



MALG

Money Advice Liaison Group

A forum working for greater communication, understanding and professionalism

BRIEFING NOTE 2

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A BRIEFING NOTE ISSUED BY THE MONEY ADVICE LIAISON GROUP

CLAIMS MANAGEMENT COMPANIES UNENFORCEABLE CONSUMER CREDIT ACT AGREEMENT CHALLENGES -THE FACTS

Introduction

What are Claims Management Companies?

Claims Management Companies (CMCs) are not a new phenomenon. They have been operating in the personal injury and finance sectors (mainly offering services for mis-sold endowment and Payment Protection Insurance claims) for quite a while, and have been formally subject to statutory regulation since April 2007. However, within roughly the last twelve months there has been a significant increase in businesses offering to challenge consumer credit agreements.

CMCs are companies that offer compensation-related claims to consumers. In the current context, CMCs proactively target consumers who may be attracted to the suggestion of challenging loan agreements that are regulated by consumer credit legislation. Companies will offer to scrutinise clients' credit agreements with the intention of challenging these with clients' creditors, on the grounds that the agreements are not compliant with the Consumer Credit Act 1974.

Such CMCs claim that if such agreements are non-compliant, then the associated debt will be unenforceable. Other companies go further and claim that the debts will be written off for the consumer. In a substantial number of situations, such assertions are both rash and unsubstantiated. There is only limited case law on the subject.

There are also a number of DIY websites (some with a cost attached), which offer consumers a self-help pack to assist them in making a challenge.

The legislation

CMCs will typically invoke two parts of the Consumer Credit Act 1974 (as amended by The Consumer Credit Act 2006) to achieve their aims.

Firstly, Sections 77, 78 and 79 of the Act require the creditor or owner to provide the customer with a copy of the credit or hire agreement in question, after having received a request in writing together with payment of a statutory fee of £1. If the request is not responded to within twelve working days, then the agreement becomes unenforceable until such time as a copy of the agreement is provided. It is sometimes claimed (wrongly) that a lender should provide a signed copy of the agreement - an 'exact' copy and not a 'true copy' as legislation requires.

Changes were made to the Consumer Credit Act 1974 under the terms of the Consumer Credit Act 2006, whereby agreements entered into after April 2007 could no longer be claimed as irredeemably unenforceable for failing to meet some of the technical requirements of the Act. This is why CMCs often advertise that they will review agreements made before April 2007 to assess whether they are legally enforceable. However, such claims are often unfounded and not related to a specific agreement.

Registration

All companies offering claims management services are required to be authorised by the Ministry of Justice (MoJ).

We understand from MoJ that around 2,500 businesses are currently authorised to provide regulated claims management services. MoJ currently receives around 30-40 new applications for authorisation per week in the Financial Products and Services sector. As of the 1st July 2009 there were approximately 1,100 businesses authorised to practise in this particular area.

Unfortunately, MoJ does not undertake competence testing, as such activity is not required by law. However, all businesses are subjected to rigorous scrutiny before they are authorised, so the process of becoming authorised is far more than a cosmetic exercise.

Checks include:

- Companies House check to investigate whether the business is registered
- Searches to check on any directorships held by applicant company personnel
- Insolvency check

- Law Society check
- Intelligence checks
- Website compliance checks

All these checks are designed to verify that the individuals and businesses concerned are who and what they say they are. The MoJ is also empowered to carry out Criminal Records Bureau checks where it is felt these are required.

Once authorised, all businesses are required to comply with statutory rules on conduct, which amongst other things require certain standards to be met, including the requirement that a business is directed by (a) person(s) who is/are competent.

Operational and advertising activities

The marketing employed by some CMCs makes misleading claims about success rates and the ease with which consumer credit agreements can be challenged. Many businesses require an upfront fee from clients (£500 is not unusual), and often the CMC allows this to be paid by credit card, overdraft or loan, thus loading the liability of the vulnerable debtor, before passing a claim to a solicitor to assess enforceability. Some businesses operate on a traditional no-win, no-fee basis and either there is no up-front fee at all or only a small administration charge is applied.

Although it is true that many claims are still in the process of being challenged, and many will not yet have reached the stage at which a refund of the fee would be due, there is very little evidence so far that companies are refunding fees when challenges fails. This is an area that MoJ is carefully monitoring

These companies rely heavily on creditors giving in to pressure.

The advertising used by many CMCs is often grossly exaggerated. The examples quoted below provide a flavour.

Get your loan balances written off! – Get previous payments refunded!

***Credit Card Balances Cleared!
Scroll down now to find out how you can legally claim compensation from your credit card provider and get ALL your money refunded***

Approximately 50 million Credit Agreements are created in the UK each year and we believe well over 25 million of those could be unenforceable.

Have you got a credit card over £5,000? Would you like to have it cleared, legally and without damaging your credit file?

You may have a claim! Over 80% of credit cards taken prior to 2007 are flawed which means our solicitors can get them overturned and your balance reduced to zero!

See if you are one of the estimated 25 million eligible to claim!

Action being taken by regulators and others

There has been extensive lobbying by industry trade associations (the British Bankers' Association, The Finance & Leasing Association and the UK Cards Association) to raise the profile of the issue, which has resulted in much of the activity listed below.

MoJ and the Office of Fair Trading (OFT) remain concerned about the impact of misleading practice on the part of CMCs on consumers, and have taken a number of steps to try and deal with the issue.

- In August 2008, a "consumer alert" was published by the OFT, urging consumers to think before parting with any money to challenge consumer credit agreements
- Work commenced at MoJ's Monitoring and Compliance Unit to assess websites and other marketing material in terms of compliance with the requirements of the Conduct of Authorised Persons Rules 2006. Where any advertising was found to be potentially misleading, the business concerned was instructed to amend its advertising and websites. In cases where unauthorised trading was discovered, the business concerned was instructed by MoJ to cease trading and advised to apply for authorisation if it wished to continue trading.
- The MoJ has made a number of presentations to representative organisations such as the British Bankers' Association (BBA), the Association of British Insurers (ABI) and The UK Cards Association (formerly APACS), in order to raise awareness of claims management regulation.
- MoJ has published guidance for businesses, which advises that potentially misleading marketing activities would constitute a likely breach of both conduct rules and industry rules.
- In February 2009, MoJ issued a ministerial press notice together with the OFT, highlighting concerns and raising consumer awareness. Citizens Advice, which is a member of the Claims Management Regulatory Consultative Group, published a press notice to coincide with the MoJ/OFT release.
- MoJ continues to work closely with the Advertising Standards Authority (ASA), which regulates media advertising. A number of complaints have been made to the ASA, which will consider whether it is appropriate to investigate the businesses in question. If the ASA proceeds, adjudication results will be published in due course.

- At the time of writing, MoJ is drafting a warning to businesses, which will highlight activities that could constitute potential rule breaches beyond the areas of advertising and marketing
- The OFT is intending to issue guidance on relevant Consumer Credit Act matters, which will aim to, clarify for lenders exactly what is expected of them in order to achieve compliance with s77-79 of the Consumer Credit Act (ie, that providing a "true copy" does not mean a photocopy of the signed original agreement.)
- The OFT has recently issued a press release entitled "*OFT warns consumers about 'debt sale scams'*". Some CMCs are now claiming they can take over liability for debts or write off debts by purchasing consumers' agreements. The OFT states that this is a 'scam'.
- The Solicitors Regulation Authority (SRA) is very concerned about the increased activity in this area and they are currently investigating ten CMCs. The SRA has also issued specific guidance to solicitors:

www.sra.org.uk/solicitors/code-of-conduct/guidance/2636.article

<http://www.sra.org.uk/sra/news/press/2612.article>

MoJ is working closely with the SRA on its investigations in this area.

The subject of CMCs was the central focus of a MALG meeting held on the 12th March 2009. A session was introduced by a representative of the British Bankers' Association, which is acting as the industry lead on combating this malpractice, and presentations were made by Jan Farenden, Deputy Head of Claims Management Regulation, at MoJ, Steve Meakin, Chair of The Institute of Money Advisers, and Marie Whitley, Head of Debt Business Competence Assessment Team at the OFT.

It was made very clear that there is a world of difference between a professional debt adviser scrutinising a credit agreement to check its validity where they have reason to believe it may not comply with the Consumer Credit Act, and a CMC proactively seeking business for commercial gain from consumers, many of whom are highly distressed by existing financial difficulties and therefore vulnerable to attractive but exaggerated claims of being able to clear their debts.

We recommend that all readers exercise extreme caution, both on their own behalf and that of those consumers with whom they may have dealings, when considering offers being made by companies claiming an easy way out of debt. If it sounds too good to be true, it probably is.

The contact point for general complaints about CMC activity is info@claimsregulation.gov.uk.

Author *Anthony Sharp. Chair.*
The Money Advice Liaison Group.
with considerable help from other MALG members

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