



To [claimsmanagementregulation@dca.gsi.gov.uk](mailto:claimsmanagementregulation@dca.gsi.gov.uk)

Response from **Amicus the Union** on the Compensation Act - Regulation of Claims Management Services – Consultation on 28 September 2006 drafts of rules of conduct (SECTION ONE) and rules for dealing with complaints (SECTION TWO)

Responses to both sought by 20 October 2006

**Amicus is the UK's second largest trade union, with a greater number of members in the private sector than any other union and it is the fastest growing in the public sector. Now with 1.2 million members, Amicus has members in a range of industries including financial services, manufacturing, print, media, the voluntary and not for profit sectors, local government and NHS health professionals.**

Please refer to our earlier response covering the nature of our great interest in this area.

#### **Response to Consultation Documents - Executive Summary**

1. We appreciate the extent to which our comments and those of others have been taken into account in relation to earlier drafts. We otherwise recognise the efforts of those who have been responsible for the current draft.
2. We appreciate the extent to which there is an increasing understanding of the role of trade unions, which is very substantial and almost entirely a force for good. We support the aim of a level playing field, where necessary taking account of significant differences and the fact that, for example, solicitors are not trade unions and trade unions are not claims management companies.
3. For instance, we are pleased to see the reference to trade unions in relation to "alternative funding mechanisms" in paragraph 9. We are keen to ensure this is retained.

## **Section One: Consultation on 28 September 2006 draft conduct rules for authorised persons**

### **Principles**

We would like to see a principle that “A business shall act in the best interests of those who have suffered harm in such a way that they can make a legitimate claim”. We believe that such a principle would assist with enforcement of the rules generally, in the interests of the consumer.

### **Professional Indemnity Insurance**

Even if professional indemnity insurance is not available or essential from day one, there should still be a requirement of a demonstrable ability appropriately to cover risk of a significant claim.

### **Training and Competence**

We accept the problem that this poses and understand the general requirement in the rules relating to competence. The issue of a level playing field should extend this to the trade union code and the real problem faced by trade unions particularly with the provision of initial “shop floor” advice in the context of the workplace. In this context it should be not be underestimated the extent to which we have a vested interest in ensuring that the advice and assistance we give to members and others is correct and effective in any event.

### **Data Protection**

It is difficult to imagine of circumstances in which any business requiring regulation would not need to be registered with the Information Commissioner’s office.

### **Provision of Information**

It is a minor point but we wonder if there may be doubt whether 20 days means four weeks or three weeks less one day, or perhaps 20 working days.

### **Advertising or Marketing**

We would like to see confirmation that an approach like that by Sainsbury’s Bank in the letter, a copy of which we sent to the DCA with the response to consultation a week ago, would be covered under the section on “Advertising and marketing” or otherwise recognised for what it is and dealt with.

Under 6 (c), we consider that it should be made plain that compensation is no more than restitution or to provide for loss and damage.

## **Taking on business**

We are pleased to see the reference to trade unions in relation to "alternative funding mechanisms" in paragraph 9. We are keen to ensure this is retained. We have heard some arguments against this, but they are ill thought out, weak and indeed will work to the disadvantage of a significant number of those who have suffered damage.

If a solicitor, or anyone else, intends to exploit the lack of reference to trade unions in this context, in clear breach of Law Society Rules or otherwise, then this should not be encouraged. When such a position was expressed by a solicitor, it was later retracted, as it was made in the absence of the full facts and counter argument. That is itself worrying enough, and is a strong argument for retaining the words.

It is not enough of a counter argument to suggest that others such as solicitors should be referred to; that this would lead to an unworkable list, so that no such bodies should be referred to. The inclusion of trade unions is at least a measure of the general ignorance (or flagrant disregard) of the positive cost and quality of union support available to perhaps up to 20 million people, who are members of trade unions or family members of trade unionists.

We would be surprised if an organisation like APIL would put forward the suggestion that trade unionists should be removed, or that a strong case can be put up for this regressive step.

Hopefully, our comments in this regard are unnecessary, as our case is understood and well made out previously.

Instead of "alternative funding mechanisms" we would prefer "alternative funding or support for pursuing a claim". It is not just a matter of the money that those who have suffered might pay to one who is regulated, but the quality of available support.

## **Conflict of interest**

We are concerned that this otherwise welcome and clear statement in paragraph 19 presupposes that liability insurers are not to be regulated in relation to third party claims against their policy holders. In that regard, they are in an unavoidable conflict situation and should not act, under the draft rules. We have made comments previously, including in the response a week ago about this problem and the inadequacy of the FSA as a regulator in this arena.

## **Section Two:**

### **Consultation on 28 September 2006 draft rules for complaints**

#### **Publicising and Procedures**

We would like to see the requirement to inform clients of the complaints procedure extend to a requirement that this should include reference to the yardstick by which the business should be judged. That should include the principles and the obligation to advise about alternative support, particularly that which could be expected to be of a high standard free of charge or deduction win or lose.

#### **Rules generally**

Subject to review in the light of experience, these rules otherwise appear well drafted and workable.

Again, we confirm that we welcome the opportunity to continue to participate in the efforts to make Part 2 of the Compensation Act a success to protect all consumers.

Georgina Hirsch

20 October 2006

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