a complaints spreadsheet for three years. This practice will also allow CMCs and the regulator to see if any worrying themes are developing within that company.

If a complaint is made about a solicitor to the LeO, the lawyer is charged a complaints fee of £400, unless the complaint is resolved in favour of the

lawyer. This fee allows additional funding for LeO enabling investigation of the complaint.

General rule 16

We would support the need for clearer guidance to be given to CMCs on what information they need to provide to the regulator when there has been a change to their business or authorised status.

General rule 18(b)

Exempt introducers should be abolished businesses should not be allowed to make any referrals without being authorised. It is unfair to expect those, such as solicitors, accepting referrals from exempt introducers to police introducer's activity. Every business referring work should have to be authorised by the regulator, however few cases they refer in a year. In our view there should be the same level of transparency for exempt introducers as regulated ones.

If this is not possible then spot checks should be conducted by the CMR on exempt regulators to ensure that they are complying.

General rule 19

This rule lacks force. If a CMC has had its authorisation cancelled the regulator should still be able to enforce any restrictions or directions that it has imposed on that company. The rules must be amended to ensure that a suspended CMC is obliged to deal with the CMR and follow any specific directions that have been given.

Client specific rule 1(e)

We agree that CMCs registered to give advice must be placed under an obligation to inform consumers of any free complaints services such as the Ombudsman schemes.

Client specific rules 2 to 6

There has been a noted increase in members of the public being targeted by aggressive unsolicited approaches such as cold calling and texting. These pushy sales techniques inviting people to make claims have the potential to generate fraudulent claims and must be stopped. We welcome the joint initiative that the CMR has recently announced with the Advertising Standards Authority to determine where these companies are based and what can be done to stamp out this practice. APIL would like to see cold calling and texting banned in its entirety.

This would ensure that vulnerable people are not subjected to these worrying practices.

If a full ban is not possible then clear guidance should be given on when calls and texts can be sent to existing customers as direct marketing. We agree that client specific rule 2 could be made clearer to ensure that CMCs are aware that this rule relates to the entirety of their website.

We would also like to see the tighter regulation of advertising generally in the personal injury field to ensure that adverts clearly explain that compensation is not available for an accident, only when the injury is as a result of negligence.

Client specific rule 6 (d)

We prefer the suggested wording “regulated by the claims management regulator”. This will allow for there to be no confusion over CMCs advertising that they are endorsed or recommended by the Ministry of Justice. We would also welcome the CMR’s suggestion that such a warning should be compulsory on all marketing to raise awareness and reduce the scope for abuse.

Adopting a health warning akin to those required by the financial sector would also ensure transparency. This should be included on all advertising and marketing material, including the company website. It would confirm what type of regulated activity the company is permitted to carry out, for example “We act as an introducer passing on potential claims to a solicitor for a fee”. This will ensure that the use of referral fees is more transparent and will then allow the consumer the opportunity to make an informed choice before pursuing their claim.

Client specific rules 10 to 16

We agree that these rules should apply to all CMCs and not just those with a contractual relationship with a client. This will further ensure transparency and provide consumers with greater awareness. Consumers should be given full details of other organisations that could provide alternative mechanisms for pursuing claims. A link to a list on the Justice website could be provided within the rules and this way it can be regularly updated.

Client specific rule 11

Specifying a minimum time period between information being provided by the CMC and a contract being agreed is not going to prevent pressure being placed

on consumers. We would suggest that a better approach is for a consumer to have to confirm in writing that they require the CMC to act on their behalf. This could be done by e-mail or fax. This will allow the consumer time to digest the information being provided by the CMC.

Client specific rule 11 (K)

We agree that the term 'penalty' should be removed from the rule.

Client specific rule 15

To prevent pressure being placed on the consumer by the CMC over the telephone we suggest that all retainers are agreed in writing either by e-mail or fax (see CSR17). If this practice is written into the rules by the regulator then CSR15 can stand.

Client specific rule 16

It is essential that a CMC can provide evidence of work undertaken on behalf of a consumer. There should be listed within the contract or retainer letter an hourly rate at the outset of the contract confirming at what rate the work will be charged if the contract is cancelled. It will also provide further transparency so consumers can ensure that the charges being incurred are reasonable for the work undertaken.

Client specific rule 18

The rules governing what information a CMC should give to clients throughout the conduct of their cases should be clearer and should mirror the Solicitors Code of Conduct 2007 Rule 2.

The updates must be documented and kept on file. Basic information should also be given to consumers about the level of expertise of the handler dealing with a claim on their behalf.

It is essential that a CMC confirms to a client immediately if its authorised status changes. Not doing so will deceive the consumer into believing that a CMC is something it is not.

General case handling

We question whether CMCs should be permitted to act for consumers at all if they do not have the skills and expertise to lodge a complaint on their behalf. Supplying guidance to CMCs would be a start but we question whether there

should be minimum supervisory and training requirements for CMCs that are doing more than just referring work.

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