



Association of Mortgage Intermediaries' Response to Ministry of Justice - Claims Management Regulation's proposals to amend the Conduct of Authorised Persons Rules: The Financial Services Perspective

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products.

Our members are authorised by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

AMI welcomes the opportunity to respond to Ministry of Justice - Claims Management Regulation's proposals to amend the Conduct of Authorised Persons Rules: The Financial Services Perspective.

Introduction

We are concerned about the actions of the majority of Claims Management Companies (CMC) our members engage with. Clearly where a consumer has an eligible complaint and requires third party assistance to make the complaint then such services should be available. However, given FCA's DISP rulebook requirements and the public awareness strategies adopted by FOS and FSCS, we believe that genuine instances where a consumer needs to use a third party to make a complaint are limited.

The number of CMCs operating in the Financial Services complaints sector has continued to grow since the Compensation Act 2006 was introduced. This has undoubtedly been as a consequence of the widespread Payment Protection Insurance (PPI) mis-selling issue and has been further fuelled by poor complaint handling by some financial institutions.

The vast majority of mortgage intermediary firms were not exposed to the same level of PPI complaint cases as the major banks. Those complaints which did arise were generally dealt with in a timely manner. This was mainly because in most cases where PPI was sold alongside a mortgage it was a regular premium contract.

We have no issue with legitimate complaints being brought against member firms by a CMC. As a consequence of FCA's regulation, in particular the DISP rulebook, all FCA regulated firms must consider complaints in the same way regardless of whether the consumer brings the complaint themselves or it is made through a CMC.

What does concern us is some of the practices which have been adopted by CMCs. Many member firms have been subject to spurious complaints being submitted by CMCs. At best these may be poorly constructed cases but at worst they could be seen as fraudulent attempts to extract funds from organisations.

Furthermore we have seen the use of Subject Access Requests (SARs) by CMCs as a fishing exercise to extract information with the view to exploiting the data to make further complaints. Many requests go beyond what needs to be provided under the SAR requirements.

We welcome the amendments to the Conduct of Authorised Persons Rules. These changes should help to create higher standards amongst CMCs and reduce some of the more dubious practices being undertaken by some firms. What is essential, as we have seen from some of the failings in the financial services market, is that there is robust supervision, and where necessary enforcement action taken, to underpin the rulebook changes. Without sufficient supervision of CMCs being in place the potential for good outcomes from these rules changes will not be fully realised.

AMI supports the views already expressed by a cross party group of MPs that HM Treasury and MOJ should consider the transfer of regulation of the Financial Services aspects of CMC's to the Financial Conduct Authority. This would allow for more cohesive and effective supervision as we consider that the rules as drafted provide robust protection for all market participants but the limited resources available to MOJ, to fully supervise activities, remains our principal concern. Should the activity remain with MOJ, then there should be a significant increase in licence application and renewal fees to allow proper resourcing to control the activities of CMCs.

The amendments made in this consultation are relatively minor and only confirm or clarify MOJ's regulatory intention. We would see little issue for CMCs, which wish to act in a responsible and ethical manner, to not only meet the proposed amendments but also to want to achieve the level of standards intended in MOJ's Claims Management Regulation.

Questions

Q1. Do you have any suggestions or comments on the proposed statement that outlines how the rules should be followed? Do you agree with the definition of "document"?

We agree that the statement and the definition of "document" provides clarity for CMCs and should improve their compliance with MOJ's regulations. To help CMCs understand what is required there could also be a need for clear and explicit guidance and examples citing what would be "sufficient to enable the Regulator to monitor compliance".

Q2. The proposed General Rule 2b) amendment requires CMC to ‘substantiate and evidence’ the basis of claims. The Ombudsman will consider a consumer’s oral evidence and recollections where documentation cannot be located. Do you think there is a risk that financial service providers will reject claims from CMCs as a result of this proposal if they interpret ‘substantiate’ to mean documentation? Can this be mitigated?

The wording of General Rule 2b seems appropriate to steer CMCs to provide sufficient substantive information to verify that a product was sold and that a complaint about the sold product is genuine.

Any concern about Financial Services firms rejecting complaints is already covered under FCA’s DISP rulebook. Whether a complaint is made by a consumer or a third party should make no difference to the way a firm considers the complaint. Clearly DISP forms part of the FSMA regime and is regulated and enforced by FCA. Any rules written by MOJ could only apply to the firms it regulates. As such we would see little reason for MOJ to construct rules under its regime to address issues which are beyond the reach of its supervisory remit.

However, this may be an issue that FCA could monitor, if there was evidence of a change in behaviour leading to consumer detriment.

Q3. The list of specifications proposed in General Rule 2 from a)-f) are common breaches of the requirement to act ‘responsibly’; is it clear that these examples are non-exhaustive?

It is clear that the examples are not exclusive. However, this could be reiterated at the end of the example list.

It is essential that there is flexibility in what is considered as a common breach to allow for the regulation to be flexible and adaptable to changes in way CMCs operate and provide their services.

Q4. Do you have any comments or suggestions on the proposal to expand General Rule 3?

We agree that directors of CMCs should be competent to run the firm. The basic requirements of a working knowledge of the legislation and rules of claims management services, as set out under General Rule 3, present the bare minimum that should be required.

Q5. The proposals at General Rules 6, 7, 13 and 14 represent either technical corrections or grammatical clarifications. Do you agree with these proposed amendments?

These technical corrections and grammatical clarification should help CMCs to better adhere to the rules under which they operate. However, the general spirit and intention of the rulebook remains unchanged and we would expect ethical CMCs, which are already operating in a manner that is expected by MOJ, to experience little

change as a result of these amendments, or any other amendments made in this consultation.

Q6. In relation to the amalgamation and clarification of General Rules 16 and 17, do you agree with the proposal?

We agree that the changes should leave little room for any mis-understanding in the requirements under General Rules 16 and 17.

Q7. Do you have any views on the likely benefits or costs to CMCs and particularly small to medium sized CMCs?

No comment

Q8. The CMR Unit welcomes your views on the Equality Statement in terms of the potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence.

No comment.

AMI
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