



Law Society
of Scotland

Consultation response

FCA Consultation:

Claims management: how we propose to regulate
claims management companies

August 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

We welcome the opportunity to consider and respond to the Financial Conduct Authority consultation - Claims management: how we propose to regulate claims management companies. In relation to this, we put forward the comments below for consideration.

General Comment

We have said on a number of occasions that we believe all those providing legal services to the consumer should be regulated, which would include claims management companies (CMCs), a view which we expressly stated in our response to the *Wider choice and better protection* consultation in 2009¹, before the Scottish Parliaments Justice Committee in the oral evidence session² relating to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill and, more recently, in our submissions³ to the Scottish Government independent review of legal services.⁴

We therefore welcome the proposed regulation of CMCs by the Financial Conduct Authority (FCA) being extended to Scotland under the provisions of The Financial Guidance and Claims Act 2018.⁵

¹ <http://www.gov.scot/Resource/Doc/1097/0076097.pdf>

² Oral evidence session: 28th Meeting, 2017 (Session 5) Tuesday 26 September 2017

³ <https://www.lawsco.org.uk/media/359509/case-for-change-revisited-law-society-of-scotland.pdf>

⁴ <http://www.gov.scot/About/Review/Regulation-Legal-Services>

⁵ Part 2 The Financial Guidance and Claims Act 2018

Specific Comment

We note that the consultation document makes reference to exclusion from the claims management regulation being extended to activities carried on either through or by a 'legal practitioner' as defined within Article 89N of the draft Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018. In relation to the definition of legal practitioner' which is contained in Article 89N (3), and a similar exclusion contained within Article 76(2), we wish to point out that the wording which is intended to extend the exclusion to Scottish solicitors fails in part in its objective of exemption and of avoiding unnecessary duplication of regulation, whilst ensuring that all those carrying out the specified activities are subject to a regulatory regime which aims to achieve an appropriate level of consumer protection.

We highlighted the issue to Her Majesty's Treasury (HMT) and to the Scottish Government in June 2018. We understood that amendments were to be made to take our concerns into account. We were pleased to note that the amended draft order, published July 2018, took into account a number of our concerns. However, we still have some concerns in regards to Article 89N (5), and the mirrored provision in Article 76(2) which we have again raised with HMT direct.

Consultation Questions

We are in broad agreement with the regulatory regime outlined in the consultation document. Applying the Principles for Businesses, COND and SYSC and SUP regime to claims management companies will ensure consistency and promote and protect the interests of consumers.

Around communications, we believe that the provisions outlined will address concerns around poor practices regarding phone calls and texts, though we would observe, at question 8, that we believe that the retention of records should be for a period longer than 12 months.

Around prudential resources, PII cover and other protections, we believe that there should be a prudential resources requirement and that, in response to question 21, there is an argument that all CMCs should have PII cover, rather than restricting these requirements to a single area. In addition, we note, in response to question 22, that the Compensation (Claims Management Services) (Amendment) Regulations 2008 do not apply to Scotland.

We hope that these comments are useful in determining an appropriate regulatory regime for claims management companies and would be happy to assist further if helpful.

For further information, please contact:

Brian Simpson

Policy Team

Law Society of Scotland

DD: 0131 476 8184

briansimpson@lawscot.org.uk