

<b>Title: Claims Management Rules Review - Phase One</b>  <b>Lead department or agency: Ministry Of Justice</b>  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> MoJ 59
	<b>Date:</b> 13.12.2010
	<b>Stage:</b> Consultation
	<b>Source intervention:</b> Domestic
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## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**  
 Inducements are currently being paid to claimants by claims management businesses, which may in theory incentivise claimants to pursue claims when they otherwise would not do so. Society may be better off if some of these claims were not pursued, for example if the costs associated with reaching a resolution in a case significantly outweighed the value of the claim itself. Further, in his report Lord Young identifies the payment of inducements as contributing to a perceived 'compensation culture'. To the extent that inducements contribute to the perception of a compensation culture, and that this is damaging for society, this is a further problem that the proposal seeks to address. Government intervention would be required as the Ministry of Justice is the regulator of the claims management industry.

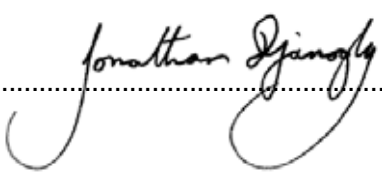
**What are the policy objectives and the intended effects?**  
 The intended effects of the proposal are that claims management businesses would no longer be able to offer claimants a financial reward or similar benefit as an inducement for making a claim. This would in part help to reduce the perception of a compensation culture within England & Wales, as outlined in a recent report by Lord Young. If inducements incentivise claimants to pursue claims when they would otherwise not have done so, the proposal may also prevent some claims from being pursued where the cost of reaching a resolution significantly outweighs the value of the claim itself. This would lead to a more efficient use of resources from society's perspective.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**  
**Option 0** – Do Nothing. The current rules would remain in place.  
**Option 1** – Amend the relevant rules to state that an inducement could not be offered at any stage.  
**Option 2** – Write to businesses asking that they refrain from offering inducements at any stage on a voluntary basis.  
  
 Option 1 is the preferred option at this stage, as the extent to which businesses would comply on a voluntary basis is unclear.

<b>When will the policy be reviewed to establish the actual cost and benefits and the achievements of the policy objectives?</b>	It will not be reviewed
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off For** consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:.......... Date: 23/12/2010

# Summary: Analysis and Evidence

# Policy Option 1

Description: Amend Client Specific Rule 6 (b) of the Conduct of Authorised Persons Rules 2007

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate:	
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>	
Low						
High						
Best Estimate						
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
<b>Other key non-monetised costs by 'main affected groups'</b>						
<p>MoJ may face some additional monitoring and enforcement costs, although these costs are not expected to be significant. Businesses that currently pay inducements may attract fewer clients as a result of the proposal, and fewer cases may be pursued overall. This would represent a cost to claimants no longer pursuing cases, and a cost to any sector that derives income from civil litigation. The proposal is also likely to impose some efficiency costs as firms will be restricted from engaging in one form of competition (price competition in the form of the payment of inducements). There may be further efficiency costs if some socially beneficial cases are no longer pursued.</p>						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>	
Low						
High						
Best Estimate						
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
<p>Businesses not currently offering inducements may benefit if claimants are more likely to choose to pursue a claim with them in the absence of any offer of inducements. Defendants in those cases that are no longer pursued would benefit from lower cost and damagers liabilities. Society may benefit from efficiency gains if cases are no longer pursued in which the resource cost of reaching a resolution significantly outweighs the value of the case. If stopping inducements reduces the perception of a compensation culture, this may be associated with other benefits.</p>						
<b>Key assumptions/sensitivities/risks</b>						
<p>Assumed that the offer of inducements may incentivise claimants to pursue claims when they would not otherwise have done so. Assumed that claims management businesses offer inducements as it is profitable for them to do so, and that the most efficient businesses are able to offer the largest inducements. Assumed that the payment of inducements leads to the perception of a compensation culture, and that the perception of a compensation culture may not be beneficial.</p>						
<b>Impact on admin burden (£m): 0</b>			<b>Impact on policy costs (£m):</b>			<b>In scope</b>
Costs: 0	Benefit: 0	Net: 0	Costs: 0	Benefits: 0	Net: 0	No

# Summary: Analysis and Evidence

# Policy Option 2

Description: Write to businesses asking that they refrain from offering inducements voluntarily

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low:	High:	Best Estimate:	
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price)</b>	<b>Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>		
Low						
High						
Best Estimate						
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
<p><b>Other key non-monetised costs by 'main affected groups'</b></p> <p>Costs as set out in Option 1, although likely to be lower in magnitude as some firms may choose to continue paying inducements.</p> <p>In addition, under this option there may be some additional one off and ongoing correspondence costs for MoJ, although these costs are not considered likely to be significant.</p>						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price)</b>	<b>Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>		
Low						
High						
Best Estimate						
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
<p><b>Other key non-monetised benefits by 'main affected groups'</b></p> <p>Benefits as set out in Option 1, although likely to be lower in magnitude as some firms may choose to continue paying inducements.</p>						
<b>Key assumptions/sensitivities/risks</b>						
<p>Assumptions as set out in Option 1. The key risk for this option is that the proportion of firms that would voluntarily stop paying inducements is unknown. It is assumed that in the absence of any legal obligation to stop paying inducements, it is likely that some and potentially all firms that currently pay inducements would continue to do so.</p>						
<b>Impact on admin burden (£m): 0</b>			<b>Impact on policy costs (£m):0</b>			<b>In scope</b>
Costs: 0	Benefit: 0	Net: 0	Costs: 0	Benefits: 0	Net: 0	No

What is the geographic coverage of the policy/option?			England and Wales		
From what date will the policy be implemented?			April 2011		
Which organisation(s) will enforce the policy?			MoJ		
What is the total annual cost (£m) of enforcement for these organisations?			Not quantified		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: 0	Non-traded:0	
Does the proposal have an impact on competition?			Yes		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

	Impact	Page ref within IA
<b>Statutory equality duties</b>	No	11
<b>Economic impacts</b>		
Competition	Yes	11
Small firms	Yes	12
<b>Environmental impacts</b>		
Carbon emissions	No	12
Wider environmental issues	No	12
<b>Social impacts</b>		12
Health and well-being	No	12
Human rights	No	12
Justice	No	12
Rural proofing	No	12
<b>Sustainability</b>	Yes	12

## Evidence Base (for summary sheets) – Notes

### References

No.	Legislation or publication
1	PIR Plan (Annex 1)
2	Equality Impact Assessment Screening (Annex 2)
3	<b>Common Sense, Common Safety</b> – <i>A report by Lord Young of Graffham to the Prime Minister following a Whitehall-wide review of the operation of health and safety laws and the growth of the compensation culture – Published 15<sup>th</sup> October 2010</i>
4	Consultation Paper No. CP19/10

# Evidence Base (for summary sheets)

## 1 Introduction

### Background

- 1.1 The Ministry of Justice (MoJ) currently regulates the claims management industry within England and Wales. While the MoJ's role as a regulator of the claims management industry has become firmly established the regime is still relatively young and continues to evolve. MoJ's direct regulatory responsibilities remain a unique function for a government department to hold. However, the significant progress made since the start of regulation has demonstrated that it is an arrangement that works and delivers benefits at much lower cost compared with traditional regulation models. Indeed the Better Regulation Executive concluded last October that claims management regulation was a good example of efficient and low costs regulation.
- 1.2 The MoJ is currently undergoing a review of the current rule framework. One aspect of the current regulatory framework relates to the ability of claims management businesses to offer financial rewards or similar benefits as an inducement to customers to make a claim. The relevant client specific rule (6) within the Conduct of Authorised Persons Rules 2007 states:
  6. In soliciting business through advertising, marketing and other means a business must –
    - a) Clearly identify the name of the advertiser.
    - b) Not offer an immediate cash payment or similar benefit as an inducement for making a claim.**
    - c) Not promote the idea that it is appropriate that compensation may be used in a way that is not consistent with the cause of the claim.
    - d) Not imply that the business is approved by the Government or is connected with any government agency or any regulator. (If a business wishes to mention in advertising and marketing material that it is authorised it may use only the following words which must be used in their entirety: "Regulated by the Ministry of Justice in respect of regulated claims management activities".)
- 1.3 Regulation 12 (b) of The Compensation (Claims Management Regulation) Regulations 2006 states that as a condition of authorisation regulated businesses must comply with the rules prescribed. If a business were to breach Client Specific Rule 6 (b) by offering an immediate inducement they would therefore also breach a condition of authorisation. Regulation 46 gives provision for the MoJ to vary, suspend or cancel a business's authorisation to trade if satisfied, after investigation of the alleged or suspected failure that the authorised person has failed to comply with the condition. In 2010 the MoJ shut down its 200<sup>th</sup> business as a result of malpractice and non-compliance with the conditions of authorisation.
- 1.4 The MoJ estimates that less than 5% of the entire claims management sector currently offers inducements. This is based on anecdotal evidence. That would be approximately less than 100 out of around 3,000 regulated firms. This total is not expected to change.
- 1.5 Although it is difficult to quantify accurately, research suggests that inducements are currently offered by regulated businesses mainly within the personal injury sector and are typically between £20 and £500 in cash or retail vouchers. Such inducements are non-returnable and paid *upon acceptance of a claim by a solicitor*. This is not a breach of Client Specific Rule 6 (b) as the inducement is not paid immediately.
- 1.6 Many businesses take out adverts in their local & national newspapers that offer non-returnable rewards for making a claim as well as employing marketing techniques tailored for their local area which could include the distribution of leaflets and other localised campaigns.

### Common Sense, Common Safety

- 1.7 The Prime Minister recently commissioned Lord Young of Graffham to review the operation of health and safety laws and the growth of a compensation culture. His terms of reference were: 'To investigate and report back to the Prime Minister on the rise of the compensation culture over the last decade coupled with the current low standing that health and safety legislation now enjoys and to suggest solutions. Following the agreement of the report, to work with appropriate departments across government to bring the proposals into effect'.

- 1.8 Lord Young considers that personal injury advertising by Claims Management Companies (CMCs) and lawyers is at least partially responsible for fuelling the perception of a compensation culture. The presence of a compensation culture within England and Wales has previously been investigated by the Department for Constitutional Affairs Select Committee<sup>1</sup> and the Better Regulation Task Force<sup>2</sup> and was also investigated as part of Lord Young's review. The outcome of these investigations concluded that there was no real evidence of an actual compensation culture in existence. However, the issue identified is the public perception of a compensation culture which is, in part, sustained by the type of marketing and advertising employed by CMCs. Lord Young recommends that greater controls be introduced to restrict the volume and type of advertising by CMCs, and states:

*"...in my view the regulations do not go far enough: they allow companies and personal injury lawyers to advertise in such a way that encourages individuals to believe that they can easily claim compensation for the most minor of incidents and even be financially rewarded once a claim is accepted... I particularly feel that the system needs to go further and do more to control both the volume of advertising that such companies produce and also the content of these adverts."*

- 1.9 Lord Young focuses particularly on the promotion of cash or other inducements to consumers to make a claim. In his report, he states: *"...many adverts entice potential claimants with promises of an instant cheque as a non-returnable bonus once their claim is accepted – a high pressure inducement to bring a claim if ever there was one"*.

### Problem under consideration

- 1.10 The current restrictions in relation to inducements do not prevent inducements from being paid by claims management businesses in all circumstances. The payment of inducements may in theory incentivise claimants to pursue claims when they otherwise would not do so. Society may be better off if some of these claims were not pursued, for example if the costs associated with reaching a resolution in a case significantly outweighed the value of the claim itself.
- 1.11 Further, in his report Lord Young identifies the payment of inducements as contributing to a perceived 'compensation culture'. To the extent that inducements do contribute to the perception of a compensation culture, and that this is damaging for society, this is further problem that the proposal seeks to address.

### Economic rationale

- 1.12 The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistributive reasons (e.g. to reallocate goods and services to the more needy groups in society).
- 1.13 In this case, intervention might be justified primarily on efficiency grounds. Some cases are currently pursued where the overall cost of reaching case resolution significantly outweighs the value being disputed in the case itself. This generates efficiency costs for society, given the resources (e.g. legal, court and judicial resources) used in such cases could more productively have been used elsewhere. If the proposal prevents some of these cases from being pursued, this would then generate efficiency gains for society. This argument relies on the assumption that the availability of inducements incentivises claimants to bring forward some of these types of cases when they would not otherwise have done so.
- 1.14 The proposals might also be justified in consumer protection terms. For example a financial inducement might undermine advertising standards and lead to consumers making less well-informed judgements about which claims management company to select. Whilst upfront inducements might provide claimants with initial benefits it is unclear whether this might be at the cost of reduced subsequent standards of service, which may even have adverse implications for settlement levels.

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<sup>1</sup> Effects of advertising in respect of compensation claims for personal injuries – Report on Quantitative and qualitative research conducted for the DCA - March 2006 – Written By Chris Edwards and Liz Holme

<sup>2</sup> Better Routes To Redress – May 2004 – Produced by the Better Regulation Task Force

- 1.15 The proposal would also generate efficiency costs. The payment of inducements is one element of competition within the claims management market, and some claims management businesses pay inducements as it is presumably profitable for them to do so. The most efficient firms are likely to be able to pay the highest inducements. The proposal is therefore likely to restrict competition in the claims management market, and may lead to claimants pursuing their case through less efficient claims management businesses.
- 1.16 From an advertising expenditure perspective, it might also be more efficient from the claims management company's perspective to offer a financial inducement in order to attract business rather than to use other forms of advertising and promotion. If financial inducements were viewed as a restriction on attracting new customers then the proposals may have efficiency costs.
- 1.17 Further, the proposal may lead to fewer cases being pursued. While society may benefit from some of these cases no longer being pursued (as outlined above), some of these cases may have been socially beneficial. In respect of the socially beneficial cases, the proposal would generate an efficiency loss for society.
- 1.18 The proposal would only be justified if the efficiency and equity benefits outlined above outweighed the efficiency costs identified.

### Affected stakeholder groups, organisations and sectors

- 1.19 The following individuals/sectors are likely to be affected by the proposals:
  - Claims Management Businesses in England & Wales
  - Potential claimants wishing to contract with a regulated claims management business
  - Potential defendants in those cases that may be pursued
  - Other sectors that derive income from civil litigation including solicitors, ATE insurers, and experts.
  - Courts/Tribunals
  - Ministry of Justice

## 2 Costs and Benefits

- 2.1 This Impact Assessment attempts to identify both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

### Option 0: Base case (do nothing)

- 2.2 If no action is taken then the current regime will continue in its current form and inducements to encourage consumers to make a claim will continue to be paid. This would also mean that the report of Lord Young and the recommendations made within it would be completely disregarded.
- 2.3 Because the do-nothing option is compared against itself its costs and benefits and necessarily zero, as is its Net Present Value (NPV).

### Option 1: Amend Client Specific Rule 6 (b) of Conduct of Authorised Persons Rules 2007

#### Description

- 2.4 Under this option, the relevant part of the Conduct of Authorised Persons Rules 2007 concerning inducements would be amended to prevent businesses from offering inducements at any stage.
- 2.5 The amended rule would read;
  - 6.** In soliciting business through advertising, marketing and other means a business must –
    - a) *(Unchanged)*
    - b) Not offer any cash payments or similar benefits as an inducement for making a claim.**
    - c) *(Unchanged)*



d) (Unchanged)

## Costs of Option 1

2.6 There would be some minor one-off costs for all affected parties associated with familiarisation with the new rules. These costs are not expected to be significant.

### *Ministry of justice*

2.7 The MoJ currently monitors and enforces the Compensation (Claims Management Services) Regulations 2006 and the relevant rules prescribed under it. As the proposal could be interpreted as moving to a tighter form of regulation, this could involve additional monitoring and enforcement costs for MoJ. However, the proposal is considered to simply involve moving to a different interpretation of an existing rule, rather than introducing a new rule. Therefore, there are not expected to be significant additional monitoring and enforcement costs as a result of the proposal.

### *Claims management businesses currently offering inducements*

2.8 Any business currently offering inducements will be made worse off as a result of the proposal as they will no longer be able to do so. Such businesses are likely to face a reduction in income as potential claimants may be more likely to choose rival claims management businesses in the absence of the offer of an inducement. Further, some claims may only have been pursued given an inducement was available. In theory the proposal may result in a reduction in the volume of claims pursued overall, which would represent a further cost to businesses offering inducements. In contrast, businesses not currently offering inducements would not be expected to face a reduction in claims in this way.

### *Other affected parties*

2.9 Any overall reduction in the volume of claims pursued as a result of the proposal would also represent a cost to any sector that derives income from civil litigation. This is likely to include claimant and defendant solicitors, After the Event (ATE) insurers, and experts.

### *Claimants*

2.10 If some claimants choose to pursue a case based on the offer of an inducement, the proposal may prevent such claims being pursued, as outlined above. This would represent a direct cost to those claimants who no longer pursue their case.

### *Society*

2.11 Removing the ability of claims management businesses to offer inducements is likely to restrict one aspect of competition within the claims management market - the ability to compete by paying an inducement. It is assumed that offering inducements is profitable for those firms choosing to do so, and that the most efficient firms are able to offer the largest inducements. The proposal may therefore be associated with an efficiency cost for society if claims are no longer pursued through the most efficient claims management businesses in future.

## Benefits of Option 1

### *Claims management businesses not currently offering inducements*

2.12 Currently, claims management businesses offering inducements may in part be competing with other businesses not offering inducements. If so, restricting the ability of businesses to offer inducements should benefit those firms not offering inducements. This would be the case if potential claimants were more likely to choose to pursue claims with firms not currently offering inducements in future.

### *Defendants*

2.13 As outlined in the costs section above, the proposal may lead to a reduction in the overall volume of claims pursued. If so, this will benefit defendants who will be liable for a lower aggregate level of damages and legal costs.

## **HMCS**

2.14 If fewer cases are pursued, this may involve lower demand for court resources. However, in theory court fees should adjust to any change in demand, meaning the proposal would be expected to have no net financial impact on HMCS.

## **Society**

2.15 Some cases are currently pursued where the overall cost of reaching case resolution significantly outweighs the value being disputed in the case itself. This generates efficiency costs for society, given the resources (e.g. legal, court and judicial resources) used in such cases could more productively have been used elsewhere. If the proposal prevents some of these cases from being pursued, this would then generate efficiency gains for society.

2.16 The proposal may also generate equity benefits. Lord Young suggests that the payment of inducements contributes to the perception of a 'compensation culture'. If this is the case, and the perception of a compensation culture creates economic welfare costs for society, the proposal may therefore deliver some economic welfare gains.

## **Net Impact of Option 1**

2.17 It has not been possible to quantify the impacts outlined above. Option 1 is the preferred option as the extent to which claims management companies would voluntarily comply with a request to stop paying inducements is unclear.

## **Option 2: ask claims management businesses to voluntarily refrain from offering inducements**

### **Description**

2.18 Under this option the MoJ would firstly need to write to all regulated businesses and organisations requesting that they refrain from offering financial or similar rewards as an inducement for making a claim at any stage throughout proceedings. The MoJ would need to continually maintain awareness of this preference to persuade regulated businesses to adopt it.

### **Costs of Option 2**

#### **Ministry of justice**

2.19 There would be some monitoring and enforcement costs for MoJ as set out in Option 1. While monitoring costs are likely to be unchanged, enforcement costs would likely be lower in magnitude as businesses would be under no legal obligation to comply.

2.20 In addition, this option would impose some costs on MoJ relating to providing requests to claims management businesses and maintaining awareness. These costs would have to be built into the current enforcement regime and are not likely to be significant.

#### **Claims management businesses currently offering inducements**

2.21 This proposal would impose costs on any business choosing to stop offering inducements as outlined in Option 1. These would likely be lower in magnitude in aggregate as some businesses may choose to continue to offer inducements.

#### **Other affected parties**

2.22 This proposal may impose costs on any businesses deriving income from civil litigation as outlined in Option 1. However, these would likely be lower in magnitude in aggregate as some businesses may choose to continue to offer inducements.

#### **Claimants**

2.23 As outlined above, claimants would be worse off if they no longer pursue cases. These costs would likely be lower in magnitude in aggregate as some businesses may choose to continue to offer inducements.

#### **Society**

2.24 This proposal may impose efficiency costs on society as outlined in Option 1. These costs would likely be lower in magnitude in aggregate as some businesses may choose to continue to offer inducements.

## Benefits of Option 2

### *Claims management businesses not currently offering inducements*

2.25 This proposal may benefit those claims management businesses that do not currently offer inducements, as outlined in Option 1. These benefits would likely be lower in magnitude in aggregate as some businesses may choose to continue to offer inducements.

### *Defendants*

2.26 This proposal may benefit defendants if fewer cases were pursued in aggregate, as outlined in Option 1. These benefits would likely be lower in magnitude in aggregate as some businesses may choose to continue to offer inducements.

### *HMCS*

2.27 As outlined in Option 1, the proposal may have an impact on HMCS. This impact would likely be lower in magnitude in aggregate as some businesses may choose to continue to offer inducements.

### *Society*

2.28 The overall benefit to society would be entirely dependent on whether or not businesses voluntarily adhere to the MoJ's request. If all businesses adhered the regulatory regime would improve accordingly although it would also be hard to monitor whether or not businesses were in fact adhering as they would be under no legal obligation to do so.

## Net Impact of Option 2

2.29 It has not been possible to quantify the impacts outlined above. The extent to which claims management companies would voluntarily comply with a request to stop paying inducements is unclear, and therefore this is not the preferred option.

## 3 Enforcement and Implementation

3.1 The MoJ intends to implement the proposals during April 2011. Monitoring and enforcement will be carried out as part of the existing regulatory regime.

## 4 Specific Impact Tests

### *Equality Impact Assessment*

4.1 An initial Equality Impact Assessment screening has been completed and is attached below in Annex 2.

### *Competition Assessment*

4.2 It is estimated that less than 5% of the Claims Management Industry currently offer inducements to potential clients wishing to make a claim. Out of around 3,000 businesses less than 100 are known to offer inducements. The proposed rule change may produce an adverse effect on the dimensions of competition by introducing a barrier to competing in terms of financial inducements. The extent of this is unknown. Solicitors firms are not currently subject to any restrictions on the offering of inducements however we would expect the Solicitors Regulation Authority, in the course of their own review of their own conduct rules, to look to ensure that solicitors are subject to similar marketing and advertising controls that could compliment the proposed change applying to claims management companies. As stated above, the number of businesses currently offering inducements is small when compared with the overall size of the sector. All remaining marketing options and other various forms of advertising would remain untouched and are subject to compliance with the Advertising Standards Authority's codes of conduct in any event. It would be a small number of businesses that would, as a direct result of any amendment to the current rule, need to adapt their marketing accordingly which would involve some cost to businesses.

### *Small Firms Impact Test*

- 4.3 Claims management firms range in size from large national companies to smaller local firms that employ a small number of people and operate within a more localised community. It is not envisaged that the proposals considered would have a disproportionate impact on small business.

### *Carbon Assessment*

- 4.4 We do not anticipate any significant carbon impacts as a consequence of these proposals.

### *Other Environment*

- 4.5 We do not anticipate any significant environmental impacts as a consequence of these proposals.

### *Health Impact Assessment*

- 4.6 We do not anticipate any significant health impacts as a consequence of these proposals.

### *Human Rights*

- 4.7 The reforms are considered to be compatible with Convention Rights.

### *Justice Impact Test*

- 4.8 We do not anticipate any significant impact on the justice system as a consequence of these proposals. There may be a general reduction in amount of claims brought overall.

### *Rural Proofing*

- 4.9 We do not anticipate any significant rural impacts as a consequence of these proposals.

### *Sustainable Development*

- 4.10 Overall, the balance of the monetised and non-monetised costs and benefits and the sustainability issues is considered to be strongly positive. We do not anticipate any significant environmental impacts as a consequence of these proposals.

## Annex 1: Post Implementation Review (PIR) Plan

**Basis of the review:**

To monitor levels of compliance throughout the industry after relevant amendments have been made.

**Review objective:**

To ensure compliance and take action against businesses that do not adhere to the conduct rules in line with the regulatory framework already in place.

**Review approach and rationale:**

Monitoring and enforcement is currently in place with regards to the Compensation Act & Compensation (Claims Management Services) Regulations 2006, the current enforcement structure will remain unchanged

**Baseline:**

The impacts will be assessed against the 2010/11 baseline position.

**Success criteria:**

Success will be based on the level of compliance seen in regards to the regulatory regime already in operation.

**Monitoring information arrangements:**

The monitoring and enforcement team currently monitor all regulated businesses to ensure compliance with the rules and regulations.

**Reasons for not planning a PIR:**

Current monitoring and enforcement arrangements provide the regulatory framework under which the claims management industry operates under statutory law.

## Annex 2: Initial Equality Impact Assessment Screening

# Ministry of JUSTICE

This EIA is used to identify likely impacts on:

- disability
- race
- sex
- gender reassignment
- age
- religion or belief
- sexual orientation
- pregnancy and maternity

1. Name of the proposed new or changed legislation, policy, strategy, project or service being assessed.

Amendment to Client Specific Rule 6 (b) of the Conduct of Authorised Persons Rules 2007 (Claims Management Regulation)

2. Individual Officer(s) & unit responsible for completing the Equality Impact Assessment.

Ashley Palmer

3. What is the main aim or purpose of the proposed new or changed legislation, policy, strategy, project or service and what are the intended outcomes?

Aims/objectives	Outcomes
To formulate and implement solutions and recommendations as outlined in Lord Young's report on compensation culture published on 15 <sup>th</sup> October 2010.	The offering of inducements by a claims management business would be prohibited at any stage meaning that this type of marketing practice is effectively outlawed.

4. What existing sources of information will you use to help you identify the likely equality on different groups of people?

In addition to a bulletin sent to all regulated businesses, the proposed amendment will be put out for consultation to the claims management industry including all currently regulated businesses and any other related stakeholders and relevant organisations.

5. Are there gaps in information that make it difficult or impossible to form an opinion on how your proposals might affect different groups of people? If so what are the gaps in the information and how and when do you plan to collect additional information?

As there is no requirement for a business to notify the regulator of their current marketing practices it is hard to quantify exactly how many businesses will be affected in reality. There are currently around 3000 businesses regulated by the MoJ and the Regulator estimates that less than approximately 5% of these businesses currently offer the types of inducements that would be banned under the amended rule.

6. Having analysed the initial and additional sources of information including feedback from consultation, is there any evidence that the proposed changes will have a **positive impact** on any of these different groups of people and/or promote equality of opportunity?

Please provide details of who benefits from the positive impacts and the evidence and analysis used to identify them.

7. Is there any feedback or evidence that additional work could be done to promote equality of opportunity?

If the answer is yes, please provide details of whether or not you plan to undertake this work. If not, please say why.

No - Not applicable in this case

8. Is there any evidence that proposed changes will have **an adverse equality impact** on any of these different groups of people?

Please provide details of who the proposals affect, what the adverse impacts are and the evidence and analysis used to identify them.

No

9. Is there any evidence that the proposed changes have **no equality impacts**?

Please provide details of the evidence and analysis used to reach the conclusion that the proposed changes have no impact on any of these different groups of people.

All varying sectors within the claims management industry will be subject to the same marketing restrictions creating a level playing field for all businesses and potential consumers.

10. Is a full Equality Impact Assessment Required?      Yes       No

If you answered 'No', please explain below why not?

The proposed change is not a legislative change. All sectors within the industry will have to adhere to the amended rule and will not be able to offer inducements at any stage to any potential consumer.

11. Even if a full EIA is not required, you are legally required to monitor and review the proposed changes after implementation to check they work as planned and to screen for unexpected equality impacts. Please provide details of how you will monitor evaluate or review your proposals and when the review will take place.

The monitoring process involved is continuous and in line with the current regulatory procedure and systems. If the regulator has knowledge that rule breaches are occurring sanctions can be put in place under the current legislative framework {The Compensation (Claims Management Services) Regulations 2006 and rules prescribed underneath it}.

12. Name of Senior Manager and date approved

This EIA relates to the amendment of Client Specific Rule 6 (b) of the Conduct of Authorised Persons Rules 2007.
Name (must be grade 5 or above): Dr. Elizabeth M. Gibby
Department: Ministry Of Justice
Date: 17/12/2010