Claims Management Regulation Review

Ministry of Justice

10th Floor (10,11)

102 Petty France

London

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Dear Sirs

Review of Claims Management Regulation

Flairford Securities Limited trading as Brunel Franklin, (CRM 13067), wishes to make representations to the review into "how to implement a much more rigorous regulatory regime for CMCs, with particular reference to the high standards applied to other regulated financial industries such as Financial Services.

These representations have been prepared by Sally Bowyer BSC FCA, Managing Director of Flairford Securities Limited.

Brunel Franklin has been in the claims sector since 2004, in its previous structure as Brunel Franklin & Co Ltd (CRM 1409) and subsequently in the current company since April 2008 when the business was acquired as part of a management buyout. The business has been responsible for recovering over £375Million of redress for its customer base of approximately 160,000 unique customers. The company has and continues to be keen to engage in active open dialogue with the CMR, with Financial Institutions, with the FCA, FOS, LEO and with the press and other interested parties.

Brunel Franklin welcomes the review into Claims Regulation and is frustrated by the apparent failure of the combined regulatory powers of the CMR, the ICO and OFCOM to force those businesses who

do not comply with the rules out of business or into compliance. Brunel Franklin hopes that the review will:

- Help in tackling rogue companies.
- Help drive out bad practices including nuisance calls and reckless claims.
- Ensure all telemarketing is legally compliant.
- Prevent all text and voice broadcast messages.
- Ban companies from taking fees before a contract has been signed.
- Improve the reputation of businesses who follow correct procedures.
- Improve consumer protection.

We note that the principle objectives of the review are to consider how to improve consumer protection and mitigate the wasteful impact of poor conduct and service on those businesses which are subject to claims from CMCs.

We also note the review is to consider who should regulate the Claims Management Companies and how a fee cap can be established, although we understand that the details of a fee cap will be the subject of a separate review.

It should be noted that Brunel Franklin is only authorised my the CMRU to carry out work in the Financial Services sector and can only comment on their experiences in the financial claims arena.

How can Consumers be better protected from bad practices of CMCs?

Consumers need protection from bad practices in all aspects of their day to day lives, from faulty goods, bad service, bad advice and their rights to a quiet life. They must also have a right to be assisted in seeking redress should they wish to do so. The CMR has now got significant powers to fine and block businesses.

Brunel Franklin welcomes that the CMR now has the powers to enforce its' rules and has set about doing so. This can clearly be seen from the CMR Enforcement Action reports Jan to March 2015 published 28/5/15 and the April to June report published 5/8/15. These reports read in conjunction with CMR Bulletin 26, show a really welcome and definite toughening of the CMR stance and a dramatic improvement in its success at working with the other regulatory authorities.

Brunel Franklin is concerned that a number of lead generators most notably the text and voice broadcast business continue to prey on vulnerable and elderly individuals and this matter needs to be addressed with a degree of urgency.

Brunel Franklin would like to see an outright ban on all lead generation from voice and text broadcast platforms. It is a source of immense frustration to us individually, as well as the rest of society, to receive multiple calls in a day from a pre-recorded message stating "you still haven't claimed your refund….." "You were involved in an accident….." "Your debt could be written off" or texts saying "the banks are refunding customers who have paid a monthly fee on packaged bank accounts. For your refund click www.claimextra.com" which the writer received only this week. These text and voice broadcast messages must generate leads, which someone must buy. Brunel Franklin believes that if it were a direct breach of the rules to receive leads generated this way the CMR would stop this type of marketing activity by killing this market for these leads.

Brunel Franklin understands that stopping the broadcasting of these messages, which often comes from offshore, has been troublesome to the various regulators but believes tracking the leads to the end user CMC is a relatively easy task.

Brunel Franklin also believes that there are merits to an outright ban of upfront fees. Such fees are symbolic of a business which is unsure of its model or has insufficient funds to bank role claims. In either case it is unlikely that a client will receive the most favourable outcome.

How are Consumers protected by CMCs?

Brunel Franklin is proud to have been involved in obtaining PPI refunds for its clients since 2006. For several years since that time our PR activities have all been focussed on raising customer awareness that they may have been sold a product which, even according to such noteworthy bodies as Citizen's Advice and the OFT, was commonly inappropriate for their needs and was unlikely to pay out in the event of a claim. We have argued with the financial institutions and the ombudsman and eventually helped to establish what fair redress was.

Whilst from inside the sector it is difficult to believe that in a recent survey, which the FCA reported on 2 October 2015, only 74% of those surveyed had heard of PPI and only 77% of those understood there may be a problem with the product (i.e. only 57% of those surveyed). It is improbable to believe that, given the volume of PPI, 43% of those surveyed did not at some time have PPI. These are the very customers that CMC's are trying to protect. What more evidence of a mis-sale does one require than the customer has bought a policy but has not heard of PPI, never mind knowing they have bought it, or what it does.

When considering the need for CMC's it is vital to consider the following facts:

- In a Money Advice Service survey it was established that 25% of the people surveyed could not read a bank statement.
- A third of people surveyed cannot calculate interest at the rate of 2% to a sum of £100.
- In a YouGov survey commissioned by Brunel Franklin in 2011 only 1% of people surveyed said they trusted their bank.
- The Financial Institutions usually ask claimants to fill in a long PPI claims form(11 Pages) and a further 3 pages to escalate the case to FOS. These forms are acknowledged by our customers to be complex, burdensome and off putting.

- Martin Lewis and Which offer self help services, which are valuable to some customers but other customers are happy to pay to be walked through a process which can be complex and time consuming.

Considering only PPI as an illustration, The Financial Institutions have had ample opportunity to redress all of their customers and have indeed been asked under PS10/12 to do so, but instead they have continued to seek to fail to redress their customers on a consistent and fair basis. In a brief summary of the institutions failures you need only look at the initial 100% reject rates, followed by lengthy delays at the FOS in 2007-2008, followed by the Judicial Review in response to the FSA issuing complaint handling rules in PS10/12, the failure of the FSA to follow FOS recommendation requesting the FSA make the Financial Institutions write to all affected customers and the scandals of financial institutions ignoring their regulator and staying all cases during the Judicial Review. More recently the mis-handling of complaints by most notably Lloyds banking group and Bank of Australia group which continue even now are continue in failing to redress customers properly through proper reviews, mishandling of complaints, inaccurate information, inappropriate use of "alternative redress models" and wrong calculations.

Brunel Franklin has been representing our clients' interests through all of these matters, raising concerns with the Financial Institutions and trying to have meaningful dialogue, reporting our most grave concerns to the appropriate authorities, including the FCA and the MOJ. It is interesting to us as a CMC that the effectiveness of the Financial Services regulation should be a standard to be aspired to by the CMRU, when the Financial Services Regulator allowed the mis-selling of PPI on such a monumental scale and have to date failed to properly enforce remedial action.

At this point it is probably worth noting a few facts about Brunel Franklin's business model. In the summer of 2013, Brunel Franklin decided to suspend its general outbound campaigns to the public, which had previously been predominately through Google PPC. At this time we were puzzled that so much PPI remained unclaimed despite our belief that market awareness was vastly improved. After

significant thought we realised that one of the main reasons for the Judicial Review was the banks had tried to avoid having to redress all connected loans. Our investigations in late 2013-4 highlighted that that most banks had failed to properly review previous decisions following Judicial Review to ensure that any linked loan had been revisited.

We decided to remarket to people who had already had a successful claim, seek a new authority and require the Financial Institutions to readdress the original clients claims under the PS10/12 rules now in force. It is staggering to us that to date we have obtained £35,447,359 of additional redress for 11,003 customers who thought they had already recovered the full refund they were entitled to. Furthermore on our most recent cases we have recovered to date £1,420,290 for customers who had previously been told they did not have PPI. How can the Financial Institutions claim that we are mis-leading customers when they are guilty of under paying rightful redress on such a large scale?

Waste in the businesses subject to claims

Addressing specifically the question of waste caused on financial institution by claims by CMCs, we would first note that Brunel Franklin originally acknowledged that this was a potential issue to both the CMC and the financial institution in 2012. Immediately following the Judicial Review we introduced a DSAR process on all enquiries from customers to ensure that we only complained about PPI on those cases where the bank confirmed the clients assertion that they had PPI. We soon came to arrangements with the major institutions to provide a shortened enquiry process so as to help the banks handle these request for data, the processes have various names and are all slightly different, to effectively shortcut the legal DSAR process but allow both sides to eliminate waste.

Looking at complaints made by Brunel Franklin in quarter 1 of 2015, (this data chosen as it now mature) our complaints and uphold rates against the main institutions were:

Banking Group	Complaints made	Redress awarded	Percentage uphold rate	Cases referred to FOS
Lloyds Banking Group	3084	2406	78%	155
Barclays Group	2986	2141	71%	124
HSBC Group	569	410	72%	78
NatWest Group	1081	927	85%	33

In arriving at these actual complaints, in excess of 31,000 other potential claims were eliminated before a complaint was made through our due diligence processes. These processes are time consuming and costly to operate.

We believe that this data supports the view that a properly managed PPI campaign should not and does not generate excessive waste but does drive customers to receive the refunds of their PPI they are rightfully entitled to.

There are and we suspect will continue to be issues with the Pre-submission processes adopted by the financial institutions who sold PPI. This has been exacerbated by Financial Institutions never investing in the proper integration of legacy computer systems as they acquired businesses and the sector consolidated lenders. Accordingly some banks are unable to report on the existence of PPI, and in these circumstance it is necessary to complain based on the clients assertions alone. It is also worthy of comment that the information supplied by lenders can be unreliable and fuels waste. Equally some lenders have substantial difficulties providing accurate information on whether there had been previous complaints at pre submission stage. We can show examples of error rates in excess of 15%.

The Financial institutions could also cut a further 1-2% of waste if they could identify at Pre-submission stage that a client bought PPI but cancelled it within 14 days these complaints could then be avoided.

We continue to seek enhancements to the Pre-submission process on a regular basis, but the banking institutions are large and need to clear even the smallest cost saving opportunities through an approval process which is very slow and time consuming.

Regulation

Brunel Franklin welcomes any additional regulation which would improve the reputation of the sector with Consumers and/or enhance the protection of the Consumer. We would support any changes and seek the earliest possible implementation. However we do not believe these changes can be currently achieved on a most timely basis by a change of regulator.

The review document asks for consideration of 4 options:

1) Further reform of the Existing Regime, with New Powers and resources provided to the CMRU

   We believe at this stage, and taking into account the FCA consultation on a time bar on PPI, the CMRU finally has most of the powers it needs and is at last able to start enforcing them effectively as noted above.

   The CMRU has the established relationships with the other key bodies, the FCA the FOS, LEO, ICO and OFCOM and the BBA necessary to understand and pursue all new developments as they happen.

At Brunel Franklin we believe that the CMRU would benefit from increased direct open dialogue with some of the more significant CMC's, most of whom are active supporters of raising standards within the sector. These companies have hands on experience of the problems facing the industry from Consumers and Recipients of Claims perspective and could help balance up some of the noise surrounding the sector. Whilst it is noted that the PFCA and ARC sit on the regulatory panel, they do not represent (anything like) a majority of the CMC's. We would suggest that a significant minority of the seats held on the Regulatory Review Panel should be held by individual CMC board members, rather than 2 trade bodies who do not adequately reflect the diverse opinions of all those responsible CMC's who actively have an interest in improving standards within the sector.

Approximately 18 months ago Brunel Franklin were approached by the CMR and asked to liaise with a named individual, Saeeda Sadaff, about matters giving rise for concern and to feedback what we were experiencing from Consumers and Banks. Unfortunately after one meeting, emails went unanswered and the process dwindled out. We would like to see this process reinstated and the CMRU given the resources it requires.

The weakness of the CMRU is that it appears to have few full-time staff; most of its resource appears to be subcontracted trading standards officers from Burton on Trent Council. Whilst the staff try to do their job to the best of their abilities it is a shame that if a question is asked about the interpretation of a rule, we have found that different officers will frequently give different answers.

The existing regime of Regulation could be further strengthened by the implementation of an "Approved Person" and a "Skilled Person" regime similar to that currently used by FCA; this could be achieved by replicating the scheme rather than changing the regulator.

2) Dual regulation by CMRU and FCA

Administratively this must be the least workable option, it would be practically impossible to have two regulators each effectively with half the resource. Having two bosses is simply a recipe for disaster. Furthermore the cost of operating a dual regulation would be prohibitive.

3) Creation of a new regulator

Our principle objections to the creation of a new independent regulator are timing and costs. The CMRU has floundered for a number of years to get the rules and enforcement procedures it needs in place. It is accepted that this delay has been caused by an over simplification of the regulatory needs initially and the innovative nature of the sector in these technology driven times. However to start again essentially means there will be a further learning curve to undertake and unnecessary prolonged implementation of the required improvements. With a pending time bar and the Financial Institutions winning the PR rhetoric, the CMC need to be seen to have an effective regulator in place now.

If a new regulator were deemed a necessity then it appears to us that the most sensible existing regulatory body would be the SRA. The Synergy of our work under DISP to the activities of lawyers in pre court proceedings seems to us apparent. We already share the LEO services.

The SRA would not be subject to the obvious conflict of interest that the FCA would have.

4. Transfer of regulation to the FCA

The FCA is an illogical choice of regulator for CMCs. The FCA is a regulator who would have a conflict of interest effectively trying to regulate the needs of a hunter and a hunted, a natural conflict which it is difficult to see an easy or practical resolution for.

Further the FCA is still trying to complete the staging of its take over of regulation for the debt management, debt adjusting and specialist lending from the OFT. The process of the transition from one regulator to another has been time consuming, confusing, expensive and has yet to reap any rewards for the parties concerned.

It is difficult to consider that the FSA and now the FCA's regulation of PPI, either in the selling of PPI policies, or the redress of customers as a success. We find it difficult to see how adding another sector to the FCA's regulatory regime could help the FCA, any of its current regulated businesses or the consumers many of whom are dismayed that any regulator could have allowed such a series of mis-selling scandals to develop.

It is accepted that aspects of the FCAs regime including the authorised individuals part of the FCA regulator program could add strength to perceptions of good practice, its regulation and accountability. However it is believed that it would be more cost effective and in the interest of the consumer quicker to implement these changes to the current CMR rules rather than to change the regulator.

The implementation of a fee cap?

We are advised by the Ministry of Justice and HM Treasury that the fee cap consultation will be an entirely separate review but it is simultaneously recorded in the review document that one of the issues being considered by this review is "including the power to implement the cap on charges that CMC's can apply to their customers- and what architecture might be most appropriate to deliver this, including its governance and scope" As there appears to be some doubt therefore as to whether a fee cap is part of this consultation we make the following comment.

Brunel Franklin does not necessarily understand the need for a fee cap. Although operating in a common sector, the services offered by CMC's vary widely and it is already a requirement of the regulations to advise customers that they may represent themselves and further that they are free to shop around with other service providers. Claims may at times appear to be relatively simple to undertake, yet require significant background knowledge accumulated over years of experience. For example it can often be excessively complex approaching the correct underwriter and establishing liability on pre- regulation PPI sales where in theory the DISP rules do not apply.

It is relatively easy for the financial institutions to state that a claims company's fees should be capped as they do little to justify their fees and add no value to customers, but I am certain that those of our clients referred to above who are now in receipt of a further £35Million of refunds which was originally denied them when they first made their claims would dispute this contention.

Further the banks repeatedly fail to acknowledge that if they actually had the consumers' interest at heart rather than their legal responsibilities to their shareholders, they would by

now have written to every client to whom they sold the “toxic” PPI and offered them the full refund they are entitled to.

It is easier for these banks to portray that the CMC “ambulance chasers” are ripping consumers off rather than to admit that they are still unwilling to face up to the full scale of their mis-selling and are seeking to minimise their pay outs at all costs.

Brunel Franklin accepts that a fee cap may well be imposed and sincerely hopes that this is after proper consultations with the sector, so that it is possible for the industry to properly explain the costs they incur in investigating all potential claims properly in order to minimise wastage for the banks.

It is also vital to understand that each different model has entirely different revenues and costs. For example in our model, of looking at linked loans which the banks have not addressed when the original complaints were settled, that the average redress value of each case is lower than the original claim, whilst the amount of work involved in handling these lower value claims is the same as handling the original complaints and the skill required is higher.

Assuming a non-commercial sector wide fee cap were implemented alongside the FCA’s Plevin proposals, (the subject of a completely separate representations), it is doubtless that the result will be that some of the most badly exploited individuals, who have thus far been completely unable to pursue PPI refunds, will be permanently penalised. This is because the issues in Plevin are far too complex for the average consumer to be able to put together their own complaint and the redress far too small for an average lawyer to take on the work.

Summary

It is hoped that this submission will be received in the good faith it has been written in. Brunel Franklin wishes to see consumers protected and well represented but the one sided rhetoric from the banks must not be allowed to be taken as gospel. We would be delighted to provide any additional evidence to support any fact or assertion should the review consider it to be appropriate.

Yours faithfully

Sally Bowyer (Managing Director)

Executive Summary

In summary Brunel Franklin would propose that the following points be appreciated and adopted in your proposals

1. A significant minority of seats on the regulatory board shall be held by CMCs, this would ensure that the true issues affecting regulated business good and bad are identified quickly and addressed
2. Most CMCs provide a valuable service highlighting the failures in handling of claims by financial institutions which would not have come to light otherwise. The FCA alone cannot be left alone to ensure that cases have been handled correctly.
3. Regulations should be introduced to stop social nuisance text and voice broadcasts by introducing regulations stopping any CMC accepting, either directly or indirectly, any sales leads generated from such activities.
4. Immediate withdrawal/suspension of regulatory approval of any CMC found to accept leads from text and voice broadcasts.
5. Action to be taken by Ofcom to aggressively enforce and fine those Telecoms companies who are found to repeatedly allow text broadcasts over their networks, similar to those used for spam emails.
6. The CMR now has virtually all the powers it needs to iron out bad practices amongst regulated businesses. To change the regulator now would be to lose most of the impetus gained over the last few years.