



Ministry of
JUSTICE

Claims Management Regulation

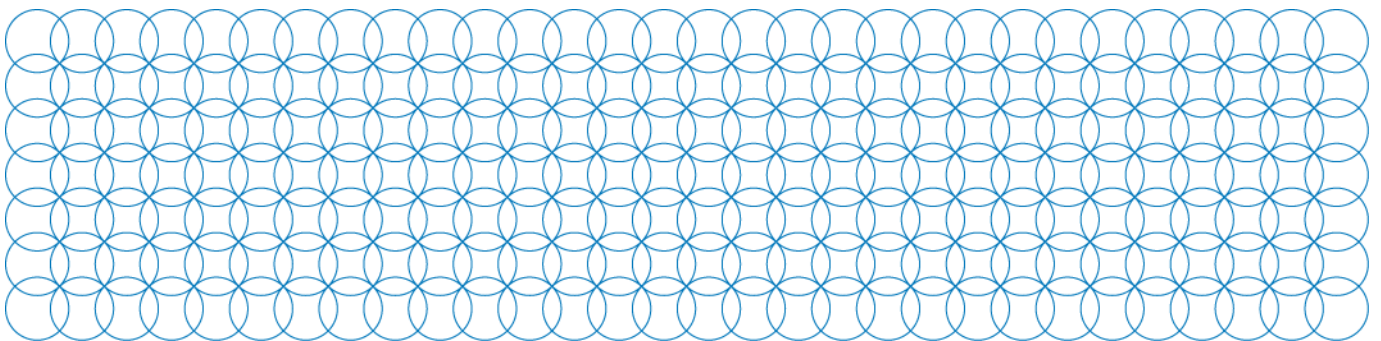
Proposal to amend the Conduct of Authorised Persons Rules 2007 to prohibit the offering of cash payments or similar as an inducement to make a claim

December 2010

Consultation Paper CP19/10

This consultation begins on 23/12/2010

This consultation ends on 10/02/2011





Ministry of
JUSTICE

Claims Management Regulation

Proposal to amend the Conduct of Authorised Persons Rules 2007 to prohibit the offering of cash payments or similar as an inducement to make a claim

December 2010

A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at www.justice.gov.uk

About this consultation

- To:** All Claims Management businesses throughout England and Wales
- The Claims Management Regulation Regulatory Consultative Group
- Duration:** From 23/12/2010 to 10/02/2011
- Enquiries (including requests for the paper in an alternative format) to:** Ashley Palmer
- Claims Management Regulation
Ministry of Justice
102 Petty France
London SW1H 9AJ
- Tel: 020 3334 6831
Fax: 020 3334 4296
Email: claimsmanagementregulation@justice.gsi.gov.uk
- How to respond:** Please send your response by 10/02/2011 to:
- Claims Management Regulation
Ministry of Justice
102 Petty France
London SW1H 9AJ
- Fax: 020 3334 4296
Email: claimsmanagementregulation@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published in March 2011 at: www.justice.gov.uk

Contents

Executive summary	2
Introduction	4
The proposals	6
Questionnaire	9
About you	10
Contact details/How to respond	11
The consultation criteria	13
Consultation Co-ordinator contact details	14
Annex A – List of consultees	15

Executive summary

1. In June 2010, the Prime Minister commissioned Lord Young of Graffham to conduct a Whitehall-wide review on the operation of health and safety laws and the growth of the perceived compensation culture in England & Wales. 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’*.
2. In his report published on 15th October 2010 entitled 'Common Sense - Common Safety'¹ Lord Young raised a number of concerns and made recommendations for improvement of the current regulatory system. Lord Young also wrote to the head of Claims Management Regulation to elaborate on his specific concerns relating to the role played by claims management businesses. Lord Young identified that the promotion of inducements to encourage consumers to make a claim were particularly problematic and should be stopped.
3. Lord Young stated in his report;

“Today accident victims are given the impression that they may be entitled to handsome rewards just for making a claim regardless of any personal responsibility – adding to a real sense that we live in an increasingly litigious society.” (Common Sense – Common Safety, Foreword by Lord Young - Page 7, paragraph 4)

“Britain’s ‘compensation culture’ is fuelled by media stories about individuals receiving large compensation payouts for personal injury claims and by constant adverts in the media offering people non-refundable inducements and the promise of a handsome settlement if they claim. It places an unnecessary strain on businesses of all sizes, who fear litigation and are subjected to increasingly expensive insurance premiums.” (Compensation Culture - Page 19, paragraph 2)

“Furthermore, 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.”

“Such companies then proceed to auction any claim that appears well founded to the solicitor who will pay the most. Quite apart from encouraging litigation in circumstances when it might not otherwise occur,

¹ www.number10.gov.uk/news/latest-news/2010/10/lord-young-report-55605

claims go to the solicitor who pays the most, rather than the one most suitable for the client – sometimes even if their practice is far away from their client.” (Referral Fees and Claims Management Companies - Page 20, paragraphs 4 & 5)

“Inducements” to make a claim and the regulatory rules

4. Existing controls under Client Specific Rule 6(b) of the Conduct of Authorised Persons Rules 2007² state that a regulated claims management business is prohibited from offering an **immediate** cash payment or similar benefit as inducement for making a claim.
5. Examples of advertising by claims management businesses that promote inducements and which are currently permitted under the existing Rule 6(b) include:

“We'll pay you £200 immediately after our solicitors approve your claim”

“As soon as we accept your claim, we promise to give you a £150 cash advance”

“If the solicitor believes they can win the case for you and accepts it, we will award you £300 as an up-front payment”

6. In addition to the examples of cash inducements set out above, some companies also run prize draw competitions and state in their adverts that potential customers will be entered into a competition to win a high value prize such as computer or other gadgets if their claim is accepted. However, not all inducements offered are of high value. Some businesses offer small gifts such as a £25 shopping voucher or similar.
7. In order to address the particular concern in Lord Young's report that offering inducements to potential claimants is a high-pressure marketing technique, we have decided to consider and implement appropriate amendments to Client Specific Rule 6(b) of the Conduct of Authorised Persons Rules 2007.
8. Subsequent changes may arise from a further review of the Conduct of Authorised Persons Rules 2007, in order to take into account Lord Young's wider calls for restrictions on the advertising and conduct of claims management businesses.

² <https://www.claimsregulation.gov.uk/conduct.aspx>

Introduction

9. This consultation is primarily aimed at persons authorised to provide regulated claims management services in England and Wales under the Compensation (Claims Management Services) Regulations 2006³ and those businesses and individuals contemplating making applications for authorisation. The Register of Authorised Persons is available at www.claimsregulation.gov.uk.
10. An Impact Assessment indicates that the majority of claims management businesses are not likely to be particularly affected as around 5% of regulated businesses currently offer financial rewards or other non-returnable bonuses as an inducement to make a claim. The proposals are unlikely to lead to any significant costs or savings for businesses or on the public sector.
11. The overall benefits would be a reduction in the perceived compensation culture within England and Wales in addition to strengthening the regulatory regime ensuring that it achieves, more directly, its intended overall purpose. Additionally, as businesses may need to adapt their marketing accordingly this would go some way to improve the overall quality and content of advertising and marketing in the industry. Comments on the Impact Assessment attached are very welcome.
12. An informal exercise has been carried out to inform all stakeholders of our proposals. A draft paper outlining the position was sent to the Claims Management Regulatory Consultative Group (RCG - see annex A attached for list of members) in November 2010. In addition, a preliminary guidance letter and draft consultation paper was sent to all regulated claims management businesses and the RCG during the third week of December 2010.
13. This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code, except that we are conducting the consultation for a period of six weeks. This is in light of the informal exercise already conducted and, more importantly, to enable implementation of the proposals during April 2011.
14. Copies of the consultation paper are being sent to:

All authorised claims management businesses and organisations

³ www.legislation.gov.uk/uksi/2006/3322/contents/made

The Claims Management Regulation Regulatory Consultative Group – see **Annex A** for list of members.

15. This consultation list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

16. We intend to:

- (i) Address Lord Young's concerns that the current regulatory regime does not go far enough and still provides for the encouragement of suspect claims. We propose to prohibit the offering of cash payments or similar benefits as an inducement for making a claim by amending Client Specific Rule 6(b) of the Conduct of Authorised Persons Rules 2007. This is a direct response to Lord Young's wider calls for change to the restrictions on the advertising and conduct of claims management businesses.
- (ii) Make technical updates to General Rules 7, 12 and Client Specific Rule 2 as a result of changes in the regulatory structure which have had an impact on the current regime.

These proposals are to be implemented in April 2011.

i) Amendment of CSR 6(b) to prohibit the offering of cash payments or similar as an inducement to make a claim

Current Rule 6(b)

17. Client Specific Rule 6(b) of the Conduct of Authorised Persons Rules 2007 as currently drafted states:

- "6. In soliciting business through advertising, marketing and other means a business must –
- b) Not offer an immediate cash payment or a similar benefit as an inducement for making a claim."

New Rule 6(b)

18. We propose to amend the wording in order to prevent claims management businesses from offering any kind of financial or similar benefit as an inducement for making a claim at any stage throughout their dealings with a client. The new rule would state:

- "6. In soliciting business through advertising, marketing and other means a business must –
- b) Not offer any cash payments or similar benefits as an inducement for making a claim."

ii) Technical updates to General Rules 7, 12 and Client Specific Rule 2 as a result of regulatory changes

General Rule 7

19. General Rule 7 currently states that a “business shall maintain professional indemnity insurance in accordance with any rules made by the Regulator. (There are currently no additional rules but it is expected that rules will be consulted on and made by summer 2007.)”.
20. The MoJ proposes to amend the wording to reflect the legislation set out in the Compensation (Claims Management Services) (Amendment) Regulations 2008 so that it states:

“A business that provides representation for personal injury claims is required to take out and maintain professional indemnity insurance (see Regulations 21A and 21B of the Compensation (Claims Management Services) (Amendment) Regulations 2008).”

General Rule 12

21. General Rule 12 currently states that “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 Claims Management Services Tribunal, and of the Tribunal.”
22. The MoJ proposes to amend the wording to reflect the new name of the Tribunal. The amended rule would state -

“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 **First-tier Tribunal (Claims Management Services)**, and of the Tribunal.”

Client Specific Rule 2

23. Client Specific Rule 2 states that –

“All advertising, marketing and other soliciting of business must conform to the relevant code –

The British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code)

The BCAP Television Advertising Standards Code

The BCAP Radio

Advertising Standards Code

The BCAP Code for Text Services

These codes are accessible at www.cap.org.uk/cap/codes/

For the purposes of this rule a business's website shall be deemed to constitute advertising, and must comply with the CAP Code."

24. Since the inception of this rule, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) have revised their Codes. The rule will therefore be updated so that it states:

"All advertising, marketing and other soliciting of business must conform to the relevant Code –

The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code); or

The UK Code of Broadcast Advertising (the BCAP Code)

The codes are accessible at www.cap.org.uk/The-codes.aspx

For the purposes of this rule a business's website shall be deemed to constitute advertising, and must comply with the CAP Code."

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

- 1) **Do you have any comments on the proposal to prohibit the offering of financial or similar benefits as an inducement for making a claim by amending Client Specific Rule 6(b) of the Conduct of Authorised Persons Rules 2007?**
- 2) **Do you have any comments on the proposal to make technical updates to General Rules 7, 12 and Client Specific Rule 2 as a result of changes in the regulatory structure which have an impact on the current rules?**

The above questions are an indication of the main issues being raised in this paper. **However, we welcome any general comments you may have.**

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 10/02/2011 to:

Ashley Palmer
Ministry of Justice
Claims Management Regulation
Post Point 4.36, 4th Floor
102 Petty France
London SW1H 9AJ

Tel: 0203 334 6831

Fax: 0203 334 4296

Email: claimsmanagementregulation@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at www.justice.gov.uk.

Alternative format versions of this publication can be requested from claimsmanagementregulation@justice.gsi.gov.uk.

Publication of response

A paper summarising the responses to this consultation will be published in March 2011. The response paper will be available on-line at www.justice.gov.uk.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as

confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact **Lisa Levy**, Ministry of Justice Consultation Co-ordinator, via email at consultation@justice.gsi.gov.uk

Alternatively, you may wish to write to the address below:

**Consultation Co-ordinator
Ministry of Justice
102 Petty France
London SW1H 9AJ**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper on page 11.

Annex A – List of consultees

The following organisations and individuals have been consulted:

All authorised claims management companies

Claims Management Regulatory Consultative Group – members as follows:

Advertising Standards Authority (ASA)

Advisory, Conciliation and Arbitration Service (ACAS)

Association of British Insurers (ABI)

Association of Independent Financial Advisors (AIFA)

Association of Personal Injury Lawyers (APIL)

British Bankers Association (BBA)

British Insurers Brokers Association (BIBA)

Building Societies Association (BSA)

Citizens Advice Bureau (CAB)

Claims Standards Council (CSC)

Council of Mortgage Lenders (CML)

Financial and Leasing Association (FLA)

Financial Ombudsman Service (FOS)

Financial Services Authority (FSA)

Forum of Insurance Lawyers (FOIL)

Law Society

Legal Ombudsman

Legal Services Board (LSB)

Motoring Accident Solicitors (MASS)

National Debtline

Office of Fair Trading (OFT)

Solicitors Regulation Authority (SRA)

UK Cards Association

Unison/TUC

Which?

This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

© Crown copyright 2010, Produced by Ministry of Justice

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk

This publication is also available on our website at www.justice.gov.uk

Alternative format versions of this report are available on request from claimsmanagementregulation@justice.gsi.gov.uk.