

Claims Management Companies (CMCs) – a plague on our houses

I wonder how many of us have received calls about poorly performing investments, that car accident we had, how to get rid of our outstanding credit without making payments? My most recent call was a company asking me about my car finance. Was I made aware of the balloon payment? Any other charges on the loan? Any commission paid to set up the loan?

I normally send them away by advising them that I work as a compliance consultant in financial services and am aware of all of these issues. Sometimes, I simply advise them that they cannot help me and good luck with their next call. Occasionally, I counter their call by advising that I am not looking to make any fraudulent claims today. There is no rhyme nor reason to my responses. Just my mood, how busy I am and how pushy they are. I try not to be unkind too often because the callers do a very difficult job that I would not want to do.

Years ago, a firm that I was working with had been advised to settle a claim by a CMC as settlement was cheaper than going to court. This was for an older couple. Shortly afterwards a claim was made for their son and daughter in law. Weirdly with all the same details and the explanation that the clients were approaching retirement age. Of course, this was nonsense, as the son was a 35-year policeman and the lady was also in a profession that did not retire at that age. But the CMC persevered and I stopped helping the firm before that claim was settled.

Worse than the calling is the abuse of SARs. Subject Access Requests under the GDPR which enable individuals to find out what data is held about them by organisations. This has become the method of choice used by CMCs to ask for all the data held by an organisation relating to a client. The client signs an instruction and then the CMC asks for the information, ostensibly on behalf of the client.

I have recently referred this matter to ICO and it seems that the firm is obliged to provide all the information requested under the rules of GDPR. The guidance that I received was that if we were in any doubt, we should contact the client to ascertain whether they are aware of extent of their information that would be provided to the CMC. The operative had doubts that clients would be aware just how much of their information is being made available.

Also as the CMC works on a “no win, no fee” basis, we felt that it would be unlikely that the client would be aware that the CMC would claim up to 35% of any compensation payment that could be obtained.

I had a case recently where the solicitor firm stated “ *To confirm, where we have the Clients authority, **we require all the information held**, as this enables us to get our facts correct and therefore maximise our chances of achieving the desired outcome, which is, as discussed, to recover some if not all of the Clients losses, which in many cases are absolutely horrendous.*” They seemed surprised and even hurt at my accusation of them fishing for information to fabricate claims. Also, that we did not share their view regarding the value of them receiving all the information. They were really concerned when I advised that I would be redacting anything that may be useful to them.

Recently, claims management has been moved to become a regulated activity supervised by the Financial Conduct Authority. Previously, it was supposed to be regulated by the Solicitors' Regulation Authority. However, some solicitors remain supervised by the SRA under an exemption. Which suggests that they see regulation by the SRA as a softer option. Certainly, the firm that I was dealing with produced this piece of law.

May I draw your attention to Compensation (Exemptions) Order 2007, in which it states:

Legal practitioners

4.—(1) Section 4(1) of the Act does not prevent the provision of a regulated claims management service in the circumstances that—

(a) the service is provided—

(i) by a legal practitioner;

(ii) by a firm, organisation or body corporate that provides the service through a legal practitioner; or

(iii) by an individual who provides the service at the direction, and under the supervision, of a legal practitioner who is—

(aa) his employer or fellow employee; or

(bb) a director of a company, or a member of a limited liability partnership, that provides the service and is his employer; and

(b) the legal practitioner acts in the normal course of practice in a way permitted by the professional rules to which he is subject.

(2) In paragraph (1), "legal practitioner" means—

(a) a solicitor, barrister or advocate of any part of the United Kingdom;

(b) a Fellow of the Institute of Legal Executives;

(c) a European lawyer, as defined in the European Communities (Services of Lawyers) Order 1978(2);

(d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990(3); or

(e) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society or the General Council of the Bar as a regulated legal profession.

For the avoidance of doubt, claims management activity is not restricted to persons regulated by the Financial Conduct Authority, but includes legal practitioners as defined above who are authorised by the Solicitors Regulation Authority, such as Money and Me Solicitors.

I would interpret that as going for the easy option and they certainly seemed to think so.

For the sake of completeness, I referred the firm to both the FCA and SRA to ask for their opinion on this practice.

The FCA came back saying that the firm was not registered with them and therefore fell outside their jurisdiction. But would be interested in hearing about any firms that do fall under their regulation.

The SRA came back a little later to advise that they would be looking into the matter.

So now, each time that any CMC comes in with a fishing SAR, I am popping notes to each of the regulators – FCA< SRA and ICO.

I am sure that many advisers share my opinion regarding CMCs and their practices. We need to get our regulators involved otherwise there is no point in claims management being a regulated activity.

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