

## **Compensation Bill**

### **Regulation of Claims Management Services**

# **Consultation on draft conduct rules for authorised persons**

**July 2006**

## **Introduction**

1. The Schedule to the Compensation Bill requires the Secretary of State for Constitutional Affairs to require the regulator to prescribe rules for the professional conduct of authorised persons. As the Secretary of State will initially exercise the functions of the regulator he will be responsible for drawing up, consulting on and issuing the rules. Any reference to the regulator in this document should be taken to mean the Secretary of State/DCA unless otherwise stated.
2. The Schedule sets out the procedure to be followed for making the rules. The draft Compensation (Claims Management Services) Regulations 2006 make a number of specific provisions in respect of the rules, including the giving of notice to clients by an approved person whose authorisation has been suspended, cancelled or varied.

## **Previous consultation**

3. We published a pre consultation set of model rules on 2 March to inform the House of Lords consideration of the Bill. While not a formal consultation we did discuss the model rules with key stakeholder representative organisations from the consumer, legal, insurance, claims and financial sectors.

## **The proposed rules**

4. The proposed conduct rules are attached to this paper. For completeness we have tried to bring together all the relevant provisions that apply to the conduct of authorised persons whether they are provided for in the primary legislation or secondary legislation.
5. The rules are in two parts
  - Part 1 - General requirements
  - Part 2 - Rules governing the relationship with clients.
6. It is recognised that there are different contractual relationships between companies providing claims management services and the people with whom they deal. The rules recognise this by stipulating that some sections apply only to businesses that either have a contractual relationship with the client or which manage a claim.

## **Consultation process**

7. The purpose of this consultation is to seek views on the proposed rules. We are interested not only in the views of interested parties on how the rules would

affect them but also views on the effectiveness of the rules in securing the desired objective of the legislation which is to curb malpractice in the provision of claims management services. To facilitate the consultation process a number of specific questions are asked. However, they should not constrain respondents. Comment on any of the principles underlying the rules and on the detailed wording would be welcome.

8. Responses to this consultation exercise should be made by Tuesday 29 August 2006 and submitted to

Katherine MacGregor  
Private Funding Regulation Branch  
Department for Constitutional Affairs  
3rd Floor Selborne House  
54-60 Victoria Street  
London SW1E 6QW  
Tel 0207 210 1407  
E-mail: [Katherine.Macgregor@dca.gsi.gov.uk](mailto:Katherine.Macgregor@dca.gsi.gov.uk)

9. If you would like to discuss any elements of content or other matters related to the introduction of regulation you should also contact Katherine in the first instance, unless you already have other contacts within the Private Funding Regulation Team who have previously dealt with who of course you can contact directly.

## **The rules - general issues**

10. Before turning to specific issues there are two general questions

*Question 1. Are there any additional points that should be included in the conduct rules?*

*Question 2. Is the distinction provided for in the rules between all businesses, those that have a contractual relationship and those that manage claims, a sensible one?*

## **Part 1 General Rules**

### **General principles**

11. Part 1 paragraphs 1 – 4 set out for general principles covering honesty and integrity, acting responsibly, management of the business and a requirement to observe all laws and regulations.

*Question 3. Are the general principles in paragraphs 1 to 4 appropriate?*

### **Disqualification from working in claims management**

12. Part 1 paragraph 5 sets out the factors that would exclude a person from being involved in the provision of claims management services.

*Question 4. Are all the factors that would exclude a person from being involved in claims management services appropriate?*

### **Conduct of business**

13. Paragraph 6 requires a business to certify that it has arrangements to comply with the rules when it applies to authorisation and annually to certify that it is done so. In the model draft rules authorising via a tied agency arrangement was floated. This would allow an authorised business to take responsibility for those introducing business to it and who would therefore not require their own authorisation. There has been general adverse reaction to this concept with a view that all individuals and businesses undertaking claims management services should be authorised. Paragraph 7 therefore provides for this and requires an authorised person to supply to the regulator details of its agents and person who introduce business to it.

*Question 5. Should the tied agent concept be provided for or should any individual or business that provides claims management services be authorised in its own right?*

## **Finance**

14. The section requires a business to always maintain its solvency and to maintain appropriate internal systems and controls. The previous draft envisaged that businesses would have to supply audited accounts to the regulator. This would be an additional burden, in particular for sole traders, and also the audited accounts would be of little use to the regulator because they are available only after a delay and may cover business that it not regulated. In any event the regulator has the power to require any information that he requires from any authorised business.

## **Professional indemnity insurance**

15. The rules allow the regulator to make specific rules in respect of holding professional indemnity insurance. It is not the intention to make this a requirement immediately as this would be impractical and would leave a number of businesses unable to comply with the rules. Rather, the regulator will, after considering the responses to this consultation exercise, consider whether professional indemnity insurance should be required and if so what the minimum requirements should be.

*Question 6. Should holding professional indemnity insurance be a requirement for authorisation? Would it be possible in practice for authorised businesses to obtain such insurance from the outset or should requirements be phased in to allow sufficient time for a market to develop?*

## **Complaints and redress**

16. Part 1 paragraphs 11-14 sets out the requirements that authorised businesses must meet in respect of a complaints mechanism. These are reproduced from Part 7 of the Regulations. The main issue is whether what is provided for in paragraph 11-14 is sufficient or whether more detailed guidance should be provided by the regulator, for example a model scheme. Sole practitioners may also wish to consider how they would deal with these requirements.

*Question 7. Are the requirements in paras 11-14 sufficient or would more guidance be helpful in respect of a model complaints scheme?*

## **Competence and training**

17. The principles in the general rules require that those providing claims management services must be competent and capable. This is of course a general principle and a key question is how competence is measured, if it should be prescribed in more detail and whether specific requirements on training should be stipulated.
18. In practice, it may not be possible to stipulate training requirements that would have to be met before the regulatory regime comes into operation. Similarly, it is difficult to see how meaningful competence requirements can be stipulated in a way that can be objectively tested.
19. We will consider this further in the light of responses to this consultation exercise and as the regulatory regime develops whether it is appropriate to prescribe either or both of training and competence requirements.

*Question 8. Should specific rules on training and competence be developed? If so, are there suitable models which could be considered for a small sector?*

## **Compliance and enforcement**

20. Part 1 paragraph 16 requires a business to co-operate with the monitoring and compliance arrangements of the regulator.

## **Disciplinary arrangements**

21. Part 1 paragraph 17 requires unauthorised business to comply with the Regulator's disciplinary arrangements.

## **Provision of information**

22. Part 1 paragraphs 18 to 23 set out the information that businesses must provide to the regulator. Some of this will also be prescribed in the application form. There is a catch all provision allowing the regulator to request specific information from authorised businesses either individually or collectively. Paragraph 23 requires authorised businesses to notify the Regulator within one month of changes in certain specified information.

## **Part 2 Client specific rules**

### **General principles**

23. Part 2 paragraph 1 sets out general principles in respect of dealing with clients.

*Question 9. Are the general principles in paragraph 1 appropriate?*

### **Advertising and sales**

24. Part 2 paragraphs 2 - 8 set out requirements in respect of advertising and sales. These include a number of important provisions –

- The banning of cold calling in person. The previous model draft considered whether all cold calling should be banned. The general view was that this would be an unreasonable restriction on a specific group of businesses.
- A ban on soliciting business in or near medical facilities other than advertising explicitly approved by the facility concerned.

*Question 10. Should only cold calling in person be prohibited or should this be a wider prohibition?*

*Question 11. Are the proposals on advertising and sales generally appropriate?*

### **Taking on business**

25. This section sets out the information that must be provided to a client before he is asked whether he wishes to go ahead, and provides for a cooling off period of 14 days. These arrangements would apply only where the business is seeking to have a contractual relationship with the client. For example, an introducer would not be required to provide all of this information; indeed it would be impractical if not impossible for him to do so.

*Question 12. Is 14 days appropriate for a cooling off period?*

*Question 13. Are the requirements for the taking on of business generally appropriate?*

### **Managing a claim**

26. The section covers how a claim should be managed and includes provision for the client to be allowed to withdraw from a contract at any time subject to any penalty being reasonable in the circumstances.

*Question 14. Are the arrangements for managing a claim appropriate?*

## **Insurance**

27. This section requires a business to take reasonable steps to ascertain whether a client has any before the event insurance and makes requirements in respect of the provision of ATE insurance by the authorised business.

*Question 15. Is the provision in respect of taking reasonable steps to ascertain whether the client has BTE insurance sufficiently clear?*

*Question 16. Are the provisions in respect of arranging ATE insurance appropriate?*

## **Loan finance**

28. Part 2 paragraph 23 makes initial provisions in respect of arranging loans, in particular the requirement to advise the client that he has the option to pay for insurance directly rather than by taking out a loan.

*Question 17. Are the arrangements for providing loans reasonable?*

## **Handling client money**

29. Part 2 paragraph 24 makes arrangements for providing client money, similar to those that apply in other sectors.

*Question 18. Are the arrangements for handling money appropriate?*

## **Informing clients when authorisation is suspended, cancelled or varied**

30. The draft Rules do not specifically provide for this but it is a necessary and important safeguard for consumers where a business has a contractual relationship with a client and authorisation is to be suspended, cancelled or varied. We therefore suggest inserting a paragraph under managing a claim as follows:

“If the Regulator informs a business that authorisation is to be suspended, cancelled or varied it must make immediate arrangements to inform all clients of the decision. It should also inform clients of steps they might take to ensure their claim is not affected. This would include referring them to the Regulator’s register of authorised person for alternative providers.

If the approved person is to appeal to the Claims Management Services Tribunal they should also make this clear to the client, and subsequently inform them of the Tribunal’s decision.”

*Question 19. Are the proposed arrangements for informing clients of the Regulator's decision to suspend, cancel or vary authorisation appropriate?*

**DCA  
Conduct rules consultation paper  
July 2006**



## **Compensation Bill**

### **Regulation of Claims Management Services**

# **Draft conduct rules for authorised persons**

**Version 1.0**

**July 2006**

## **Introduction**

An essential part of the claims management regulatory framework will be the rules governing the conduct of authorised persons. Compliance with these rules would be a condition of authorisation, and applicants will be required to sign a declaration that they will continue to comply with them. The Secretary of State for Constitutional Affairs will for an interim period exercise the functions of the regulator.

### **The current draft**

The draft rules are in two parts –

- General requirements
- Rules governing the contact with clients

The client rules cover the relationship between the claims management business and the claimant. The general requirements cover everything else.

The Compensation Bill (Schedule paragraph 4(3)) and the Compensation (Claims Management Services) Regulations 2006 set out the matters the regulator should take into account when assessing applicant's fitness to be permitted to carry out claims management services.

### **Interpretation**

All references to business in the Rules should be taken to be a reference to an authorised person as specified in section 13 of the Compensation Act 2006.

DCA  
July 2006

# Model rules

## Part 1 – General rules

### Principles

1. A business shall conduct itself with honesty and integrity.
2. A business shall act responsibly
3. A business shall be directed by people with the necessary competence and they shall employ competent and capable staff.
4. A business shall observe all laws and regulations relevant to its business.

### Disqualification from working in claims management

5. No person shall be involved in the provision of regulated claims management services as a sole trader, partner in a partnership, director of a limited company, significant shareholder or chief executive who either -
  - a) Is disqualified from being a director of a company in the UK, or
  - b) Has been removed from the list of persons authorised by the FSA or has been refused authorisation, or
  - c) Had been disqualified from acting as a solicitor, barrister or other [legal services professional], or
  - d) Has been convicted of any offence involving fraud, theft, false accounting or other dishonesty or an offence relating to companies, financial services, and consumer credit or consumer protection.

### Conduct of business

6. A business shall comply with the rules relevant to it and shall –
  - a) On applying for authorisation certify that it has arrangements in place to do so, and
  - b) Annually certify it has done so.

7. A business shall ensure that any agent and any other person who introduces business to it is authorised under the Act to do so and shall supply to the regulator in a form and a time prescribed by the regulator the names, addresses and national insurance numbers of all such people and the payments made to them.

### **Finance**

8. A business shall always maintain its solvency.
9. A business shall maintain appropriate internal systems and controls.

### **Professional indemnity insurance**

10. A business shall maintain professional indemnity insurance in accordance with any specific requirements made by the Regulator.

### **Complaints and redress**

11. A business shall operate a complaints mechanism in accordance with the statutory requirements and rules.
12. The full requirements are set out below. A complaints scheme must:
  - Identify a person, by name or position, within the authorised person's organisation to receive complaints and be responsible for dealing with them;
  - Provide for the acknowledgement of complaints within a reasonable period after their receipt;
  - Provide for the investigation of complaints and reporting to the authorised person on the outcome of the investigation;
  - Provide for keeping proper records of investigations and the complaint-handling process;
  - Provide for reporting to complainants; and
  - Provide for proper recompense in appropriate cases.
13. An authorised person must
  - Publish details of its complaints scheme on its website, if any; and
  - Give a printed copy of the scheme to anybody who asks for it.

14. When a person enters into a contract with an authorised person, the authorised person must immediately
  - Tell the client in writing about the authorised person's complaints scheme and the client's rights under it; and
  - The name or title of the person to whom complaints should be made, and that person's address, telephone number and email address (if any); and
  - Give the client a printed copy of the scheme.

### **Competence and training**

15. A business shall comply with any directions given by the regulator in respect of training and competence.

### **Compliance and enforcement**

16. A business shall comply with the monitoring and compliance arrangements of the Regulator.

### **Disciplinary arrangements**

17. A business shall comply with the Regulator's disciplinary arrangements and shall comply with decisions of the Regulator subject to the right of appeal to the Claim Management Services Tribunal, and of the Tribunal.

### **Provision of information**

18. A business shall provide to the Regulator its business name (and any other trading names), business address, telephone number and any other contact details.
19. A partnership shall provide to the Regulator the names, addresses and dates of birth of all partners and details of other partnerships or directorships they have held in the previous five years.
20. A limited company shall provide to the Regulator the names, addresses and dates of birth of all directors and significant shareholders and the chief executive of the business and details of directorships all those persons have held in the previous five years.
21. A sole trader shall provide to the Regulator his address, telephone number, date of birth and details of directorships he has held in the previous five years.

22. A business shall inform the regulator of any other material changes in respect of its organisation and the provision of regulated claims management services. The information should be supplied one month before the material change occurs. The business should also inform clients if the change has an impact on any contractual arrangements.
23. A business shall provide to the regulator any other records and information that the regulator may request.

## **Part 2 – Client specific rules**

### **Introduction**

These rules set out how a business regulated under the Act must conduct its relationship with clients. The rules must be complied with at all times and a business must be able to demonstrate that it complies with the rules.

### **General principles**

1. A business shall –
  - a) Act fairly and reasonably in dealings with all clients.
  - b) Ensure that any service offered is one that meets the need of the client and satisfies the requirements of these rules.
  - c) Ensure that all information given to the client is clear, transparent, fair and not misleading.
  - d) Avoids conflicts of interest.
  - e) Where advice is given, advise the client unambiguously of ombudsman schemes or other official means of obtaining redress.
  - f) Where advice is given, advise the client to pursue cases only if it is in the interests of the client to do so.

## **Advertising and Sales**

2. A business must not engage in 'high pressure selling'.
3. Cold calling potential clients in person is prohibited. Any other cold calling (by telephone, by e-mail, by fax, by text) shall be in accordance with the appropriate industry code.
4. Business must not be solicited in any way in or in the immediate vicinity of public or private medical facilities (hospitals, surgeries etc) and other public buildings other than through advertising which has been specifically approved by the facility concerned.
5. All advertising must conform to the British Code of Advertising, Sales Promotion and Direct Marketing or the relevant code covering broadcast advertising and any other code of advertising practice or statutory requirement.
6. Advertising by authorised businesses must –
  - a) Not make misleading or exaggerated statements.
  - b) Not use expressions such as 'no win, no fee' without qualification unless there is no possibility of the client having to meet any costs he may have incurred in connection with the claim, including the purchase of an insurance policy or interest on a loan taken out to fund the purchase of an insurance policy.
  - a) Clearly identify the name of the advertiser.
  - c) Not offer an immediate cash payment or a similar benefit as an inducement for making a claim.
  - d) Not seek to imply that compensation may be used in a way that is inconsistent with the cause of the claim.
  - e) Not seek to imply a relationship with any official or other organisation where no such relationship exists.
  - f) In the case of all written advertising and promotional material state that the business is regulated under the Compensation Act 2006 and give the authorisation number.
7. If the sale or marketing of any service has occurred via the Internet or mail order it must comply with the Consumer Protection (Distance Selling) Regulations 2000.

8. A business must try to ensure that any publicity for its services issued by a third party and which is intended to solicit business for it complies with these Rules.

### **Taking on business**

*(This section applies only where the business is seeking to have a contractual relationship with the client)*

9. A business must provide the client with the following information in writing or electronically before he is asked to confirm that he wishes to go ahead –
  - a) Honest, comprehensive and objective written information to assist the client to reach a decision including the risks involved in making a claim, in particular the possibility of losing money and, in the case of legal action, appearing in court.
  - b) The services that will be provided, in a way that does not misrepresent, either by implication or omission, any term or condition.
  - c) The procedures that will be followed.
  - d) Contracts, including for insurance or loans, that the client will be asked to agree to.
  - e) Any charge the business makes. Where this is a percentage of compensation payable the percentage must be indicated together with a typical example of the actual cost in pounds, or more than one example if the company makes differential charges.
  - f) Any costs that the client may have to pay, including the purchase of a legal expenses insurance policy and loan repayments and whether the client will be liable to pay any shortfall in recoverable of costs or premiums from the losing defendant party.
  - g) How the business is remunerated.
  - h) Commission or fees paid to any other person in respect of the claim.
  - i) Documentation needed to pursue the claim.
  - j) Any relationship to a particular Solicitor or panel of Solicitors.
  - k) A copy of consumer information.

- l) Procedures to follow in the event of a complaint and a copy of the business complaints scheme.
  - m) How the client may cancel the contract and the consequences of cancellation including the reimbursement of any costs paid during the cancellation period and any costs or penalty that has to be paid after the 14 day cooling off period.
10. Where a claim is one that falls within the province of the Criminal Injuries Compensation Authority, the Financial Ombudsman Service, the Housing Ombudsman Service or any other recognised dispute resolution procedure the business must not suggest that a claimant will have a more favourable outcome if he uses the services of the business.
  11. A business must make explicit to the client his right to have as much time as he wants to seek further advice or to shop around, subject to any time limits within which a claim must be made.
  12. A business must ensure that the client is able to understand the contract that he is being asked to agree to.
  13. As far as is reasonably possible a business must establish the client's identity prior to the signing of any agreements or contract.
  14. A business must allow a 'cooling off' period of at least 14 days after signing any agreement during which period the client may cancel the agreement and be entitled to a refund of any payments made to the business or in connection with any insurance policy, loan or other agreement taken out in relation to the agreement.

### **Managing a claim**

*(This section applies only where businesses manage claims)*

15. In seeking information to help pursue a claim a business shall –
  - a) Advise the client that any claims documentation should be read carefully and retained.
  - b) Assist the client to fill in any necessary forms, or check details that have been provided, but not "coach" the client to answer questions inaccurately in a way to maximise possible compensation.
  - c) Make it clear that all the answers or statements given are the client's responsibility.

- d) Request the client to make true, fair and complete disclosure in support of a claim and obtain a statement of truth.
  - e) Disclose all material facts within the knowledge of the business that may have an effect upon the personal injury claim including full disclosure of any Legal Indemnity cover under an existing BTE policy or any other support for pursuing a claim.
  - f) Not seek to influence the way solicitors handle cases referred to them.
16. A business must permit the client to withdraw from a contract at any time, and if he wishes to pursue the claim in another way, any penalty shall be limited to what is reasonable in the circumstances.
  17. A business must keep the client informed of the progress of the claim, including any changes to costs, and must forward any relevant information received from the client without delay.
  18. A business must give prompt advice to the client about any requirements concerning the claim and advise the client without delay of any demands for additional information that may have been requested by any party via the business.
  19. A business must avoid conflicts of interest. If an unavoidable conflict arises the business must take steps to remove the conflict.

## **Insurance**

*(This section applies only where businesses manage claims)*

20. A business must take reasonable steps to ascertain whether the client has any Before the Event Insurance (BTE) or other insurance cover which may assist him to pursue any claim (and must adhere to applicable case law in doing so)
21. Where ATE insurance is arranged the business must –
  - a) Make clear that it is authorised by the FSA or exempt as an appointed representative of an authorised firm.
  - b) State whether it is providing advice or information from the whole insurance market, a limited market of providers or a single provider.
22. If the business provides the client with an insurance contract it must –
  - a) Discuss with the client, in accordance with insurance conduct of business rules, any insurance proposed and why it may help.

- b) Identify any insurer or insurers (including the underwriting organisation) being used to provide cover and provide the client with a policy summary, setting out key details of the policy.
- c) Explain the essential provisions of the cover provided and the cost.
- d) Disclose to the client any commission or other remuneration received as a result of affecting the insurance.

### **Loan finance**

23. If loan finance is arranged to pay for an insurance policy –

- a) The business must have a consumer credit licence from the OFT and must comply with any relevant rules of guidance issued by the OFT or other government department or agency.
- b) The client must be advised in writing that he has the option to pay for the insurance directly rather than by taking out a loan.
- c) The business must provide details of the interest payable on the loan.

### **Handling client money**

24. If the business handles client money it must –

- a) Maintain a separate account called the “client account” for any money received from or on behalf of clients, including pre-payments for services.
- b) Not mix client monies with those of the business. Any money held on behalf of a client must be clearly identified within the business accounts and must not be accessible to any of the creditors of the business or used in any way to support, maintain or expand the business.
- c) Ensure that all money received from clients or on behalf of clients is paid into the “client account” and will remain there until passed to the client or any other agreed recipient who is entitled to receive the money.
- d) Refund immediately any and all pre-payments received from the client should the business fail to fulfil its obligations to the client.
- e) Not require unreasonable procedures that the client must meet in order to receive a refund of any payment that the client has made.

- f) Provide clients with printed receipts for any payments received in connection with a claim and the nature and purpose of that payment.

### **Data Protection**

- 25. If required to do so the business must be registered under the Data Protection Act 1998 as amended and comply with obligations imposed by that legislation.

### **Complaints and Conciliation**

- 26. A business must handle complaints fairly and promptly in accordance with rules made by the regulator.
- 27. A business must advise the client that if he is not satisfied with the outcome of the complaint it can be referred to the [Regulator].
- 28. A business must implement promptly and fully any decision of the Regulator. This includes any order made in relation to redress.