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Brady report proposes senior manager regime for CMC bosses and reauthorisation

FCA regulation of credit hire firms touted as CMC's fall under its remit

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Industry commentators have backed the future Financial Conduct Authority oversight of claims management companies, announced in the 16 March Budget, alongside suggestions a similar regulatory framework should be adopted for credit hire companies.

The Budget announcement coincided with the publication of the final report into the regulation of CMCs by Claims Management Regulation Unit non-executive board member Carol Brady. The report also proposed a senior managers regime for CMC bosses and a reauthorisation of all CMCs.

Initial response from the industry showed support for FCA oversight of CMCs with British Insurance Brokers' Association executive director Graeme Trudgill considering it would help to reduce fraud and Association of British Insurers director general Huw Evans commenting it would assist in "driving the cowboy operators out of town".

However, the regulatory change has spurred further debate about whether credit hire companies should be subject to similar scrutiny, despite assurances from the Credit Hire Organisation that most CHO's are already monitored by the FCA.

Max Withington, Forum of Insurance Lawyers credit hire special focus team head, said: "Although the extension of the regulatory regime to CHOs and credit repair companies was not something the [Brady] review was able to look at, Foil believes the same regulatory need arises in these areas."

"Reform and regulation of the credit hire/credit repair sector is a key part of the overall reform of the claims process and whether that is achieved by new rules or partly through self-regulation, Foil is keen to see that progressed," Withington added.

The FCA would be an appropriate regulator due to cost and the fact it has shown it has "teeth", he said.

"One of the consequences for the market would be cost because that regulation is going to come at a cost that would be borne by insurers and the CHOs in one form or another. The FCA seems to be a logical route from Brady's report."

However, DAC Beachcroft regulatory partner Matthew Rutter said the way credit hire would be traditionally regulated would not necessarily catch many of the issues industry players are concerned with, for example, how it is sold and priced.

"The question of whether or not a credit hire agreement is regulated has come down to the scope of the consumer credit regime. I am not sure if there is any great appetite to extend the scope of that regime to cover what would be a credit hire agreement," he said.

The Credit Hire Organisation told *Post* the majority of its members are already FCA registered and monitored.

Martin Andrews, CHO director general, explained: "If you are involved in first notification of loss of claims then you get caught by the FCA. If you are just renting a car to someone then that would not be captured. Because most people are assisting in claims management as a function of renting the car then most credit hire companies register with the FCA anyway."

"For those that aren't it would be an extra cost and administered burden and they would have to pay for consultants to understand which activities get captured and caught by the FCA regulations," he said.

Commentators expressed support for the proposed "fit and proper persons test" requirement for all CMC employees that will be undertaking controlled functions.

Aviva claims director Rob Townend said: "It is really important to hold those that run these businesses as being accountable for what they are doing and delivering to the customer. They are not on the hook enough at the moment."

Rutter predicted the introduction of such a regime will lead to CMCs having to employ more compliance officers.

"That is sending out a message that it is also the senior managers of the CMCs who could face personal sanction if they do things that they shouldn't. It will be a beefed up version of the approved persons' regime," he said.

However, he considered the Brady review should not be seen as negative for all CMCs.

"There will be many CMCs for which this will be an opportunity. There should be a number of CMCs that welcome this because it should give them more sustainable and secure business models. It should help them to improve their reputation in the market."

Elsewhere, ABI motor and liability policy adviser Ben Howarth told *Post* the trade body will respond to the Ministry of Justice's fees consultation suggesting a cap on personal injury CMC fees.

The MoJ in February proposed capping fees charged by claims management companies handling mis-sold payment protection insurance claims.

"The weight of evidence that has come out of Carol Brady's review [of CMC regulation] and the scale of problems she has identified and which the government has acknowledged by saying the FCA should take it on – that all points to the fact that action needs to be taken on CMC fees as well," Howarth said.