Financial Ombudsman Service

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07 September 2011

Dear Mr Palmer,

Thank you for giving us the opportunity to comment on the CMR's proposals to amend the Conduct of Authorised Persons Rules.

As you are aware, the Financial Ombudsman Service is free for consumers and is an impartial service established under statute to settle individual complaints between consumers and businesses providing financial services; its decisions are binding on financial businesses up to £100,000. Most cases are brought to us by consumers acting on their own – indeed our service is designed to be accessible and informal in order to allow unrepresented consumers to have their complaint heard fairly and impartially. In recent years the number of cases which consumers have brought to us via a CMC has increased, particularly in the light of the mass claims for Payment Protection Insurance, and last year 45% of all our cases were via CMCs.

We do not feel that it is for us to comment on the detailed changes to the rules which are being proposed. Other parties will be better placed to do this. Instead, we thought it might be helpful to share our general observations, based on our experience of handling well over 100,000 CMC related cases since regulation began.

In our experience the performance and practice of CMCs varies widely – in some instances that performance/practice can give rise to significant detriment to customers and/or financial firms and /or the Ombudsman Service itself. The CMR has rightly focused on areas where some unscrupulous firms have given rise to clear customer detriment – for example by failing to be clear about charges, requiring up front fees and in a few cases failing to settle redress with customers.

We certainly see examples of CMCs deserting their clients and failing to adequately administer claims. And we see circumstances where claims management and debt management businesses act together in a way that is often detrimental to the customer concerned. The scale of these problems has in recent years been fairly limited, in part no doubt due to preventative action by CMR. But the market for CMCs has also been relatively benign (since the end of bank charges). It is important to consider how well the regime for failing CMCs would cope if the market moved again to threaten a larger number of CMC business models.

That benign present environment has highlighted other issues about CMC interaction with customers. CMCs often choose not make important disclosures (such as those about fees and cancellation rights) upfront on their websites, but hide the details away in the small print which is often provided at a later stage of the sales process. It is for consideration whether the present rules on disclosure are working sufficiently well to ensure that the customer is aware of the rights they are giving away to the CMC (ie rights to conduct the complaint) and the CMC charges involved at the key points of the sales process. As we regularly observe in the case of sales by financial firms, written information given after the point of sale has significantly less weight in the customer's mind than information highlighted during the critical points of the sales process.

In our own dealings with CMCs we also see a wide variety of practice and professional standards. The Ombudsman does not have the same powers as a court to deal with parties who do not cooperate – in relation to customers and their representatives the only meaningful sanction we have is to discontinue our consideration of the case – a difficult decision when the customer concerned may well have a valid complaint against the financial institution. But we do try to provide guidance for CMCs about the way we expect them to engage with us in handling complaints and the evidence we expect them to provide on behalf of their clients.

We work closely with the CMR and have a memorandum of understanding with it to ensure that we can share information, where appropriate, to assist each other in our respective statutory functions. In doing this we also work with the sector's regulator, the Financial Services Authority (FSA).

As presently constituted and resourced, the CMR's focus on licensing is of only modest value to customers and the others impacted by CMCs. In essence, those who pay the licensing fee can claim the apparent endorsement implied by authorisation by the Ministry of Justice – with seemingly little by way of real constraint on their actions. It is clear that the action the regulator can take for breaches is limited, as is its ability to proactively discover inappropriate behaviour. As those consumers who use a CMC are, by their nature, slow to complain without assistance, they may not be proactive in reporting inappropriate behaviour to the regulator. That said, the present regime for handling complaints about CMCs seems inadequate and under-resourced given the extent of customer dissatisfaction and detriment evident in the market.

Rather than concentrate on revising the detail of the conduct rules, we believe that it is the means of enforcement of the regulations which needs to be reviewed. What is largely absent from the present regime is any conduct regulation beyond the initial sale to the customer – this has allowed the poor practice of some CMCs to go largely un-checked. The needs in financial services here are different from those of personal injury (where court processes provide the background to most disputes). A greater focus by the CMR on financial services given the significant impact of CMCs on customers and financial businesses would be warranted to ensure that CMCs adopt satisfactory professional standards in their dealings with customers, firms and the ombudsman service.

In order to do this, the CMR needs greater resources in order to take a more interventionist approach and more closely supervise the behaviour of CMCs. It also needs a wider variety of tools to address rule breaches. At the moment the choice is between taking only informal action or to suspend or cancel the firm. What appears to be lacking is a range of moderate penalties, such as a system of fines, which could both provide a penalty for firms in breach and help to fund the additional resources

which are required for this closer supervision. According to the figures in the CMR's Annual Report 2010-11– the regulatory costs are currently less than 0.4% of the annual reported turnover of the industry[1], and with CMCs operating in the financial services sector likely to take fees of up to circa £1.8bn for PPI claims, there would appear to be scope to increase the resources available to CMR. Enforcing existing regulations, rather than writing new ones, would also appear to be consistent with the government's regulatory reform agenda.

Whether the CMR should remain part of the MoJ is in some ways not the critical question. But the present arrangement seems under-resourced and arguably in need of the greater flexibility of response that an independent regulatory body might provide.

Yours sincerely,

Tony Boorman,
Principal Ombudsman & Decisions Director

[1] Total reported turnover of authorised claims management businesses £581m (p15), Total cost of the CMR in 2010-11 - £2.32m (p46)