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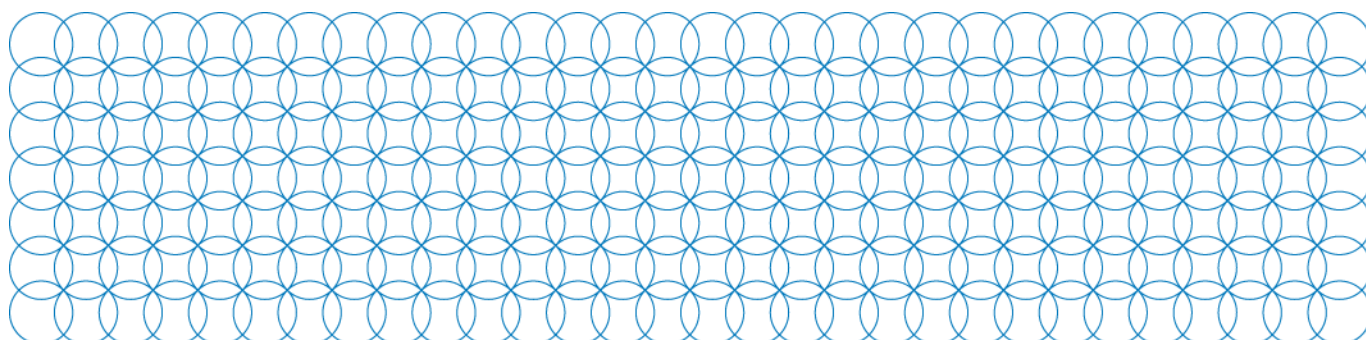
Claims Management Regulation

Regulation fees paid by claims
management companies

Proposed regulation fee scales for 2018–19

This consultation begins on 20 October 2017

This consultation ends on 17 November 2017





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Regulation fees paid by claims management companies

Proposed fee scales for 2018–19

A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at www.justice.gov.uk

About this consultation

- To:** All those required to be authorised under the Compensation Act 2006
- Duration:** From 20/10/2017 to 17/11/2017
- Enquiries (including requests for the paper in an alternative format) to:** CMRU 2nd Floor, Ministry of Justice
102 Petty France
London SW1H 9AJ
- T: 020 3334 3168
E: claimsmanagementregulation@justice.gsi.gov.uk
- How to respond:** Please send your response by 17/11/2017 to:
Email:
claimsmanagementregulation@justice.gsi.gov.uk
- Mail: CMR Unit, 2nd Floor (2.54)
102 Petty France
London SW1H 9AJ
- Response paper:** A response to this consultation exercise is planned to be published in February 2018 at:
www.justice.gov.uk

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Summary

Claims Management Regulation

1. Claims Management Regulation was established in 2007 under Part 2 of the Compensation Act 2006. The regulatory system is self-financing, with applicants and authorised claims management companies (CMCs) meeting the costs of regulation through the payment of application and annual authorisation fees. Fees are calculated based on the number of new CMCs predicted to apply for authorisation, the turnover of those CMCs already authorised together with the proportion of CMCs expected to maintain their authorisations both in year and into the following year. The level of these fees is set in advance of the year to which they apply and this consultation sets out the proposed fees for the regulation year April 2018 to March 2019.
2. The proposed fee levels are designed to recover the costs of operating the regulatory regime from authorised businesses. Fee levels for the 2018/19 regulatory year must remain sufficient to support the necessary enforcement and compliance programmes, build on the ongoing work to maintain and improve regulation and prepare for the transition of regulation. Having considered all the factors that contribute to the current and future size of the industry, and the general consolidation of the market, the Regulator proposes that fee levels should remain unchanged for 2018/19.
3. The fee levels for the 2018/19 regulatory year would therefore remain as follows:
 - The application fee £2,000
 - The annual regulation fee pay scales for CMCs with turnovers under £88,889 unchanged
 - The percentages of annual turnover levied on CMCs with turnovers over the flat fee threshold of £88,889 unchanged at 0.90% 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 fees caps for both annual regulation and the financial products and services uplift unchanged at £150,000
 - The existing financial products and services uplift levied on annual turnover from regulated activities in that sector unchanged at 0.145%.

The proposed draft fee determination including the specific fee proposals are set out at page 9 and **Annex A**.

Introduction

4. This paper sets out the levels at which claims management regulation fees will be set for the 2018-19 regulatory year and the methods of calculation by which they will be collected.
5. This consultation is aimed at persons authorised to provide claims management services in England and Wales under the Compensation Act 2006 and those CMCs and individuals contemplating making an application for authorisation. The register of Authorised Persons is available at: <https://www.claimsregulation.gov.uk/search.aspx>
6. The consultation will run for a period of 4 weeks. Copies of the consultation paper are being sent to:
 - All authorised claims management companies and organisations, and
 - The Claims Management Regulatory Consultative Group – see **Annex B** for a list of members.

However, this list is not intended to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Background

Regulation Fee Requirements

7. The levels of fees paid by authorised CMCs are reviewed by the Regulator each year to ensure that regulation is adequately funded. As part of the annual fees review, authorised CMCs and other interested parties are consulted in accordance with regulation 15¹ of the Compensation (Claims Management Services) Regulations 2006 (the Regulations).
8. The claims management regulatory regime is self-funding and all relevant costs must be recovered through the regulation fees paid by CMCs. All applicants must pay an application fee and, if authorised, an annual regulation fee. For all currently authorised CMCs, an annual regulation fee is charged in advance of the regulation year to which it relates. This fee is calculated using turnover information submitted by CMCs as part of the annual renewal process in February of each year.
9. The yearly fee levels determined by the Regulator are based on estimates of income receipts from new applications, the level of authorised CMCs in operation, any potential contraction (or, if applicable, expansion) of the claims management services market and the administrative costs of operating the regulatory regime.

Application Fee

10. Those that wish to provide regulated claims management services must be authorised to do so, unless they benefit from an exemption². To become authorised, a person is required to pay an application fee and must go through a detailed application process in accordance with regulations 8 and 9³ of the Regulations. If the Regulator is satisfied that the applicant meets the criteria provided for by the Regulations, they will be granted authorisation to provide regulated claims management services.
11. An application fee is paid by every applicant, successful or not, and contributes to meeting the costs of the Regulator carrying out detailed checks in processing the applications. These checks include verifying the information provided, establishing directors' identities, seeking further information where necessary and reviewing proposed contracts and marketing material. Some CMCs require more scrutiny due to their complex structures and additional

¹ <http://www.legislation.gov.uk/uksi/2006/3322/part/4/made>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313625/Claims-management-companies-who-needs-to-be-authorized-notes.pdf

³ <http://www.legislation.gov.uk/uksi/2006/3322/part/3/made>

compliance checks are carried out on applicants that have been identified as having a higher risk rating.

Annual Regulation Fee

12. Businesses that are approved for authorisation must pay the annual regulation fee before authorisation is granted and also for each year that they remain authorised. This fee contributes to meeting the costs of monitoring, compliance and enforcement functions including handling stakeholder contacts, investigating breaches of the Conduct of Authorised Persons Rules, regulatory visits, audits and any necessary enforcement action against unauthorised CMCs.
13. To deal with key areas of non-compliance, monitoring and enforcement work is targeted appropriately. The annual regulation fee covers the provision of this risk-based monitoring and regulatory work with the aim of improving standards across the industry and ensuring that effective consumer safeguards remain in place.

Paying for Regulation

The Claims Market

14. The claims market remained relatively stable in 2016/17. At end of March 2017 there were 1388 authorised CMCs – a slight decline in numbers from the previous year. This is a continuation of the recent trend which has seen the market consolidate, with a small number of businesses holding a dominant share of the market in the two main claims sectors (financial claims and personal injury claims). The number of CMCs active in the personal injury (PI) sector has fallen by 13% to 752, with the number of CMCs active in the financial products & services (FPS) sector falling by 15% to 674. The other much smaller regulated sectors include employment claims and criminal injuries. The overall market stability is also reflected in the total declared industry turnover for the 12 months to November 2016, which decreased by 3% - with turnover in the PI sector falling by 15% and increasing by 2% in the FPS sector.
15. In the 2016/17 regulatory year 242 CMCs surrendered their authorisation, with a further 69 CMCs having their authorisation cancelled. These market exits were balanced by 107 new entrants. So far in the 2017/18 regulatory year, 36 CMCs have had their authorisation cancelled, 140 warnings have been issued, 200 formal audits and 144 regulatory visits carried out.

Regulation Costs and Fee Income

Costs

16. Various factors make up the cost of regulation, some of which are relatively fixed, with others dictated by our need to be responsive to shifting demand and emerging issues and as such, are less certain. The costs resulting from dealing effectively with non-compliant CMCs remains constant, meaning that sufficient resources are needed to undertake the necessary compliance projects, audits and management of general business and stakeholder contacts. Gross regulation costs are expected to be between £5.5m and £6m in 2018-2019.
17. Most of these costs are incurred through targeted casework and as such, they would not necessarily be affected by the total number of CMCs. Other variable costs are legal and other associated costs incurred in defending appeals against the Regulator's decisions to refuse, cancel, suspend or vary a CMC's authorisation. The regulation costs predicted for 2018/19 include:
 - Detailed assessments of applications for authorisation
 - Maintaining and enhancing monitoring, compliance and enforcement activities

- Measures to tackle fraud and compliance with the referral fee ban in the personal injury sector
- Measures to tackle non-compliant marketing practices

Fees Income

18. There are longer term policy reforms that are likely to impact on the claims market, but these are not expected to do so with any significance in 2018/19. The reforms include a time bar on PPI complaints introduced by the Financial Conduct Authority (FCA) that comes into effect in August 2019; the transfer of regulation to the FCA; proposals to cap the fees that regulated CMCs can charge consumers for PPI claims; and changes regarding compensation for minor whiplash claims.
19. We anticipate the level of new entrants, exits and turnovers remaining broadly consistent with current levels. Having balanced all the factors and variables affecting fee income, we have reached the view that the current market situation allows us to leave current fee levels unchanged for 2018/19. The fee income generated should cover estimated regulation costs.

Proposals

Annual Regulation Fee Scales for 2018-2019

Application Fee

20. We are proposing to leave the current £2000 application fee level unchanged. This allows adequate provision to cover any changes in the number of applications for authorisation in 2018-19 and to recover the costs of scrutiny when considering applications from businesses.

Annual Regulation Fee

21. We are proposing to leave annual regulation fee levels unchanged. This should not only ensure that regulation remains self-funding, but also to ensure that service levels are maintained and continue to improve. The table below sets out the proposed annual regulation fee scales for 2018-2019:

Annual Regulation Fee Scales 2018- 2019	
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
Turnover more than £88,889	Fee = 0.9% of annual turnover up to £1 million; 0.8% of annual turnover between £1million and £5 million; 0.75% of annual turnover above £5 million (with fees cap at £150,000).

Financial Products and Services Uplift

22. We are proposing to leave the financial products and services uplift which is currently set at 0.145% of annual turnover resulting from regulated activities undertaken in the financial products and services sector unchanged. The current cap of £150,000 that applies to the financial products and services

uplift would also remain unchanged. The uplift would apply to new and existing CMCs, with the uplift to new CMCs based on their estimated turnover for the financial products and services sector. This will correlate with the current charging mechanism in place for annual regulation fees paid by new claims management companies entering the market.

23. A working example of what the fee proposals would mean for different CMCs can be found at **Annex C**. Any rebate of annual regulation fees would be payable in accordance with regulation 19 of the Regulations.

Questionnaire

We would welcome responses to the following proposals set out in this consultation paper.

Claims Management Regulation Fees Determination 2018/19

- i) Do you have any comments on the proposed fee scales and the proposed draft Fees Determination for 2018 – 2019 (at **Annex A**)?
- ii) 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
- iii) Bearing question (ii) in mind, are there any particular forms of mitigation in relation to any potential equalities impacts that should be considered?

Thank you for participating in this consultation exercise.

About You

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 17 November 2017 to:

Claims Management Regulation – HQ Office
Ministry of Justice, 2nd Floor 2.54
102 Petty France
London SW1H 9AJ

Tel: 020 3334 3168

Email: claimsmanagementregulation@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Publication of response

A paper summarising the responses to this consultation will be published in February 2018. The response paper will be available on-line at www.justice.gov.uk

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. The Regulator is also bound by Part 9 of the Enterprise Act 2002).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact Consultation Co-ordinator on 020 3334 4498, or email at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
102 Petty France
London SW1H 9AJ**

Annex A – Draft Fees Determination 2018-2019

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 2018.

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 2017.
- b) If the business or applicant did not trade for the full 12 months to 30 November 2017, the estimated turnover for the 12 months to 30 November 2018.
- c) Where the application for authorisation is made on or after 30 November 2017, the estimated turnover for the 12 months to 30 November 2018.

Application of this determination

2. This fees determination applies to fees for all applications for authorisation made on or after 1 April 2018 and sets the annual fees for all businesses authorised at and after that date to the end of March 2019.

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 2018, 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 2018 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 2018.

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 2018 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 2018, 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 2018 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 2018.

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)

Annex B – Claims Management Regulatory Consultative Group (2016/17)

Advisory, Conciliation and Arbitration Service (ACAS)

www.acas.org.uk

Advertising Standards Authority (ASA) www.asa.org.uk

Association of Regulated Claims Management Companies (ARC)

www.arcmc.org.uk/

Association of British Insurers (ABI) www.abi.org.uk

Association of Professional Financial Advisers (APFA)

www.apfa.net

Association of Mortgage Intermediaries (AIM)

www.a-m-i.org.uk

Association of Personal Injury Lawyers (APIL) www.apil.org.uk

British Bankers Association (BBA) www.bba.org.uk

British Insurers Brokers' Association (BIBA) www.biba.org.uk

Building Societies Association (BSA) www.bsa.org.uk

Citizens Advice Bureau (CAB) www.citizensadvice.org.uk

Consumer Finance Association (CFA) <http://www.cfa-uk.co.uk>

Council of Mortgage Lenders (CML) www.cml.org.uk

Employment Tribunal

www.employmentappeals.gov.uk

Financial Conduct Authority

www.fca.org.uk/

Financial and Leasing Association (FLA) www.fla.org.uk

Financial Ombudsman Service

www.financial-ombudsman.org.uk

Financial Services Compensation Scheme (FSCS) www.fscs.org.uk

Information Commissioner's Office (ICO) <https://ico.org.uk>

Legal Ombudsman

www.legalombudsman.org.uk

Motoring Accident Solicitors (MASS) www.mass.org.uk

Ofcom www.ofcom.org.uk

Professional Financial Claims Association (PFCA),

www.pfca.org.uk/

Solicitors Regulation Authority (SRA) www.sra.org.uk

The Direct Marketing Association Ltd (DMA) www.dma.org.uk

TUC www.tuc.org.uk

Which? www.which.co.uk

Annex C – The Proposals – A Working Example

		2018-2019 Proposals		
CMC total turnover	CMC financial services turnover	Annual Reg fee	FPS fee	Total CMR fee
£	£	£	£	£
40,000,000	-	150,000	-	150,000
25,000,000	25,000,000	150,000	36,250	186,250
10,000,000	-	78,500	-	78,500
10,000,000	10,000,000	78,500	14,500	93,000
1,000,000	-	9,000	-	9,000
1,000,000	1,000,000	9,000	1,450	10,450
500,000	-	4,500	-	4,500
500,000	500,000	4,500	725	5,225
100,000	-	900	-	900
100,000	100,000	900	145	1,045
50,000	-	650	-	650
50,000	50,000	650	73	723
20,000	-	500	-	500
20,000	20,000	500	29	529
10,000	-	350	-	350
10,000	10,000	350	14	364
2,500	-	200	-	200
2,500	2,500	200	4	204

