



Bar Council response to the 'Claims Management Regulation' consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to HM Treasury's consultation paper entitled 'Claims management regulation: Consultation on secondary regulations'.
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Consultation questions

Question 1: Do you agree to the overall approach of maintaining the current scope of CMC regulation, but with multiple permissions?

4. Overall, we welcome proportionate and appropriate regulation of this industry. We recognise that Claims Management Companies play a key role in providing valuable assistance to vulnerable customers seeking access to justice. However, we consider that, given the vulnerability of those approaching/approached by CMCs, steps should be taken to ensure such customers are not exploited.
5. We agree with the approach to be taken to regulation in the SI with regard to permissions. The service provided by CMCs entails a number of different activities

not currently covered under the current regime. We consider it is important that CMCs are held to a good standard in all the activities they undertake.

Question 2: Does the SI in Annex A achieve the aim of maintaining the scope of regulated claims management activity, but with multiple permissions?

6. We consider that the draft SI does cover the activities undertaken by CMCs.

Question 3: Do you agree with the policy intent that claims made under section 75 Consumer Credit Act 1974 are within scope of the FCA's claims management regime?

7. We presume that in bringing section 75 within scope, the FCA will be able to supervise and take enforcement action with regard to entities that assist customers with such claims. We consider this to be an important inclusion given the lack of understanding on the part of credit providers (and consumers) about what is covered by section 75 and their subsequent failure to address such claims appropriately. Bringing such claims within the remit of the regime would ensure the appropriate provision of assistance.

Question 4: Are there any other sectors that should be added to the scope of regulated claims management activity?

8. The draft SI appears to cover the types of claims currently made within the claims management industry and appears sufficiently wide enough to cover any changes in the claims management industry.

Question 5: Do the provisions in Annex A work in relation to Scotland?

9. We have no comments.

Question 6: Do you agree that compliance with the Code of Practice...should remain a condition of the trade union exemption from claims management regulation?

10. We have no comments on these proposals.

Question 7: If you agree that compliance with the Code of Practice...should remain a condition of trade union exemption from claims management regulation, do you agree that the current Code of Practice...is suitable?

11. We have no comments on these proposals.

Question 8: Does the SI in Annex A achieve the aim of maintaining the current exemptions?

12. Yes.

Question 9: Should the government consider further exemptions?

13. We consider the exemptions to be sufficient.

Question 10: Do you agree that the SI achieves the aim of regulating all CMCs providing claims management activities in Great Britain?

14. Overall, we are satisfied that the draft SI covers CMCs providing claims management activities. However, we would welcome a review of the exclusion of “certain providers of referrals” for any indication that this exclusion is being abused by lead generators.

Question 11: Do you agree that the FCA’s exemption from its consultation requirements under FSMA in respect of rules that are the same or have the same effect as those under the Compensation Act 2006 regime should be in place for Scotland as well as England and Wales?

15. We have no comments.

Question 12: Do you agree that the FCA’s competition duty should be disapplied in respect of rules or guidance that have the same effect as the current regulator’s rules?

16. We do not consider that applying the FCA’s competition duty would have any impact on its ability to impose appropriate rules and guidance. Therefore, we neither agree nor disagree with this approach.

Question 13: Does the SI achieve the aim of exempting the FCA from its consultation requirements under FSMA in respect of rules that are the same or have the same effect as those under the Compensation Act 2006 regime?

17. Yes.

Question 14: Do you agree with the proposed approach for the temporary permissions regime?

18. We note that this approach is largely in line with approach taken during the transfer of consumer credit to the FCA.

19. We are largely in agreement with the approach, but are concerned about how such permissions and the status of firms will be known by consumers. We recognise that the FCA has a register of authorised persons. However, the existence of this register may not be apparent to consumers who are approaching/being approached by CMCs. Also, the current format of the register is hard to follow, even for professionals. We are concerned that the inclusion of firms with temporary permissions may further confuse consumers. We note that a separate register was

formed for consumer credit firms and presumably this will be done for CMC. We ask that thought be put into whether such an approach is appropriate for ensuring that the public status of CMCs is brought to the attention of the public.

Bar Council¹
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