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London  
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Mr Ashley Palmer  
Claims Management Regulation  
Ministry of Justice  
102 Petty France  
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3 October, 2012

*Dear Mr Palmer,*

**CMR Proposals for amendments to the Conduct of Authorised Persons Rules:  
Response from the Financial Ombudsman Service**

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

**About the ombudsman service**

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 £150,000. 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. Last year 46.5% of all our cases were via commercial CMCs, although indications are that more consumers are .

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 over 120,000 CMC related cases in 2011-12 alone.

**Our experience of dealing with CMCs**

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. Serious consideration should be given to banning cold calling and up-front fees.

### **Full disclosure**

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.

Although the proposals to require CMCs to agree written contracts with their clients before any fees to be taken may help some consumers, it fails to protect the many consumers with 'no win, no fee' agreements who pay no charge up front but may be liable to pay large sums if their case is successful. Careful thought should also be given to whether such consumers should also have the protection of a signed contract. This is especially important for those consumers who may not receive a cash award due to outstanding debts, but may still find they have a large fee to pay to their CMC.

### **Closer supervision by the regulator**

What has been 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 is clearly warranted given the significant impact of CMCs on customers and financial businesses 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. According to the figures in the CMR's Annual Report 2011-12– the regulatory costs are currently less than 0.4% of the annual reported turnover of the industry<sup>1</sup>, and with CMCs operating in the financial services sector expected 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.

The work that the specialist PPI unit has been doing over the last year is a step in the right direction, but needs to be more substantially resourced if it is to ensure proper supervision of CMCs. 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, so the unit needs to be resourced to provide a more proactive supervision of businesses.

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<sup>1</sup> Total reported turnover of authorised claims management businesses £774m (p12), Total cost of the CMR in 2011-12 - £3.02m (p27)

## References to the Ministry of Justice


It is clear that currently those who pay the licensing fee have been able to claim the apparent endorsement implied by authorisation by the Ministry of Justice with little by way of real constraint on their actions, so the proposal that CMCs can refer only to CMR authorisation is welcome.

## Complaints handling

The present regime for handling complaints about CMCs has been inadequate and under-resourced given the extent of customer dissatisfaction and detriment evident in the market, so it is welcome that the Legal Ombudsman will finally be taking over responsibility for complaints handling.

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,

A handwritten signature in black ink, appearing to read 'Debbie Enever', with a long horizontal line extending to the right.

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