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RESPONSE SENT VIA EMAIL
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8 January 2014

Dear Kevin,

Re: British Bankers' Association response to the proposed changes to the amended Authorised Conduct of Persons Rules

The British Bankers' Association (BBA) welcomes the opportunity to respond to this important consultation. The BBA is the leading trade association for the UK banking and financial services sector. We represent over 200 banking members, which are headquartered in 50 countries and have operations in 180 countries worldwide. These member banks collectively provide the full range of banking and financial services and make up the world's largest international banking centre.

First, the BBA would like to thank your Unit for the on-going cooperation and engagement with the BBA throughout this process. We are pleased to see that a number of concerns that we have raised and discussed with the CMR Unit around continued CMC malpractice have been tackled in this consultation paper.

Whilst the proposed changes to the rules are a very positive step in the right direction, the BBA has on-going concerns around enforcement of these rules and would like some more clarity from the CMR Unit as to how they are going to be monitored appropriately. There are a number of statements in the rules (and the latest additions) as to what the business (as defined) must or should do, but there is no real indication as to what the repercussions would be if a business fails to do any of these things. The BBA feels that this current consultation is an opportunity for the regulator to demonstrate more 'teeth' in its ability to enforce CMC regulation.

The BBA therefore proposes that the following addition (in red) be made to the proposed changes under the Preamble section of the General Rules:

“The rules must be complied with at all times, and a business must be able to demonstrate, and where practicable, document that it complies with the rules. Failure to comply with the rules will result in enforcement action being taken against businesses by the regulator.”

In addition, the BBA continues to call for further efforts to be made to clamp down on additional CMC malpractices that have not been tackled in the current consultation paper.

Some of these are outlined below:

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- The BBA would like to see the prohibition of all forms of unsolicited contact; namely the use of nuisance calls and spam text messages by CMCs. We are especially concerned about these methods of contact being used to target those customers who are most vulnerable. This issue was one of the key points raised in our recent briefing submitted, alongside Citizens Advice, to Shailesh Vara MP, on the topic of CMCs.
- The BBA has on-going concerns around CMCs pursuing (and often harassing) banks and customers immediately before and immediately after settlement. This wastes resources of banks (often banks are fielding over 1000 calls per week about payments from individual CMCs) and causes customers unnecessary stress. We would suggest that the Regulator considers the introduction of a rule mandating a standard payment term of at least 21 days (note, this period will should only commence once the bank has reached a decision concerning the complaint in question), during which, CMCs be prohibited from persistently seeking payment.
- As the BBA has previously highlighted to the regulator, an increasing number of CMCs are using the trademarks of banks in adverts without permission and are even registering websites containing the names of particular banks. This can be misleading for customers, who then believe that the CMCs are affiliated with the bank in question. The BBA would therefore welcome a rule obliging CMCs to respect the intellectual property of third parties.
- The BBA is also concerned about CMCs blocking direct contact between banks and customers, by informing customers that they should not deal with banks directly. This makes it very difficult for banks to determine if CMCs are behaving fraudulently, by misrepresenting what customers have said to them. It also prevents banks from being able to seek further information where complaints are insufficiently detailed or evidenced. This has a detrimental impact on consumers, as it can result in complaints being defended, when in reality redress payments may have been made if more information was provided.

The BBA of course stands ready to offer further support to the Unit in terms of addressing any of the outstanding issues raised above and we are willing to provide supporting evidence in this regard, should this be helpful.

The BBA (together with Citizens Advice) also met with Shailesh Vara MP on 19 December 2013 to discuss the aforementioned briefing as well as the points raised in this response.

Overall, I would like to re-iterate our gratitude to the Unit for the on-going cooperation with the BBA to date and I look forward to this continuing in the future. You will find the BBA's more detailed response to the specific questions laid out in the consultation paper in the subsequent document annexed to this letter.

Please do not hesitate to contact me if you have any concerns about the points raised above or below.

Kind regards,



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Annex 1: Answers to specific questions:

- 1. Do you have any suggestions or comments on the proposed statement that outlines how the rules should be followed? Do you agree with the definition of ‘document’?**

In principle, the BBA agrees with the proposed definition of ‘document’. The definition is a lot clearer than it previously was: however it is still unclear as to whether voice recordings are in scope.

Would it be beneficial for the CMR Unit to issue guidance on the requirement to ‘document’ to provide more detail on where documentary evidence is and is not required, and if so, can you anticipate any specific difficulties?

In the BBA’s view, provided guidance is clear and is not intended to be prescriptive; it should be of benefit for CMCs. It will also hopefully encourage good practice by creating a substantiated and specific customer complaint that can complete the full life-cycle of the complaint handling process. That said, the BBA has witnessed CMCs not retaining critical customer information such as the Letter of Authority, which has prevented them from then being able to pass the necessary identification and verification processes for banks. This lack of documentation indicates poor record retention practices. Any guidance would therefore be welcome in this regard.

It would also be useful for any guidance to stipulate a minimum period of time that records should be retained for (under which the storage and retention of data apply).

- 2. The proposed General Rule 2b) amendment requires CMCs to ‘substantiate and evidence’ the basis of claims. The Ombudsman will consider a consumer’s oral evidence and recollections where documentation cannot be located. Do you think there is a risk that financial service providers will reject claims from CMCs as a result of this proposal if they interpret ‘substantiate’ to mean documentation? Can this be mitigated?**

In the BBA’s view, provided the Financial Ombudsman Service (FOS) questionnaire associated with each customer is completed as fully and comprehensively as possible, including as much detail of the oral evidence collated, then there is a minimal risk that financial service providers will reject claims on the basis of no documentation of the event. Most financial service providers will use the FOS Questionnaire, alongside internal evidence to weigh up the plausibility of a claim; therefore it is in the CMCs best interest to provide as robust evidence to support the claim as possible.

The BBA does however hope that this requirement will put an end to CMCs submitting generic lists of mis-selling accusations, as well as complaints which contain very little detail. The word ‘substantiate’ will hopefully be an appropriate way of indicating that claims should contain a proper level of detail.

- 3. The list of specifications proposed in General Rule 2 from a) – f) are common breaches of the requirement to act ‘responsibly’; is it clear that these examples are non-exhaustive?**

In the BBA’s view, it is clear that the list is non-exhaustive.

The BBA has the following additional comments around the list under General 2, which we have outlined below:

- 2 (a) – Take all reasonable steps to investigate the merits of a potential claim before presenting it to a third party.**

It would be useful for the Regulator to confirm exactly what is meant by the term ‘reasonable’. The BBA would suggest that the Regulator requires the CMC to carry out a certain number of processes in order for them to have adequately taken all ‘reasonable steps’. For example, these could include verification as

to whether the customer actually holds the product/policy being complained about, verification as to whether the bank in question is even the correct institution and ensuring that the necessary paper work has been correctly completed (and not just using generic template letters) etc.

- **2 (b) – Make representations to a third party that substantiate and evidence the basis of each element of the claim, are specific to each claim and are not fraudulent, false, or misleading.**

See suggested amendment in red above.

- **2 (c) – Claims referred to any recognised Ombudsman or dispute resolution scheme must comply with those organisations’ procedures, include specific, appropriate and relevant information on individual claims and take account of relevant past decisions. Furthermore any claims referred to any recognised Ombudsman should not include any new evidence or material that the financial service providers have not had adequate time and opportunity to review before referral.**

See suggested amendment in red above.

In addition, whilst the BBA recognises that this proposed requirement is a positive step, we would welcome a little more clarity as to how this will work in practice – for example, in those instances where claims are submitted to the FOS and the procedures have not been adhered to, will the FOS simply reject these? The BBA would welcome further guidance/wording in this regard in order to ensure that there is consistent application of this requirement by the Ombudsman. In order to encourage CMCs to adhere to these procedures, the BBA would suggest that those businesses that are identified by the respective Ombudsmen as continuously falling short of this requirement are held to account.

- **2 (d) – Maintain appropriate records and audit trails.**

The BBA would welcome greater clarity here. In particular we would welcome an additional requirement on CMCs to fully document the evidence upon which they have taken the decision to submit a claim. Financial service providers have to provide a clear audit trail and rationale as to how they have reached a decision relating to a claim; in the BBA’s view, the same rule should apply so that CMCs have to provide the evidence of their rationale for assessing when a customer is dissatisfied and what form of customer detriment is evidenced.

- **2 (e) – Take all reasonable steps in relation to any arrangement with third parties to confirm that any referrals, leads or data have been obtained in accordance with the requirements of the legislation and Rules.**

Again, it would be useful for the Regulator to confirm exactly what is meant by the term ‘reasonable’. As above, the BBA suggests that the Regulator requires that CMCs adhere to a minimum standard here in order to have adequately taken all ‘reasonable step in relation to third party arrangements. This could include, for example, ensuring that basic data protection requirements are adhered to.

- **2 (f) – Have an appropriate procedure in place for early identification and protection of vulnerable consumers and give due consideration to obligations under any relevant legislation.**

The BBA would welcome greater clarity here as to how it will be ensured/monitored that CMCs are taking the necessary steps to identify and not take advantage of vulnerable consumers. For example, by prohibiting all forms of unsolicited contact (as outlined in our general remarks), a vast proportion of vulnerable consumers would be greater protected.

4. Do you have any comments or suggestions on the proposal to expand General Rule 3?

The BBA welcomes the enhancement to the rules, which stipulate that Directors of CMCs must be competent and have a working knowledge of the legislation and rules relating to regulated claims management services. However, in our view, this requirement could go even further, requiring that the

Director demonstrates a 'detailed understanding' or at least a 'good understanding'. In addition, it is unclear as to how this level of knowledge can be assessed at the CMC authorisation stage. It is also unclear as to what the minimum standards and checks that are expected to be in place once a CMC is authorised. We would recommend that consideration is given to adopting similar principles to those of the FCA Approved Persons Regime to ensure the correct gravitas of the requirements.

Furthermore, the BBA would welcome clarity as to whether these competency rules apply to all Directors of a company at all times, or just named individuals.

Lastly, external auditing of these requirements could be considered, for example as per the model currently being used by the Professional Financial Claims Association (PFCA).

5. The proposals at General Rules 6, 7, 13 and 14 represent either technical corrections or grammatical clarifications. Do you agree with these proposed amendments?

The BBA has no further comments in this regard.

6. In relation to the amalgamation and clarification of General Rules 16 and 17, do you agree with the proposal?

The BBA has no further comments in this regard.

7. Do you have any views on the likely benefits or costs to CMCs and particularly small to medium sized CMCs?

Many CMCs currently spend considerable resources chasing insufficiently detailed complaints and speculative complaints. Therefore, in the BBA's view, all CMCs will benefit from avoiding the costs of doing this. The proposed rules will also hopefully enable CMCs to better plan the future of their businesses. Furthermore, whilst properly investigating complaints may initially represent an additional cost for CMCs, this will eventually be offset by the aforementioned savings from adopting better practices.

It is important to highlight, however, that an overall enhancement of the rules – as proposed in this consultation paper – will bring benefits for customers and therefore the impact they will have on CMCs should not be the main point for consideration. If CMCs wish to provide a robust complaints handling process, then they should be expected to abide by the CMR rules, irrespective of their size.

8. The CMR Unit welcomes your views on the Equality Statement in terms of the potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence

The BBA has no further comments in this regard.

ENDS.