

Governance & Professionalism
Policy Strategy & Competition
Financial Conduct Authority
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By email only: cp18-26@fca.org.uk

Dear Sirs

Regulating claims management companies: Senior Managers and Certification Regime

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of working to help injured people gain access to justice they need and deserve. We have around 3,000 members committed to supporting the association's aims, all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

We welcome the opportunity to respond to the Financial Conduct Authority's consultation on the Senior Managers and Certification Regime. We respond from the point of view of an organisation dedicated to preserving access to justice for injured people.

General comments

Robust regulation of the entire legal sector is vital to ensure that injured people are properly protected against exploitation. Passing regulation to a different body is not enough, however. While the senior managers and certification regime will go some way towards reducing bad behaviour, and aggressive marketing practices, APIL maintains that the only way to truly prevent the intrusive and distasteful practice of cold calling for personal injury claims is to introduce a complete ban on Claims Management Companies cold calling in relation to personal injury.

Senior Managers Regime

We agree that the Financial Conduct Authority should introduce plans to reduce misconduct in claims management companies, to raise standards of governance, management and professionalism. As such, we welcome the proposal to include Claims Management Companies in the Senior Managers and Certification Regime, to ensure that those who are managers, or who otherwise have a significant impact on customers or the firm, should be required to be fit and proper to carry out their role. We welcome that senior managers will need approval from the FCA before carrying out their role. The introduction of a requirement that senior managers of CMCs will have a duty of responsibility should also go some way towards addressing problems with aggressive and intrusive marketing practices. If senior managers are held accountable through enforcement action, for the firm breaching rules, this should ensure that there are fewer CMCs breaching the rules and regulations in place. Requiring the senior managers to be fit and proper, and also holding them to account for the

firm's actions, should also help to prevent "phoenixing", where a CMC in breach of rules closes down, and then the person in charge opens up a new CMC and continues to breach rules without repercussions.

Certification regime

We also welcome the certification regime, which will apply to those who otherwise have a significant impact on the customers or the firm. Again, we welcome the requirement for these people to be fit and proper to carry out their role. We are also pleased that the scheme will cover those based outside of the UK, but dealing with UK clients. A common issue in this area is that claims management companies set up outside of the jurisdiction, but conduct their business within the United Kingdom. It is correct that companies should not be able to escape the more robust regulation regime by setting up outside of the UK.

Conduct rules

We also approve of the introduction of conduct rules, to improve the behaviour of all staff, although we have a concern with the definition of "ancillary staff" in the consultation paper. According to the paper, the conduct rules will not apply to "ancillary staff", who are defined as those who do not perform a role specific to financial services. There is no mention of personal injury services or any of the other areas that claims management companies operate in. This would mean therefore, that the claims handlers working in personal injury claims management companies would not have to meet the same standards of behaviour as those working in claims management relating to the financial sector. This cannot be right.

We hope that our comments prove useful to you.

Yours faithfully



Alice Taylor

Legal Policy Officer