

Subject: Regulation of claims management companies

Note of key matters:

Attendees:

Presenters	APPG	Others
Kevin Rousell, Department of Constitutional Affairs (DCA) Mark Boleat, DCA (Head of Regulation)	Lord Hunt (Chair) Baroness Turner Baroness Gibson Lord Davies	Andrew Hindle (PwC)

Background:

The meeting was held to provide an update on the regulation of claims management companies under the Compensation Act.

During the meeting, it was noted that:

- There is evidence to indicate the 'aggressive' selling of information for a referral fee to claims management companies
- Some promotions (for example websites and advertising material/customer documentation) are misleading and sellers are not treating customers fairly
- The need to consider where appropriate restrictions on marketing (for example cold-calling), consumer rights to confidentiality, the provision of information in a way that is clear, fair and not misleading, and the need to treat consumers fairly throughout their dealings with claims management companies
- Fees/charges for dealing with claims can significantly reduce the amount of compensation available to the claimant in certain types of cases (for example endowment complaints and criminal injuries) where claims intermediaries operate on a contingency fee basis

1. Kevin Rousell, Department of Constitutional Affairs

By way of background, Kevin's primary responsibility is the development of policy and the statutory framework for authorising and regulating claims management companies. He indicated that it would be Mark's role to implement the Rules and as Regulator make them work in practice.

Kevin indicated that the definition in the Act of claims management is very broad to avoid loopholes. However, the areas which will be regulated are narrowed down by Order which necessitates further debate in both Houses. Kevin noted that further consideration was also being given to the role of the FSA, in particular clarification of the FSA's jurisdiction over 'third party' claims settlement.

Kevin indicated that independent Trade Unions providing claims management services to members are to be exempt subject to the condition that in the provision of these services they have regard to a Code of Practice to be published by the DCA. Trade Unions that are not independent and/or providing claims management services to non members would be subject to regulation.

Kevin noted that it has been alleged that some Trade Unions in the mining areas may have been making inappropriate deductions from members because the DTI has been meeting all legal costs involved under the coal health compensation schemes.

2. **Mark Boleat**

Mark indicated that from a standing start in December 2005 that considerable progress has been made (including engaging Staffordshire Trading Standards to provide outsourced monitoring services and act as a 'watch-dog'; the authorisation and enforcement processes).

The need to understand the market is critical and Mark indicated that as Regulator he was already in dialogue with the Claims Standards Council and the Criminal Injuries Compensation Authority.

Mark indicated that a key part of the regulatory process will be specific requirements concerning:

- The application process with reference to the use of an appropriate application form (including initial and ongoing information requirements in considering an application/membership)
- Fitness and propriety (for example, previous record, client accounts and record keeping)
- Disciplinary procedures (for example, the Rules need to be clear about what would be considered misconduct)
- Sanctions which may be imposed (for example, warnings, imposing conditions on authorisation, revoking authorisation).

Authorised firms would be required to organise and conduct business in a responsible manner, keep proper records, and have clearly defined procedures and controls for complying with the Rules.

Mark noted, using endowment mis-selling claims as an example, that complainants had the right to ask the FOS to review their case without charge. He indicated that some claims management companies charge a fee of up to 25% which in itself could potentially result in a shortfall by reducing the amount of compensation. Mark further indicated that as Regulator he would expect firms to ensure the information provided is transparent and promotional material clear such that consumers understand that the charge is a feature of the service and that they are liable to pay the charge and are aware of the potential impact of the charge on the amount of compensation.

A Hindle

02 November 2006