

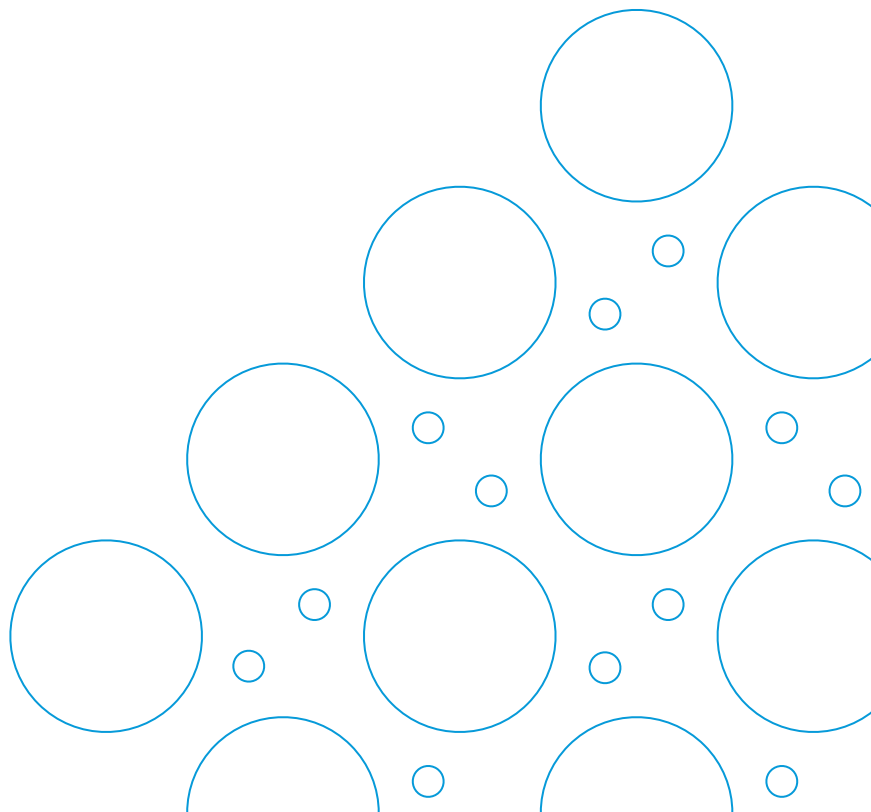


Ministry
of Justice

Claims Management Regulation

Financial Penalties Scheme Guidance

December 2014



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Introduction

The Financial Services (Banking Reform) Act expands the enforcement provisions of the Claims Management Regulator. From 29 December 2014 the Regulator is able to impose financial penalties on regulated Claims Management Companies that fail to adhere to the conditions of authorisation or engage in other non-compliant actions.

This document offers guidance with regards to the operation of the Claims Management Regulation Financial Penalties Policy.

Imposition of a Financial penalty

From 29 December 2014, the imposition of a financial penalty becomes an additional available enforcement sanction for use against non-compliant authorised persons under the following circumstances:

- As a consequence of a failure to comply with the Conduct of Authorised Persons Rules
- As a consequence of a failure to comply with requirements regarding the provision of information or documents to the Regulator
- As a consequence of a failure to comply with a requirement to take out a policy of professional indemnity insurance
- As a result of the Regulator being obstructed in its execution of a warrant to enter and search premises for the purposes of investigating a complaint about the activities of a regulated CMC, or assessing the regulated CMC's compliance with the conditions of its authorisation
- As a result of the Regulator being obstructed from attempting to take possession of, or copies of written or electronic records found when executing a warrant to enter and search premises.

A financial penalty can be imposed on an authorised person under the above circumstances occurring on or after 29 December 2014. Where non-compliant behaviour may be identified prior to 29 December but continue past this date, the Regulator is able to impose a financial penalty for any portion of the non-compliant behaviour occurring on or after 29 December 2014.

For any non-compliant behaviour identified prior to 29 December 2014, the Regulator can use alternative sanctions to give directions, vary, suspend or cancel the authorisation of an authorised person.

In practice under the CMR Unit's revised Enforcement Policy, a financial penalty is likely to be considered where:

- Breaches have continued despite previous compliance advice or warnings
- Detriment caused to consumers or third parties in general can be clearly monetised
- Any financial gain or loss avoided by the business can be monetised
- The business has sufficient financial means to pay a penalty
- No previous formal enforcement action has been imposed
- Action to vary, suspend or cancel the authorisation of a business would be disproportionate under the circumstances

This list is non-exhaustive but sets out some relevant indicators that are likely to be considered when deciding whether to initiate the penalty calculation process or move to consider the other formal enforcement sanctions.

Calculation of a penalty

Where a financial penalty is deemed necessary an appropriate penalty amount will be considered. Overall, specific penalty amounts will not be attributed to specific individual breaches of the rules but rather the overall nature and seriousness of a breach or collection of breaches.

In order to assist the calculation of any potential penalty, the Regulator may request turnover information from the authorised person when notifying them that they are subject to an investigation. Where turnover information is not forthcoming or where an authorised person has not been notified of an ongoing investigation, the Regulator will rely on the turnover figures supplied during the previous renewal of authorisation exercise or will make a judgement based on the relative size and nature of the business concerned before providing an opportunity for the authorised person to provide more accurate and up to date turnover information.

Nature Consideration Categories

The nature of a breach or collection of breaches will initially be assessed and will be set out under 3 general levels, each carrying a score.

Basic – Score: 1

The nature of breaches that fall under this category will be the least serious, are likely to be relatively minor and may also relate to more basic administrative failings. Breaches are not likely to be linked to any significant systemic failures, a business is likely to have cooperated fully with the investigation and may have taken significant steps to remedy the issues raised.

Escalated – Score: 2

The nature of breaches that fall under this category are likely to be more serious with a number of factors causing increased concern. It is likely that the authorised person would not have taken on board any previous compliance advice or warnings. There may have been less cooperation with the investigation from the authorised person generally.

Severe – Score: 3

The nature of breaches that fall under this category will be the most concerning with a number of factors causing significant regulatory issues. Breaches that fall into this category are generally likely to be deemed as intentional, reckless and negligent. It is likely that the authorised person would have ignored previous compliance advice or warnings and there may have been no cooperation with the investigation from the authorised person.

The authorised person may have shown no clear intention to put in place measures that would remedy the situation and the breaches identified will have caused significant concern to the Regulator. There are likely to be limited mechanisms that would enable the issues to be resolved in a timely manner. In addition, there are likely to be various regulatory concerns across the business.

The example behaviours mentioned in each category listed are not exhaustive but provide an idea of the relevant factors that could contribute to the overall assessment of the nature of a breach or group of breaches.

Seriousness Consideration Categories

The second element of consideration consists of an assessment of the overall seriousness of a breach or collection of breaches. The level of seriousness is effectively based on the overall impact of the breaches identified and how far the non-compliance has affected other parties.

Low – Score: 2

Breaches that fall into this category will be the least serious and are unlikely to have any wide impact on consumers or other organisations. A business placed in this category is likely to be in a position where a clear breach of the rules has been identified but are likely to be administrative or technical breaches which do not have a wide impact.

Medium – Score: 4

Breaches that fall into this category are likely to have affected a number of consumers or other organisations. The detriment caused may have affected a group of consumers or limited numbers of other organisations however there is likely to be potential for even further, more widespread detriment if action is not taken.

High – Score: 6

Breaches that fall into this category are likely to have already affected large numbers of consumers or other organisations over a considerable period of time. The detriment caused is likely to be widespread and consumers or defendant businesses may have incurred significant costs as result of the business' practices.

Final Score Calculation

The scores attributed from both the Nature and Seriousness categories are then added together to give a final score. As a result of the different factors being considered as part of the assessment, it will be possible for a breach or collection of breaches to be placed at different levels of each step.

Once a final score is reached, an assessment of the business' means will also need to be conducted. A business' means will play a pivotal role in the consideration of the appropriateness of a penalty and, in conjunction with the final score derived from the initial nature and seriousness assessment, will provide an indication of an appropriate penalty range.

Businesses' turning over less than £500k per annum can be subject to a penalty of no more than £100k. Businesses with a turnover of £500k or more per annum will be subject to penalties based on a percentage of their turnover which ultimately can not exceed more than 20% of their turnover.

Annex A provides some examples of the types of considerations that may affect an assessment of the nature and seriousness of a breach or group of breaches.

Annex B provides details of the relevant penalty bands in which a non-complaint, authorised person may be placed.

Annex A: Nature & Seriousness Scoring Table

Nature	Score
Basic <ul style="list-style-type: none"> • Authorised person has cooperated fully with regulatory investigation • Breach was not intentional, negligent or reckless • Breach has ceased after authorised person notified of non-compliance • Breach did not form a pattern of misconduct or result from systemic failures • Administrative/Technical breaches (i.e. renewals, change of details on application form etc) 	1
Escalated <ul style="list-style-type: none"> • Minimal/Some cooperation from authorised person with regulatory investigation • Breach as intentional, negligent or reckless but minor in nature • Breaches continued after notification of non-compliance • Breach may have formed a pattern of misconduct or resulted from systemic failures 	2
Severe <ul style="list-style-type: none"> • Authorised person has been uncooperative during investigation • Breach was intentional, negligent or reckless • Breaches continued after notification of non-compliance • Breach formed a pattern of misconduct or resulted from systemic failures 	3
Seriousness	Score
Low <ul style="list-style-type: none"> • Inconvenience but no/minimal loss, detriment, impact or risk to consumers/other persons or bodies • Administrative/Technical breaches (i.e. renewals, change of details on application form etc) 	2
Medium <ul style="list-style-type: none"> • Moderate loss, detriment, impact or risk to consumers/other other persons or bodies • Potential for moderate loss, detriment, impact or risk to consumers/other other persons or bodies 	4
High <ul style="list-style-type: none"> • Significant loss, detriment, impact or risk to consumers/vulnerable consumers)/other persons or bodies • Potential for significant loss, detriment, impact or risk to consumers/vulnerable consumers/other persons or bodies • Wide scale detriment 	6

Annex B: Penalty Band Table

Band	Nature/ Seriousness Rating	Score	Penalty Range (Fixed)	Penalty Range (%)
			- Turnover less than £500,000 in previous 12 months	- Turnover £500,000 or more in previous 12 months
A	Basic/Low	3	£0 - £3,000	0% - 0.6%
B	Escalated/Low	4	£3,000 - £12,500	0.6% - 2.5%
	Basic/Med	5	£12,500 - £25,000	2.5% - 5%
	Severe/Low			
C	Escalated/Med	6	£25,000 - £40,000	5% - 8%
	Basic/High	7	£40,000 - £50,000	8% - 10%
	Severe/Med			
D	Escalated/ High	8	£50,000 - £75,000	10% - 15%
E	Severe/High	9	£75,000 - £100,000	15% - 20%

Further information

The full CMR Enforcement Policy 2014 can be found here:

www.gov.uk/government/publications/claims-management-regulator-enforcement-policy

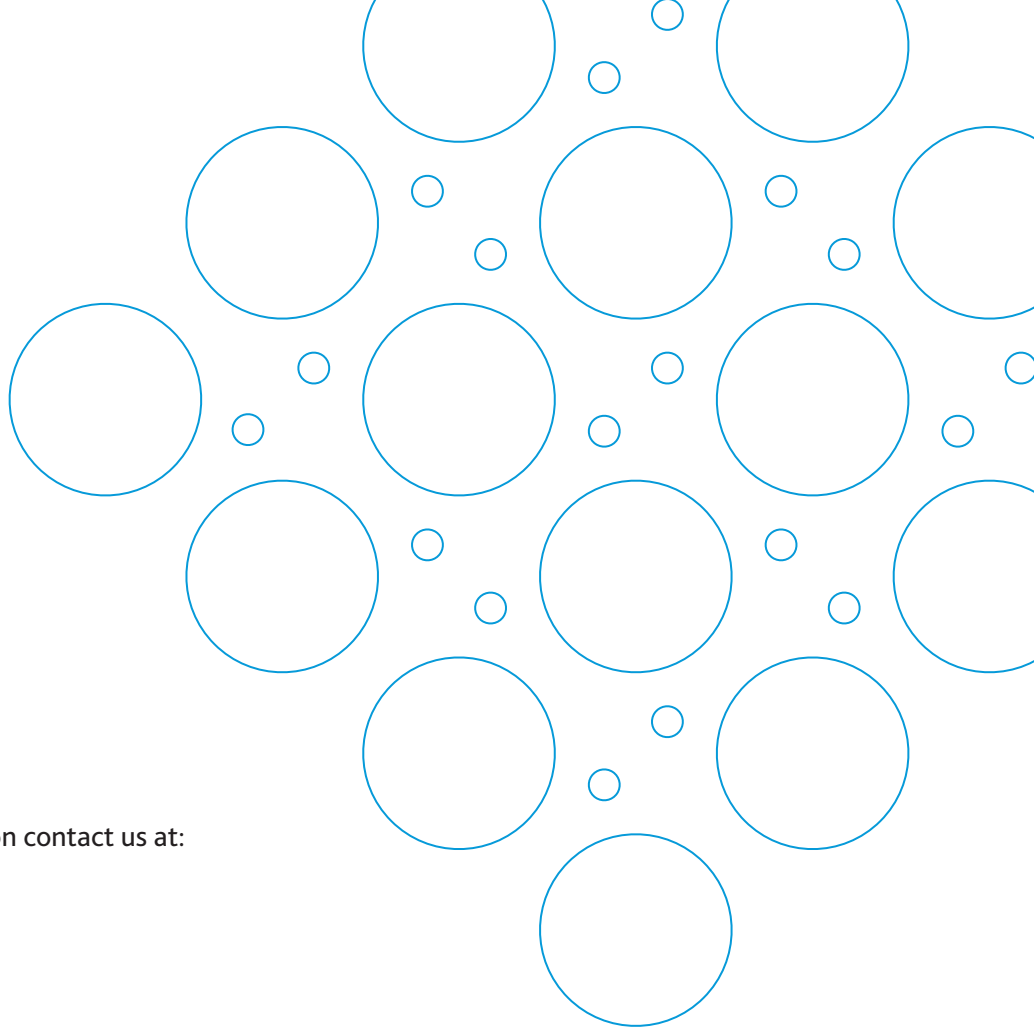
The relevant legislation underpinning the new provisions are as follows:

The Compensation (Claims Management Services) (Amendment) Regulations 2014:

www.legislation.gov.uk/uksi/2014/3239/contents/made

The Financial Services (Banking Reform) Act 2013:

www.legislation.gov.uk/ukpga/2013/33/part/7/crossheading/claims-management-services/enacted



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