

Consumer Credit Counselling Service – Response to Ministry of Justice consultation on Claims Management Regulation (Proposals for amendments to the Conduct of Authorised Persons Rules)

Introduction

The Consumer Credit Counselling Service (CCCS) is the UK's largest specialist provider of free, independent debt advice. In 2011, CCCS was contacted by over 370,000 indebted consumers, and helped clients repay £289 million. The charity currently manages over £3.7 billion worth of unsecured problem debt.

CCCS sees a number of clients each year who are contacted by or use the services of Claims Management Companies (CMCs), with many experiencing difficulty due to CMC misconduct. Around three percent of problems logged by the charity's Social Policy network last year concerned CMCs, with the majority of complaints relating to firms offering to reclaim Payment Protection Insurance (PPI). Evidence from the Social Policy network will be used throughout this response.

The charity's focus is ensuring rules governing CMCs stop firms causing stress and detriment to consumers that can result in additional financial difficulties. In summary:

- Firms should not be able to take payment from customers until 14 days after a contract has been signed
- The Ministry of Justice (MOJ) Conduct of Authorised Person Rules should prohibit CMCs from taking credit and debit card details from potential customers during an unsolicited telephone call
- Pre-contractual information must indicate if there is a possibility a successful claim may not result in a 'cash in hand' settlement
- CMCs should carry out a financial assessment with potential customers to ensure that their fees will not result in financial hardship in non-'cash in hand' settlements

The CCCS response to the following consultation questions is based on the interests of indebted consumers. We have responded to those questions most relevant to our work.

Question 4: *In relation to Client Specific Rule 11, do you have any alternative proposals that could address the issues regarding fees charged by some*

CMCs? For example, could a ban on CMCs levying fees on anything other than a 'cash in hand' compensation award paid to a consumer be effective?

CCCS supports the proposal that CMCs will only take payment once a contract has been signed. However, the charity believes this proposal should go further and the new Conduct of Authorised Person Rules mandate CMCs not take payment until after a "cooling off" period following the signing of a contract. The charity has seen evidence (including Social Policy evidence case 1) of firms continuing to chase payment after a contract has been cancelled, leading to stress and possibly exacerbating financial difficulties. CCCS recommends the time set between the signing of a contract and payment being taken be aligned with the cancellation period set out in regulation 10(2) of the Financial Services (Distance Selling) Regulations 2004 (14 days).

Social Policy evidence case 1

In September 2012 CCCS was contacted by a client who had signed a contract with a CMC but had decided to cancel within the cooling off period. Despite her cancelling the company continued to pursue the claim. Although the claim was ultimately successful the result was not a 'cash in hand' award but the reduction of some outstanding debt. The client was left with a bill of over £3,500, which the CMC is now threatening to recover via legal proceedings.

In addition, our evidence (including Social Policy evidence cases 2 and 3) reinforces that of the CMR Unit, showing some CMCs take money from credit and debit cards without explicit authorisation. With this in mind, CCCS recommends the MOJ prohibits CMCs from taking card details during an unsolicited telephone call, even if an arrangement with the CMC has been agreed in principal. It is important this provision extends to firms who do not pursue claims themselves but pass details to a linked solicitor.

Social Policy evidence case 2

CCCS advised a client who had been contacted by a CMC and decided to pursue a PPI claim. The client agreed to pay a fee of £356 and gave details of two credit cards. Without authorisation the company took £1,000 from one of the client's cards and £199 from the other. After complaining on several occasions he was referred to a second CMC who told him they were now handling his claim. The money taken by the first CMC has not been refunded and this has increased the client's financial problems. At no point has he signed a contract or agreement of any kind.

Social Policy evidence case 3

In June CCCS advised a client who had been 'cold called' by a CMC offering to reclaim PPI on his behalf. Following the telephone conversation the client was charged £564 on a credit card, the details of which he had given to the

CMC. Subsequently his case was transferred to a firm of solicitors who proceeded to charge the client a further £735.

Question 5: *In relation to Client Specific Rule 11, should CMCs be required to tell prospective clients, more clearly and explicitly that their fees would be charged irrespective of whether they ultimately receive a “cash in hand” compensation award?*

A report commissioned by CCCS from the research specialists Britain Thinks has found that at the point of seeking advice indebted consumers feel panic, helplessness, embarrassment and shame and sometimes depression. It is important people who are in such a vulnerable situation are fully informed about all potential outcomes of pursuing a claim before signing a contract with a CMC.

CCCS recommends the new Conduct of Authorised Person Rules require firms to state clearly in their pre-contractual information when there is a possibility of a non-‘cash in hand’ award. The language used should be explicit, using the phrase “there is a [strong] likelihood that if your claim is successful you will not receive a ‘cash in hand’ payment but you will still be liable for fees.”

It should be impossible for a successful claim to result in an individual’s financial situation getting worse. Therefore the MOJ should require CMCs to carry out a full financial assessment of a potential client before proceeding to make a claim – to ensure the fees will not result in financial hardship if there is a non-‘cash in hand’ settlement. The purpose of the assessment should be to ascertain whether the client could be left in financial difficulty as a result of a claim. CCCS would be happy to share its experience with the MOJ of carrying out thousands of such financial assessments every year.

Question 10: *Do you have any comments or views in relation to the current rules regarding cold calling*

CCCS advisors report a number of cases where clients have been ‘cold-called’ by CMCs. We have listed a selection of cases below (in addition see Social Policy evidence case 3).

These calls can often be stressful for the individuals contacted – many of whom will be repeatedly called by their creditors chasing payment. Therefore we would be very supportive of any moves to tighten rules surrounding ‘cold-calling’ and keen to discuss this issue further with the MOJ outside of this consultation.

Social Policy evidence case 4

CCCS advised a woman who had been ‘cold-called’ by a CMC offering to reclaim PPI payments she had made. After paying the firm an initial £369 to pursue her claim she was informed they would require a further £1,400 before

any funds were released. She subsequently discovered the firm was pursuing a creditor she did not have a loan with.

Social Policy evidence case 5

In February 2012 CCCS advised an existing client whose husband had entered in a verbal agreement with a CMC after being 'cold-called'. Although a contract was not signed the client's husband did give the firm details of his credit cards. Subsequently payments were taken from this card without the client or her husband being informed.

Social Policy evidence case 6

CCCS advised a client who received an unsolicited telephone call from a CMC which attempted to pressure her into starting PPI reclaim proceedings. The firm presented itself as associated with CCCS and the client initially believed she was talking to one of our advisers.

**Consumer Credit Counselling Service
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