



The Chartered Institute of Loss Adjusters

A new approach to financial regulation

Judgement, focus, stability

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Introduction

The Chartered Institute of Loss Adjusters (CIL A) represents the interests of its individual members whose predominant activity is the investigation, management, quantification, validation and resolution of Property, Casualty or any other losses (whether insured or not) arising from any contingency and the reporting thereof. Some of the work undertaken by members of the CIL A is regulated whilst a considerable proportion of the work undertaken by our members is currently “indirectly” regulated as it is performed for and on behalf of firms that are directly regulated by the Financial Services Authority.

The Consultation paper issued by the Treasury is of interest to our members and, having sought opinion from our members, we submit this comment to the Treasury for inclusion within the consultation process.

Whilst CIL A members have an overall general interest in these proposals, our comments have been restricted to areas where CIL A members have a specific interest.

The CIL A has restricted its responses to areas of interest and to avoid repetition it can be taken that questions unanswered were considered not to be relevant to our members, additionally again for the sake of avoiding repetition the comments can be read as emanating from the CIL A following our internal consultation process.

The CIL A would like it to be noted that a clear distinction should be made between Insurance and Banking. The impetus behind these proposals is the banking crisis that was attributed to the following:

- global economic imbalances;
- mispriced and misunderstood risk;
- unsustainable funding and business models for banks;
- excessive build up of debt across the financial system; and
- the growth of an unregulated ‘shadow banking’ system

Whilst questions are not raised on this particular point, the CIL A should like to draw attention to the fact that the proposals state that the majority of the Financial Policy Committee (FPC) will be Bank Executives, “to bring the expertise and understanding of the financial system that only a central bank can provide”.

Insurance is part of the financial market but is wholly different from banking; the handling of Insurance Claims is arguably another further step away from banking. It is, therefore, of concern that it is proposed that banking executives would or could be dominant decision makers in the regulation of insurance.

The Financial Ombudsman Service is referred to in this document only in relation to funding. The loss of the Insurance Ombudsman Service facilitated non-insurance claims experts mediating on key insurance claims decisions with the result of spurious decisions being made. The proposed changes provide an ideal opportunity to capitalise on the strengths, benefits and success of the UK Insurance market.



Responses to questions relevant to the CIL A membership

Question Number	Response
4	<p>The CIL A recognises the advantages of one body only and that this body should be independent.</p> <p>The PRA should have regard to the primary objectives of the CPMA and the FPC.</p> <p>The proposal document states that there is a “requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained.” Whilst the PRA should regulate standards, it should not restrict the method of delivery that may well enhance standards through competition. This corresponds with one of the objectives set out in (4.10) - the desirability of facilitating innovation in connection with regulated activities and the desirability of maintaining the competitive position of the UK.</p>
5	<p>The members of the CIL A see no difficulty with the proposal outlined in 3.16, i.e. The PRA and CPMA each are responsible for granting or amending permissions to undertake the regulated activities.</p> <p>Our members will have a considerable interest in not only who is regulated but also what activities are regulated.</p>
6	<p>Our members, as detailed in response to question 5 above, will have considerable interest in the activities and roles that are to be regulated. It is noted under paragraph 3.17 that the Government will seek the views of respondents when decisions are being made in this respect. Our members would very much welcome inclusion in this consultative process.</p> <p>Our members would recommend the proposal of cost benefit analysis prior to the introduction of new rules.</p>
10	<p>The Government welcomes respondents’ views on:</p> <p><i>Whether the CPMA should have regard to the stability of firms and the financial system as a whole, by reference to the primary objectives of the PRA and FPC;</i></p> <p>Yes. The primary concern is to promote consumer confidence in regulated activities and businesses.</p> <p><i>Whether some or all of the principles for good regulation currently set out in section 2 of FSMA should be retained for the CPMA, and if so, which;</i></p> <p>Yes. The fundamental regulatory objectives are:</p> <p>market confidence; public awareness;</p>



	<p>the protection of consumers; the reduction of financial crime.</p> <p>The principles to which the FSA must have regard, and which affect the deliberations of CIL A, are:</p> <p>any burden or restriction imposed by regulation should be proportionate to the benefits expected to result; the facilitation of innovation; the ability to undertake international business competitively; ensure that regulation does not generally have adverse effects on competition; the need for competition between regulated businesses.</p> <p>There are other provisions that have no impact on our work, mainly concerned with the workings of the FSA internally.</p> <p>Amongst the duties of the FSA are those of:</p> <p>making rules; preparing and issuing codes; giving general guidance (considered as a whole); determining general policy and principles.</p> <p>The first two of these seem to have particular reference to our work within what will be the CPMA.</p> <p>This is all pretty general and to a large degree the FSA - in our sector, at least - has already done this. It should be understood that members of The Chartered Institute of Loss Adjusters represent both insurers and/or policyholders in the submission of their claims. Those that represent policyholders have expressed a view that moving from rules-based ICOB to principles-based ICOBS is regretted. However, this is not a view of all members as those who work on behalf of insurers thought that moving to a principles-based ICOB would promote correct behaviour.</p> <p><i>Whether, specifically, the requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained; and</i></p> <p>As PRA - As is often the case the UK proposes a gold plated response. The effect of this is potentially to make UK firms less competitive in an EU market.</p> <p><i>Whether there are any additional broader public interest considerations to which the CPMA should have regard.</i></p> <p>As PRA - No</p>
11	With reference to point 4.33 we believe that the non-executive board



	<p>should include both consumer representatives along with the representatives of some of the SME practitioners in the various activities that fall within its remit. In the insurance claim scenario these SME practitioners should include Chartered Loss Adjusters negotiating claims for policyholders. We feel that it is important to ensure the voice of SME practitioners is heard.</p> <p>With reference to point 4.38 as both practitioners and consumers we have seen little evidence of these panels and we would welcome their higher profile. We would propose easier access to them and promotion of their existence.</p> <p>We consider that the panels should provide a single complaints mechanism to report issues and for the investigation thereof.</p> <p>Where malpractice is reported the action taken by the regulatory body should as far as possible be transparent and demonstrative in terms of the action taken.</p>
14	<p>We consider that the FSCS should be better segmented. For example our members should not pay for the failure of Northern Rock, in this scenario our members are no different to any other consumer.</p>

Other comment

The Chartered Institute of Loss Adjusters Claims Consultancy Specialist Interest Group is particularly concerned about the way in which complaints concerning the acceptance of claims and the amount paid out, are handled.

Two types of complaints should be considered, redress for incorrect claims handling by insurers and complaints concerning conduct.

Redress for incorrect claims handling

The FOS can currently make an award of up to £100,000. We propose that this should be reviewed in the light of the typical extent of cover provided to individuals and others who are able to refer such issues to the FOS. This review should take account of the purpose of the FOS and the resources of the FOS.

The rules concerning disputes which can be referred to the FOS are confusing. The current rules for eligibility are as follows:

Any individual

A business with turnover of less than £2,000,000 employing less than 11 staff

A trust with assets of less than £1,000,000

A charity with turnover of less than £1,000,000

The eligibility rules need consistency and clarity and all of the limits should be reviewed.

We consider that there should be a fast track facility to handle urgent disputes where delay in resolving the issue increases the financial hardship of the claimant.



Conduct

We believe that there should be a mechanism to require insurers to deal with claims promptly and fairly and to ensure that only those firms which are properly authorised and regulated can represent policy holders.

Under the FSA regime while these rules exist the complaints procedure is ineffective and, in our experience, the FSA has made no attempt to properly enforce its rules. For example when duty bound to report an unauthorised firm to the FSA for carrying out regulated activities the FSA shows little interest and has been happy to allow such situations to continue and a practice as detailed under point 11 should be adopted.

Summary

The Chartered Institute of Loss Adjusters is keen to ensure that matters within the proposal document that affect its members are understood and the Institute would welcome further input into the consultation process.

This review has also caused us to consider another point. The Insurance Mediation Directive does not require those who offer a claims preparation service as an incidental service to be registered. As a result such activities are not regulated. This creates an apparent anomaly. It suggests that experts handling such work all the time have to be regulated, but those who might only occasionally provide these services are not regulated. Surely to protect the consumer, all who offer such services ought to be regulated. Particularly those who do not specialise in claims handling. This situation exists where the service is delivered by a member of a designated professional body.

The Institute can be contacted as follows:

Malcolm Hyde BSc(Hons) Dip (Fr) FCII FCILA
Executive Director
The Chartered Institute of Loss Adjusters
Warwick House
65/66 Queen Street
London
EC4R 1EB