



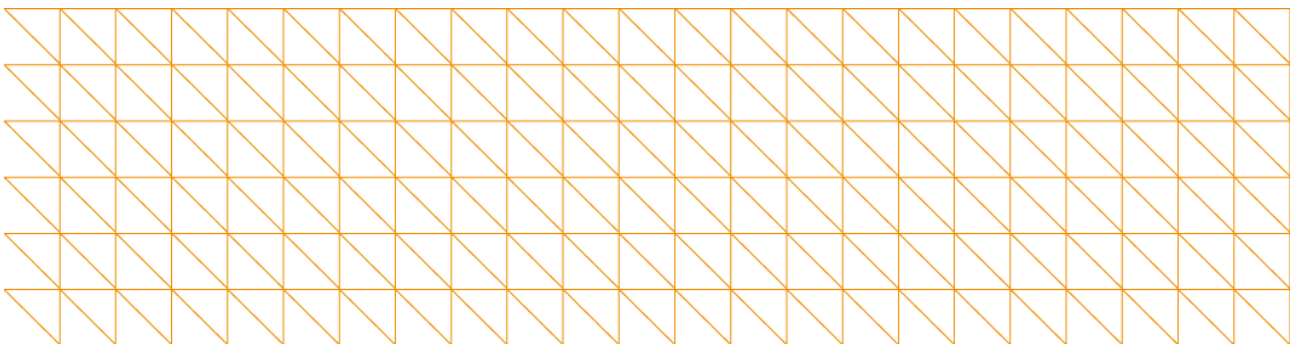
Ministry
of Justice

Claims Management Regulation

Regulation fees paid by claims management
companies

Proposed regulation fee levels for 2017-18

This response to consultation is published on 9 February 2017





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Proposed fees levels for 2017-18

Response to consultation carried out by the Ministry of Justice.

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Introduction and contact details

This document is the post-consultation report for the consultation paper '*Regulation fees paid by claims management companies, proposed regulation fees levels for 2017-18*' which was published on 18 November 2016.

It will cover:

- the background to the consultation
- a summary of the responses to the consultation
- next steps following consultation.

Further copies of this report and the consultation paper can be obtained by contacting the address below:

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10.20, 102 Petty France
London SW1H 9AJ**

Telephone: 020 3334 6396

Email: claimsmanagementregulation@justice.gsi.gov.uk

Alternative format versions of this publication can be requested from claimsmanagementregulation@justice.gsi.gov.uk.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

Executive Summary

- 1 The Claims Management Regulation (CMR) Unit was established in 2007 within the Ministry of Justice, with responsibility for regulating claims management companies (CMCs) operating in the following sectors: personal injury, financial products and services, criminal injuries, industrial injuries disablement, employment matters and housing disrepair. There are currently around 1500 authorised CMCs.
- 2 The consultation paper published on 18 November 2016¹ set out the CMR Unit's proposals for the levels of regulation fees to be paid by CMCs for authorisation for the 2017/18 regulatory year, with a recommendation that fee levels should remain unchanged.

Paying for Annual Regulation

- 3 The proposed fee levels are designed to fully recover the costs of operating the regulatory regime from authorised businesses. Having considered the factors that are likely to contribute to the size of the industry in 2017/18 the Regulator proposed that fee levels should remain unchanged.
- 4 The consultation paper setting out that proposal was sent to all regulated CMCs and members of the Claims Management Regulatory Consultative Group, and was open on the Gov.uk website to other interested parties and the wider general public. Six responses were received. Details of the responses to each of the proposals are set out later in this document. The responses to the consultation paper have been considered and the Regulator has decided to implement the proposal that fee levels should remain unchanged for 2017/18. Therefore the following fees or fee scales will continue to apply:
 - Application fee £2,000.
 - Annual regulation fee pay scales for claims management companies paying flat-fees under the turnover threshold of £88,889 unchanged (see Annex B).
 - The percentages of annual turnover levied on CMCs with turnover above the flat-fee threshold of £88,889 will be 0.9% of annual turnover up to £1 million, 0.80% of annual turnover up to £5 million and 0.75% of annual turnover over £5 million.
 - The existing financial products and services rate levied on annual turnover from regulated activities in the financial products and services sector will be 0.145%.
 - The fees caps on both the annual regulation fee and the financial products and services fee will be £150,000.

¹ <https://www.gov.uk/government/consultations/regulation-fees-paid-by-claims-management-companies-2017-to-2018>

Background

- 5 The consultation paper '*Regulation fees paid by claims management companies proposed regulation fees levels for 2017-18*' was published on 18 November 2016. It invited comments on the proposed regulation fees for authorised claims management companies for the regulatory year 2017-2018.
- 6 Under provisions in the Compensation Act 2006, businesses that provide regulated claims management services must be authorised and pay the relevant application and regulation fees. This consultation was conducted pursuant to regulation 15 of the Compensation (Claims Management Services) Regulations 2006 which enables the Regulator to determine the fees.
- 7 Regulation is intended to be self-financing with the total costs of the regulatory regime recovered from applicant and authorised businesses. Fee levels are based on estimates of income receipts and the ongoing monitoring, compliance and central costs of operating the CMR Unit, expected to be approximately £6 million over 2017-2018.
- 8 The consultation period closed on 16 December 2016 and this report summarises the responses.

A list of respondents is at **Annex A**.

The CMR Fees Determination 2017-2018 is at **Annex B**.

Summary of responses

- 9 Six responses to the consultation paper were received. We received four responses on the issues consulted on, and of those four, one was from the Professional Financial Claims Association (PFCA), and the other three from member organisations of the PFCA. The other responses were from a business consultant and a member of the public which made no direct comments on the proposals.
- 10 Overall there was support for the proposal not to increase 2017-2018 fee levels. Some respondents took the opportunity to mention wider issues, in particular proposed reforms and the impact they may have on the claims market. Other issues raised include the disproportionate level of fees paid by large compliant CMCs; whether the financial services sector uplift is fair; and the transparency of the costs of the Regulator.
- 11 Responses to the questions as set out in the consultation are summarised below.

Responses to specific questions

1. Do you have any comments on the fee scales and the proposed draft Fees Determination for 2017-2018?

Respondents agreed that fees should not be increased, but raised various issues in support of their suggestion that fees could be reduced. The main concern raised was about the implications of any forthcoming proposed reforms – in particular proposals to cap the fees that CMCs can charge consumers for PPI claims and proposals to introduce a time bar on the making of PPI complaints. It was suggested that these proposed reforms will result in a declining claims market with fewer CMCs and reduced turnover/income in the industry. Respondents suggested that any proposals on CMR fee levels for 2017/18 should take more account of this factor.

Other issues raised include:

- The burden of paying for regulation is borne by bigger compliant CMCs and this burden will increase in a declining market – making the current self-financing regulation model unworkable
- The Financial Products and Services sector “uplift” is unfair and should be removed to restore parity with the Personal Injury sector
- The costs of regulation are not transparent and should have reduced as non-compliant firms are removed or exit the industry and customer complaints are now being handled by the Legal Ombudsman
- It is unfair to pay a fee based on projected turnover – particularly in the current circumstances where the future of the claims market is uncertain.

2. Do you have any views on any potential equalities impacts (race, sex, disability, sexual orientation, religion or belief, age, marriage, civil partnership, gender reassignment, pregnancy and maternity) on individuals regarding the proposed fee determination? If so, please give reasons where possible to support your views.

There were no equality issues identified in the proposals.

3. Bearing question 6 in mind, are there any particular forms of mitigation in relation to any potential equalities impacts that should be considered?

There were no equality issues identified in the proposals.

Conclusion and next steps

- 12 Having considered the responses to the consultation and balanced these with the factors that are likely to contribute to the size of the industry the Regulator has reached the view that fee levels should remain unchanged for 2017/18.

Claims market

- 13 In response to the main concern raised about the possible impact of the proposed reforms we remain of the view that it is unlikely that those proposed reforms would have any substantive impact in 2017/18. We therefore anticipate the level of new entrants, exits and turnovers to remain broadly consistent with current levels.
- 14 The FCA also considered the implications of their proposal to impose a time-bar on bringing PPI claims^[1] and reached the view that “*Any deadline for lodging PPI claims could result in a surge of CMC marketing activity prior to the end of the proposed two-year period, with more consumers being targeted by CMCs*”. This view of an expanding rather than a declining market appears to be supported by recent plans for expansion by some CMCs. We believe the concerns raised around a declining market are unlikely to have significant relevance to the year to which these fee proposals are applicable.

CMC turnovers

- 15 We note the comments about the disadvantage of using historic turnover figures – particularly in a turbulent and potentially declining market. Our fees model has always been based on retrospective turnover performance together with an assessment of future market exits and regulatory costs. We consider that provides the most appropriate, effective and fair way to calculate a fee charged in advance of the regulation year to which it relates. It is likely when responsibility for regulating claims management services transfers to the FCA that the fee charging framework will be reconsidered.

Regulatory costs

- 16 As regards regulatory costs, continuing resource is needed to meet the challenges posed by regulating the whole regulated market and to ensure compliance with our existing commitments and proposed reform programmes. Whilst the number of CMCs has declined, business activity remains high, as does the need for the Regulator to scrutinise in detail the ways CMCs obtain business, handle claims, deal with their customers and deal with other stakeholders such as financial institutions. The scale and breadth of the compliance effort (which is fully set out in CMR Annual Reports and in regular enforcement updates published on CMR webpages) includes not only detecting CMC non-compliance with CMR and other rules/laws, but also meeting demands to tackle unauthorised activity and to raise standards generally.

^[1] <https://www.fca.org.uk/publication/consultation/cp16-20.pdf>

17 The growth of CMR has been accompanied by measures such as restructuring operational teams to focus on priorities, and we will continue to implement such changes to improve efficiency and ensure effective use of resources. We acknowledge the additional cost to CMCs of funding the Legal Ombudsman's complaint handling role as raised by respondents, and trust that the proposed reduction of this fee for 2017/18 addresses some of the concerns raised regarding the level of these particular costs.

Financial products and services uplift/fees caps

18 This uplift will be held at last year's level of 0.145% of annual turnover. We will continue to review whether the FPS uplift remains appropriate as part of our annual CMR fees setting exercise but we are currently satisfied that the uplift should remain. This fairly apportions the additional costs of regulatory resource created by the financial products and services sector, particularly regarding mis-sold PPI activities.

19 Whilst the Legal Ombudsman is now well placed to deal with the complaints from consumers about CMCs in the FPS sector, the fact that historically upward of 90% of all complaints received by the CMR were about CMCs in the FPS sector has led the Regulator to undertake an ongoing programme of specialist work focussing on the FPS sector. This includes work with other regulators, ombudsman schemes and major banks to identify non-compliant businesses/emerging issues and also provide relationship management programmes with the largest CMCs. It is also worth noting that the last reported 12 month period (to 30 November 2015) saw turnover in the FPS sector increase by 16% whereas the PI sector saw turnover decrease by almost a third. We expect that trend to continue and consider that these figures do not provide support to the suggestion that the FPS uplift should be removed now in order to restore parity between the sectors.

20 The uplift will apply to new and existing CMCs, with the uplift to new CMCs based on their estimated turnover for the financial products and services sector. The current cap of £150,000 that applies to the financial products and services uplift (and to the annual regulation fee) will also remain unchanged.

Funding models

21 The comments made about the need for alternative, long term funding models for regulation are acknowledged. Whilst elements of the current funding system (such as fee levels) will be kept under review, any fundamental or major structural changes to the CMR fees model are unlikely given the planned transfer of regulation to the FCA. It is likely when responsibility for regulating claims management services transfers to the FCA that the fee charging framework will be reconsidered.

Fee scales: flat-fees under the £88,889 threshold

22 The annual regulation fee bands for CMCs with annual turnovers between £0 - £88,889 will be held as consulted on:

- Turnover under £5,000 Fee = £200
- Turnover £5,000 - £14,999 Fee = £350

- Turnover £15,000 - £24,999 Fee = £500
- Turnover £25,000 - £74,999 Fee = £650
- Turnover £75,000 - £88,889 Fee = £800

Fee scales: annual turnover above the £88,889 threshold

23 These fee scales will be unchanged for 2017/18. The Regulator has carefully considered the risk posed by potential market exits to CMR funding and detailed modelling and contingencies have been built into the fee proposals to take account of this factor. The final proposal has been carefully evaluated to achieve a proportionate balance between recovering estimated CMR costs for 2017/18 and a fair distribution of fees across the industry.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Annex A – List of respondents

Claims Management Companies

Crystal Legal Services Ltd
Investor Compensation (UK) Ltd
Gladstone Brookes Ltd

Other respondents

Professional Financial Claims Association
K Kelleher
L Sandwith (Business Consultant)

Annex B – Fees Determination 2017-2018



Ministry
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Fees Determination 2017-2018

This Determination is made under Regulation 15 of the Compensation (Claims Management Services) Regulations 2006 and sets out the application and annual fees applicable from 1 April 2017.

Definitions

1. In this determination:

‘the Act’ means the Compensation Act 2006;

‘Regulator’ has the same meaning as in section 14 of the Act;

‘Applicant’ means a person who has applied for authorisation under the Act;

‘Authorisation’ means an authorisation to provide regulated claims management services under the Act;

‘Authorised Business’ means a person who is currently authorised under the Act;

‘Client’ means a person for whom an authorised business is providing a regulated claims management service;

‘Regulated claims management service’ means the prescribed services set out in article 4 of the Compensation (Regulated Claims Management Services) Order 2006;

‘Turnover’ means the sum of the amounts paid to, or received by, an authorised business in respect of regulated claims management services, including:

- a) charges, commission, the share of any compensation, fees and subscriptions, and
- b) the monetary value of any services received by the authorised business where it makes no payment for those services or where the payment received is worth less than the monetary value of the services, and
- c) the monetary value of any advertising in respect of the authorised business that it has not paid for out of funds referred to in sub-paragraphs (a) and (b).

‘Annual turnover’ means

- a) The authorised business's or applicant's turnover for the 12 months to 30 November 2016.
- b) If the business or applicant did not trade for the full 12 months to 30 November 2016, the estimated turnover for the 12 months to 30 November 2017.
- c) Where the application for authorisation is made on or after 30 November 2016, the estimated turnover for the 12 months to 30 November 2017.

Application of this determination

2. This fees determination applies to fees for all applications for authorisation made on or after 1 April 2017 and sets the annual fees for all businesses authorised at and after that date to the end of March 2018.

Application fee

3. An applicant seeking authorisation to provide regulated claims management services must submit an application fee of £2,000.00 with the application form.

Annual Fee

4. Authorised businesses will pay an annual fee. This fee will be equal to the sum of the amounts payable in relation to regulation and the financial products and services uplift, as set out by this determination.

Amount payable in relation to regulation

5. (1) Subject to sub-paragraphs (2) and (3), authorised businesses shall pay an amount equal to 0.90% of annual turnover up to £1 million, plus 0.80% of annual turnover between £1 million and £5 million, plus 0.75% of annual turnover above £5 million.
(2) The fee under sub-paragraph (1) shall be no more than £150,000.
(3) Where the annual turnover of a business is £88,889 or less, then the amount payable will be a fixed fee of –

Annual Turnover of Authorised Business	Annual Fee Payable
Under £5,000	£200
£5,000 - £14,999	£350
£15,000 - £24,999	£500
£25,000 - £74,999	£650
£75,000 - £88,889	£800

Pro rata calculation of amount payable in relation to regulation

6. Where an authorisation is given which has effect from a date on or after 1 April 2017, the fee shall be one twelfth of the sum calculated in accordance with paragraph 5 for each month or part of a month for which the Regulator has indicated that he is minded to authorise the business under the Act. This paragraph does not apply to any person who the Regulator is satisfied has been providing regulated claims management services prior to being authorised.

7. Where the Regulator is satisfied that the business or those who control the business have previously had control of another authorised business then the Regulator may require the business to pay an annual fee calculated by reference to the annual turnover of all of those authorised businesses.

Adjustments

8. Where an applicant has reported an annual turnover figure based on estimated turnover to 30 November 2017 and the actual annual turnover is more than the estimated turnover, an additional charge shall be levied based on actual annual turnover to 30 November 2017.

Financial products and services uplift

9. (1) Subject to sub-paragraph (2), authorised businesses shall pay an amount equal to 0.145% of annual turnover they received from regulated claims management services in relation to financial products and services.
(2) The fee under sub-paragraph (1) shall be no more than £150,000.

Pro rata calculation of financial products and services uplift

10. Where an authorisation is given which has effect from a date on or after 1 April 2017 or an authorised business begins to carry out regulated activities in relation to financial products and services, from a date on or after 1 April 2017, the fee shall be one twelfth of the sum calculated in accordance with paragraph 9 for each month or part of a month for which the Regulator has indicated that he is minded to authorise the business under the Act. This paragraph does not apply to any person who the Regulator is satisfied has been providing regulated claims management services prior to being authorised.
11. Where the Regulator is satisfied that the business or those who control the business have previously had control of another authorised business then the Regulator may require the business to pay an annual fee calculated by reference to the annual turnover in relation to financial products and services of all those authorised businesses.

Adjustments

12. Where an applicant has reported an annual turnover figure in relation to financial products or services based on estimated turnover to 30 November 2017 and the actual annual turnover in relation to financial products or services is more than the estimated turnover, an additional charge shall be levied based on actual annual turnover to 30 November 2017.

Compliance

13. Where the authorised business does not provide the annual turnover figures requested, the Regulator may use the previous year's actual or estimated annual turnover figure to calculate and issue an invoice pending the information required being supplied.

Kevin Rousell

(Head of Claims Management Regulation)

