

MINISTRY OF JUSTICE

**PROPOSALS TO AMEND THE CONDUCT OF AUTHORISED PERSONS
RULES 2007 TO PROHIBIT THE OFFERING OF CASH PAYMENTS OR
SIMILAR AS AN INDUCEMENT TO MAKE A CLAIM**



A response by the Association of Personal Injury Lawyers

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The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. Our 4,800 members are committed to supporting the association's aims and all sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Thanks go to APIL's executive committee who have contributed to this response.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL is currently celebrating its 20 years as an association, fighting for the rights of injured people. Over that time, we have seen huge change take place within the provision of legal services, including the birth of claims management companies and the introduction of the Legal Services Act 2007.

Vulnerable people are being subjected to increasing numbers of unsolicited approaches and inducements. Whilst we welcome the steps proposed by Claims Management Regulator (CMR) inducements are only one small element of worrying developments brought on by increased competition. All methods currently used to approach or entice the general public must, in our view, be reviewed together, to ensure a level playing field.

1. Amendment of CSR 6(b) to prohibit the offering of cash payments or similar as an inducement to make a claim.

General comments

A person injured as a result of negligence should not be influenced by any inducement of cash or gift to entice them through the door of a particular solicitor or a claims management company. We are committed to ensuring choices made should be based on expertise and the quality of services provided to ensure injured people obtain full redress. APIL's interest is only in the welfare of injured people and we believe that the rules governing the conduct of solicitors should be amended to prevent the use of gifts or cash inducements to potential clients. The SRA should follow the CMR.

Regulating inducements and gifts offered by CMCs and solicitors are part of a much bigger problem. Vulnerable people are also subjected to cold texting, misleading advertising and insurers short-changing injured people by offering them a quick cash

deal which bears little relation to what the claim is actually worth, just to close the claim. An injured person should not be distracted in any way from choosing the solicitor with the most appropriate expertise for dealing with their claim. Solicitors who use inducements as a marketing tool do so because, they are now obliged to compete for business on what is a very uneven playing field.

Some claims management companies continue to routinely cold call and text people to generate potential claims. We continue to get calls from APIL members advising that they or a family member have been contacted about a claim even when they have not been involved in an accident. This behaviour must be tackled as there is potential for this to generate fraudulent claims but also does not guarantee that the injured person gains access to the right legal advice.

There is a place for legitimate advertising, as it can help people with genuine personal injury claims to find the help they need. There is, however, a very real need for the tighter regulation of advertising in the personal injury field. We would welcome a clearer approach from advertisers which clearly explains that compensation is not available for an accident, but only when the injury is a result of negligence.

Insurers are allowed to contact people direct after they have been injured by their own policy-holders. This practise is known as 'third party capture' or (somewhat euphemistically by insurers) 'third party assistance'. It lacks any transparency and is subject only to industry guidelines from the FSA and not robust regulation. In many cases, victims are not made aware of their fundamental right to independent legal advice and representation. Some unscrupulous insurers capitalise on this inexperience and offer sums far below the amount the injured person would receive if he had received proper legal advice. The result is that injured people's much needed, and deserved, compensation is going into insurers' pockets.

Whilst we welcome the position the CMR is taking, amending the rules governing claims management companies' behavior and preventing them making inducements to potential clients, should not happen in isolation. To do so, without also addressing the behavior of insurers, advertising and the rules governing solicitors offering cash inducements, will lead to further inconsistency in how injured people are approached. It is essential that all operators in the personal injury field are subject to the same rules as an uneven playing field does nothing to provide clarity and transparency which injured people need and deserve. It is essential that there is a joined up approach.

Wording proposed

"In soliciting business through advertising, marketing and other means a business must-

b) Not offer an cash inducement or similar benefit as an inducement for making a claim."

The wording is vague, perhaps deliberately so, as to what constitutes similar benefits. A lack of further definition or explanatory note could mean that the rule is difficult to police. In our view there should be a non exhaustive list that is regularly updated by the CMR to ensure that claims management companies are kept updated on current practices. The list would include:

Cash

Prize draw competition to win a gadget such as an iPod, computer or mobile phone

Shopping vouchers

Case of wine

It would not include arranging a client physiotherapy or car hire on their behalf, or any other service which is a legitimate aspect of a claim such as physiotherapy. A distinction must be drawn between offering inducements which can be likened to a bribe and marketing or an information prospectus that firms produce to allow the

¹ Consultation Paper Claims Management Regulation Rules Review Phase1 page 6

injured person to make an informed choice about who should be handling their claim. Assistance such as offering to arrange treatment or a hire car goes to the heart of the claim for compensation and ensures as far as possible that the injured person is put back in the position they would have been in, as far as money can do this, had the accident not occurred². We are also concerned that the rules are not drafted so that they are easy to circumvent by cash being paid to a friend or relative for the introduction of a case.

2. Technical updates to General Rules 7,12 and Client Specific Rule 2 as a result of regulatory changes

General Rule 7

Proposed new wording:

*"A business that provides representation for personal injury claims is required to take out and maintain professional indemnity insurance (see Regulations 21A and 21B of the Compensation (Claims Management Services) (Amendment) Regulations 2008"*³.

We are happy with the amended wording here which suggests that if a CMC is providing a service over and above acting as a referrer of cases then Professional Indemnity Insurance should be obtained.

General Rule 12

*"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 **First – Tier Tribunal (Claims Management Services)**, and of the Tribunal."*⁴

² Lord Blackburn in Livingstone v Rawyards Coal (1880) 4 App Cas 25

³ Consultation Paper Claims Management Regulation Rules Review Phase1 page 7

⁴ Ibid

We agree that the Tribunal name should be changed to reflect the official wording.

Client Specific Rule 2

“All advertising, marketing and other soliciting of business must conform to the relevant Code –

The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code); or

The UK Code of Broadcast Advertising (the BCAP Code)

The codes are accessible at www.cap.org.uk/The-codes.aspx

For the purposes of this rule a business’s website shall be deemed to constitute advertising, and must comply with the CAP Code.”⁵

We support the changes to this rule to reflect the change to the codes adopted by the Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP).

⁵ Consultation Paper Claims Management Regulation Rules Review Phase1 page 8