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Claims Management Regulation Consultation
Financial Services Group, 1 Red
HM Treasury
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1 June 2018

Dear Sir,

I write on behalf of Barclays Bank UK PLC in response to Her Majesty's Treasury consultation on Claims Management regulation published on the 23rd April 2018. Barclays welcomes the opportunity to comment on the rationale for the Government's suggested approach to Claims Management regulation, the draft secondary regulations set out in Annex A (attached to the consultation document) and for the proposed approach to the temporary permissions regime.

Our responses to the consultation questions set out in Section 5 of the Claims Management regulation: consultation on secondary regulations document are set out below.

Question 1. Do you agree to the overall approach of maintaining the current scope of CMC regulation, but with multiple permissions?

We believe that the addition of new multiple permissions will tighten regulation and ensure that Claims Management Companies (CMCs) only undertake claims management activities in areas where they can demonstrate that they are fit and proper and have clear competence to do so. We believe that this is a positive move that will help mitigate customer detriment.

The addition of the new permissions regime, particularly the specific permission relating to financial products and services is welcome. In relation to the category of claims which is relevant to Barclays as a financial institution i.e. "a financial services or product claim", we note that this has not been further defined. We assume that this is deliberate to ensure that this is construed broadly to cover any type of claim which could be brought in the future against a financial institution in relation to any product or service that they provide. It would be helpful if this intention could be clarified in any further guidance or feedback which might be published

Question 2. Does the SI in Annex A achieve the aim of maintaining the scope of regulated claims management activity, but with multiple permissions?

Barclays agrees that the SI in Annex A achieves the aim of maintaining the scope of regulated claims management activity, but with multiple permissions.

Question 3. Do you agree with the policy intent that claims made under section 75 of the Consumer Credit Act 1974 are within the scope of the FCA's claims management regime?

Barclays agrees with the policy intent that claims made under section 75 of the Consumer Credit Act 1974 should be within the scope of the FCA's claims management regime. The current exclusion of CMCs handling S75 claims not requiring authorisation and falling outside of the Ministry of Justice's jurisdiction has been a technical loophole that is being exploited by some CMCs.

Question 4. Are there any other sectors that should be added to the scope of regulated claims management activity?

Barclays has not identified any other sectors that should be added to the scope of regulated claims management activity. We would, however, note our comment provided in relation to Question 1 around clarifying the intended broad scope of "a financial services and product claim".

Questions 5. Do the provisions in Annex A work in relation to Scotland?

Barclays has no evidence to suggest the provisions in Annex A do not work in relation to Scotland.

Question 6. Do you agree that compliance with the Code of Practice should remain a condition of trade union exemption from claims management regulation?

Barclays has no evidence to suggest that this condition should not remain and would agree that this seems sensible.

Question 7. If you agree that compliance with the Code of Practice should remain a condition of trade union exemption from claims management regulation, do you agree that the current Code of Practice is suitable?

Barclays is not in a position to comment on the current Code of Practice.

Question 8. Does the SI in Annex A achieve the aim of maintaining the current exemptions?

Barclays agrees that the exemptions in Annex A, subject to the following.

There appears to be a material omission in the drafting for the exemption for Independent Trade Unions, both in s89S of Part 3B and s81 of Part 7. In both cases it needs to be clear that the exemption only applies in relation to activity carried out by an Independent Trade Union. As currently drafted any member (including a former member) of a Trade Union or their family members is exempt purely by virtue of that status and the activity of the union itself is not within the scope of the exemption. We believe this must be an oversight which would be resolved by the following amendments:

> 89S. Independent trade unions
> (1) There are excluded from articles 89G to 89M any activity carried out by *an independent trade union for -*.....
>
> 81. Communications made by an independent trade union

(1) The financial promotion restriction does not apply to any communication which relates to a controlled claims management activity falling within paragraph 11A of Schedule 1 carried out by *an independent trade union for -.....*

Question 9. Should the government consider any further exemptions?

Barclays is keen to ensure that HMT gives regard to the impact of the EU proposal on representative actions for the protection of collective interests of consumers, which could give certain charities powers to undertake collective redress. The proposal is not sufficiently developed for Barclays to come to a view on this, but we believe HMT should consider the potential implications of this on a blanket exemption for charities.

Question 10. Do you agree that the SI achieves the aim of regulating all CMCs providing regulated claims management activities in Great Britain?

We agree that the SI appropriately sets out in Article 2 when a person is to be treated as carrying on a regulated claims management activity in Great Britain. We note this has not been replicated in the amendments to the secondary legislation, in particular, the Regulated Activities Order and the Financial Promotion Order and would suggest that it would be helpful, if possible, to do so that the scope is clearly set out alongside the relevant text.

Question 11. Do you agree that the FCA's exemption from its consultation requirements under FSMA in respect of rules that are the same or have the same effect as those under the Compensation Act 2006 regime should be in place for Scotland as well as England and Wales?

Barclays' interpretation of the SI is that FCA's general obligation, pursuant to s138I (2) of the Financial Services Markets Act 2000, to consult on any rules it publishes remains unaltered (even if those rules are the same or have the same effect as those under the Compensation Act 2006 regime). It is very important that this remains the case. The only exemptions which the SI is seeking to introduce are:

1) in respect of an obligation to carry out a cost benefit analysis where those rules are the same or have the same effect as under the Compensation Act 2006 regime. In this instance Barclays agrees that this obligation should not apply either in England and Wales or Scotland. and2) in respect of FCA's competition duty - please see our answer to q12.

Question 12. Do you agree that the FCA's competition duty should be disapplied in respect of rules or guidance that have the same effect as the current regulator's rules?

Barclays does not agree with the proposal that the FCA's competition duty at s.1B(4) of FSMA 2000 should be disapplied in relation to CMCs. It is not clear why HMT proposes that the FCA should not have this duty in respect of one type of firm; simply noting that the CMRU did not have this duty does not appear a sufficient reason for the FCA's duty to be disapplied in this way.

The intention behind transferring regulatory responsibility for CMCs to the FCA is surely to ensure there is an effective regulator that has the tools to prevent misconduct and negative outcomes for consumers. Indeed, to disapply the FCA's duty would not be a satisfactory outcome for customers, who would likely benefit from any work carried out by the FCA on competition in the claims management sector.

Question 13. Does the SI achieve the aim of exempting the FCA from its consultation requirements under FSMA in respect of rules that are the same or have the same effect as those under the Compensation Act 2006 regime?

In relation to the exemption from having to perform a cost benefit analysis, we would suggest that a specific exemption should be inserted into s138I (6) of FSMA as the amendments to s138I(7) and (8) could be interpreted as requiring a cost benefit analysis to be carried out to demonstrate that there is no difference.

Question 14. Do you agree with the proposed approach for the temporary permissions regime?

Barclays agrees with the proposed approach for the temporary permissions regime and notes that the FCA successfully implemented a similar approach for consumer credit firms in April 2014.

Question 15. Do you have any further comments in relation to this consultation?

Barclays is supportive of the transition of regulatory powers over the CMC market from the MOJ to the FCA as it is anticipated that this will lead to a more rigorous regime with improved outcomes for consumers and greater consequences for non-compliant CMCs.

We remain concerned that the claims management market will be split across three regulators, the FCA and Solicitors Regulation Authority (SRA) and the Scottish Law Society (SLA). If the SRA and SLA do not have equally robust rules and enforcement powers in place, then there is a risk that customers who chose to use a CMC that is regulated by the SRA or SLA may suffer detriment as a result of that party being subject to a different regulatory regime. Additionally, CMCs may choose to restructure in order to benefit from a regime which is perceived be less rigorous than the FCA's.

Barclays therefore thinks it is critical to ensure that there is parity of regulation and enforcement powers between the FCA regime and the SRA's/SLA's. It is also important that there is continued and effective communication between these regulators to ensure consistency around implementation. We would suggest that this may be best achieved through a formal Memorandum of Understanding. We would also suggest this is an area which should be kept under review and that if differences do emerge then the position should be revisited.

It is also not clear why Northern Ireland is not included within the scope of the proposed legislation. Our interpretation is that a Northern Irish CMC would still be in scope of the legislation if they were acting for a claimant who was resident in England, Scotland or Wales and would only be out of scope if they were acting for a claimant who was resident in Northern Ireland. It is not clear why only this category of claimants has been considered out of scope. Barclays would advocate for a consistent approach for all potential UK claimants.

I hope our response provides you with the information you were seeking. If you require any further detail, please do let me know.

Yours sincerely,

Kerry Newsome

Remediation Customer Services Managing Director