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John Bowman  
Ministry of Justice  
Review of Claims Management Regulation  
Team  
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31<sup>st</sup> May 2011

Dear Mr Bowman,

### **Review of Claims Management Regulation**

Thank you for giving us the opportunity to contribute to your review of Claims Management Regulation.

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. This change partly reflects the perception that many customers have that complaining to their bank or insurer will be difficult. Certainly CMC marketing in the sector has encouraged a group of customers to complain who might otherwise not have done so. However, CMCs often take a significant percentage of such redress, and unscrupulous practices may damage consumer confidence and add unnecessary costs to the other parties involved in handling disputes.

The sums involved in the CMC market are potentially very significant. Recent announcements by banks and others suggest that redress for PPI could amount to around £9bn. Presently around 80% of complaints are raised by CMCs with charges of 25% or more of the redress paid. That suggests that in PPI alone the CMC market could be worth £1.8bn.

In considering the future regulation of CMCs it is important to bear in mind the impact these services can have on three parties –

- the customer who appoints a CMC to pursue their claim,
- the organisation complained about (in this case the financial firm) and

- the final decision maker (the courts or in the case of financial services the Ombudsman).

In our experience of handling well over 100,000 CMC related cases since regulation, the performance and practice of CMCs varies widely. 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.

We also see poor practice in relation to dealings with financial firms. Perhaps inevitably the relationship between CMCs and financial businesses is antagonistic. Certainly both parties have a tendency to overstate the otherwise well-founded criticisms that they freely make of each other. But some CMCs do appear to adopt practices that go far beyond the firm but fair advocacy of their client's complaint.

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 representative the only meaningful sanction 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.

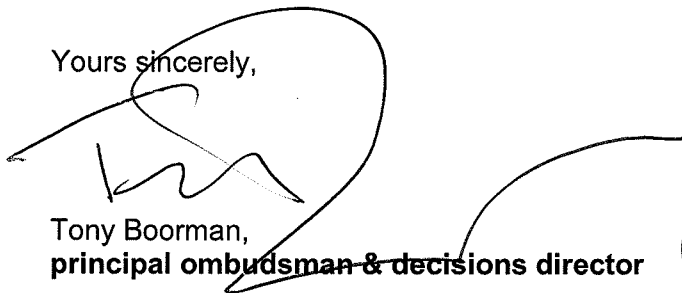
We work closely with the CMR and have a memorandum of understanding with it to ensure that we can share information, where appropriate, to assist each other in our respective statutory functions. In doing this we also work with the sector's regulator, the Financial Services Authority (FSA).

Overall, our judgement is that the CMR does a satisfactory job but would benefit from a new focus. As presently constituted and resourced, its 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 their 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.

The regulatory regime itself 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 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.

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 be 'Tony Boorman', written over a large, loopy scribble. The signature is positioned above the printed name and title.

Tony Boorman,  
**principal ombudsman & decisions director**