



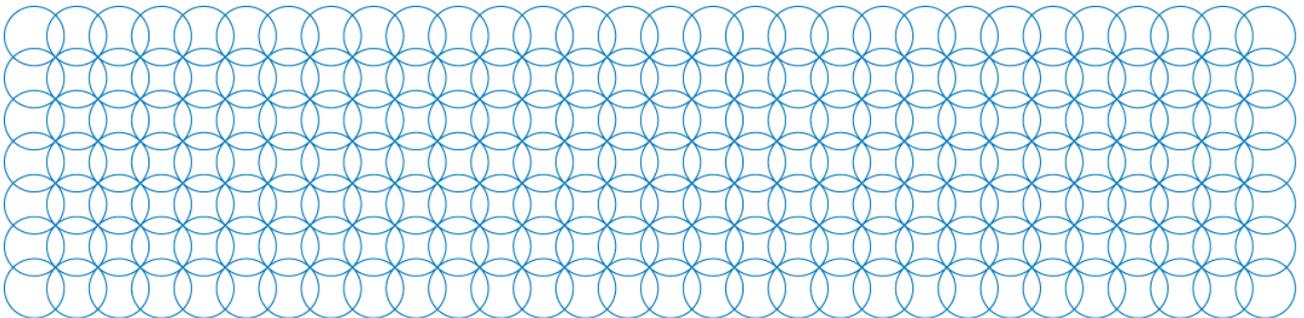
Ministry
of Justice

Claims Management Regulation

Regulatory Enforcement - Financial Penalties

This consultation begins on 31 March 2014

This consultation ends on 28 April 2014





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of Justice

Claims Management Regulation

Regulatory Enforcement - Financial Penalties

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 Claims Management Companies providing regulated claims management services within England and Wales
- Members of the Claims Management Regulation Regulatory Consultative Group
- The First-Tier Tribunal (Claims Management Services)
- Any party with an interest in Claims Management Regulation
- Duration:** From 31/03/14 to 28/04/14
- Enquiries (including requests for the paper in an alternative format) to:** Mr Ashley Palmer
Claims Management Regulation – HQ Office
Ministry of Justice
102 Petty France
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Email: Claimsmanagementregulation@justice.gsi.gov.uk
- How to respond:** Please send your response by 28/04/14 to:
Claims Management Regulation – HQ Office
Ministry of Justice
102 Petty France
London SW1H 9AJ
Email: Claimsmanagementregulation@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published by the end of August 2014 at: <http://www.justice.gov.uk>

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Executive summary

Amendments to the Compensation Act 2006

1. Businesses providing regulated claims management services in England and Wales under the Compensation Act 2006 must be authorised to do so by the Claims Management Regulator (“The Regulator”) which forms part of the Ministry of Justice (MoJ). Once authorised, these businesses are technically known as authorised persons but are, more generally, referred to as regulated claims management companies (“regulated CMCs”).
2. In December 2013, the Compensation Act 2006 was amended by the Financial Services (Banking Reform) Act 2013 to give the Secretary of State power to make regulations that enable the Regulator to impose a financial penalty on any regulated CMC in the following circumstances:
 - As a consequence of a failure to comply with rules prescribed by the Regulator about the professional conduct of authorised persons (the Conduct of Authorised Persons Rules) or a code of practice;
 - In relation to the investigation of a complaint about the professional conduct of the regulated CMC;
 - As a consequence of a failure to comply with a requirement to take out a policy of professional indemnity insurance;
 - As a consequence of a failure to comply with certain requirements regarding the provision of information or documents;
 - 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; and
 - 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.
3. The amendments provide that regulations shall include provision about determining the amount of a penalty imposed by the Regulator, and in particular may include provision specifying a minimum and maximum amount. In addition, amendments to the Compensation Act 2006 were also made in order to provide an additional right of appeal to the First-Tier Tribunal against the imposition of any financial penalty as well as the amount set and any date by which a penalty or any part of it must be paid.
4. We propose to amend the Compensation (Claims Management Services) Regulations 2006 (“the Regulations”) to enable the Regulator to impose financial penalties on non-compliant CMCs. This consultation makes proposals for the processes the regulator will follow in issuing and setting a financial penalty.

Summary of Proposals

5. In imposing a financial penalty, it is proposed that the Regulator will follow a similar process to the one currently followed when varying the conditions of, suspending or cancelling a regulated CMCs authorisation, including:
 - An investigation resulting in a finding that the regulated CMC is in breach of their conditions of authorisation.
 - Written notice of the proposed financial penalty, setting out the amount and the date by which it would be required to be paid, the reasons for the Regulator's decision and a summary of evidence relied on.
 - Providing an opportunity for the regulated CMC to make written submissions in relation to the imposition of the financial penalty, which would be taken into account by the Regulator, before reaching a final decision.
 - Written notice of the financial penalty imposed and the date by which is required to be paid.
6. In setting the amount of a financial penalty, it is proposed that the Regulator will:
 - Make an initial assessment of the overall **nature** and **seriousness** of any breach of the conditions of authorisation, which may include an assessment of the level of detriment or risk to consumers and/or third parties caused by the regulated CMCs actions or omissions.
 - Based on that assessment allocate a financial penalty band within a range of:
 - £500 - £100,000 for regulated CMCs with a turnover of less than £500,000, and
 - 0.1% and 20% of turnover for regulated CMCs with a turnover of over £500,000
 - Calculate the turnover by reference to the turnover resulting from regulated claims management activities in the 12 months prior to a request for this figure being made by the Regulator as part of the investigation. There may however be instances where this information is not forthcoming or it may be detrimental for the Regulator to disclose that an investigation is underway. Under these circumstances, the Regulator proposes to use the turnover declared at either application or renewal of authorisation, whichever is the most recent. Where the Regulator has grounds to believe these figures would not be an accurate reflection of the regulated CMCs current turnover, use estimated figures.
 - Consider any aggravating or mitigating factors including, but not limited to, the regulated CMC's cooperation with the investigation and attempts to remedy the breaches before reaching a proposed amount.
 - Re-assess the overall nature and seriousness of any breach after the notice of the proposed penalty has been issued and following any submissions by the regulated CMC. This could result in the removal, reduction of or increase in the level of penalty to be imposed.

7. In summary, the Regulations will be amended to include provisions on:
 - the process that that must be followed in order for the Regulator to impose a financial penalty,
 - the requirements to consider the nature and seriousness of a breach of a condition of authorisation and the turnover of the Regulated CMC in determining the amount of the penalty,
 - the penalty ranges that can be imposed, including maximum and minimum bounds, and
 - how the penalty can be enforced as a debt.
8. Other proposals for the operation of the financial penalties scheme discussed in this consultation document will be set out in the Regulator's enforcement policy.

Introduction

9. This paper sets out for consultation the proposed financial penalties scheme that would be implemented the Ministry of Justice and would be used by the Regulator. The consultation is aimed at all regulated CMCs providing regulated claims management services within England and Wales and any other party with an interest in claims management matters.
10. Copies of the consultation paper are being sent to:
 - All regulated CMCs providing regulated claims management services within England and Wales
 - Members of the Claims Management Regulation Regulatory Consultative Group.
 - The First-Tier Tribunal (General Regulatory Chamber) (Claims Management Services)
11. However, this list is not meant 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

Claims Management Regulation

12. Claims management regulation covers a number of sectors within the claims management industry namely; personal injury, financial products and services (such as mis-sold payment protection insurance), employment, criminal injuries, industrial injuries disablement benefit (IIDB) and housing disrepair.
13. At the end of January 2014, Personal injury remained the largest sector with 1,380 regulated CMCs operating in it, closely followed by the financial products and services sector with 1,118 regulated CMCs active in it. At the end of January 2014, there was a total of 2,260 regulated CMCs operating. It should be noted however that some regulated CMCs operate across a number of sectors not limited to Personal Injury and Financial Products and Services and these include the employment, criminal injuries, Industrial Injuries Disablement Benefit (IIDB) and Housing Disrepair sectors.
14. Regulated CMCs must pay an annual regulation fee¹ based on their turnover received from regulated claims management activities, which must be reported to the Regulator when applying for authorisation and then annually upon renewal of authorisation. Once authorised, regulated CMCs are required to adhere to the conditions of authorisation set out in regulation 12 of the Compensation (Claims Management Services) Regulations 2006 (“the Regulations”), including adherence to the Conduct of Authorised Persons Rules (CAPRs – attached at annex a). Where breaches of the conditions of authorisation are identified, statutory enforcement action can be taken by the Regulator in accordance with the Compensation (Claims Management Services) Regulations 2006. This enforcement action can currently take the form of a variation of the regulated CMC’s authorisation such as by placing additional conditions on it or by suspending or cancelling its authorisation.

Malpractice and Enforcement

15. The majority of regulated CMCs comply with the conditions of authorisation. However, bad practice by a minority of regulated CMCs, mainly operating in the financial services sector in particular, has created poor outcomes for both consumers and defendant businesses, such as financial service providers. As the scale of potential claims for payment protection insurance (PPI) compensation became clear, some regulated CMCs have for example submitted claims where there was no relationship between the consumer and the defendant business or have made claims where no relevant product had ever been sold to a consumer. More generally, some regulated CMCs have also failed to substantiate the basis of the claims made. These issues, amongst others, have led to delays in receiving compensation for some consumers who have legitimate claims, and has increased costs for defendant businesses where claims are unsubstantiated.

¹ See <https://consult.justice.gov.uk/digital-communications/regulation-fees> for details on the fees for 2014-2015.

16. This issue is most prevalent in, but not limited to, the financial services sector and the PPI claims market in particular. During the 2012/13 regulatory year, a total of 211 regulated CMCs had their authorisation cancelled, 7 were suspended and 6 CMCs had the terms of their authorisation varied across all sectors. Current enforcement powers to vary, suspend or cancel a regulated CMC's authorisation however, have not been sufficient in some cases to deter the speculative behaviour or engagement in other areas of malpractice.
17. The variation of authorisation conditions or the suspension or cancellation of a regulated CMC's authorisation can also be too harsh or disproportionate to the issue of misconduct in certain cases. The Regulator is therefore, expanding its enforcement toolkit in order to become more flexible and even more effective. In December 2013, the Financial Services (Banking Reform) Act 2013 received Royal Assent and made amendments to the Compensation Act 2006, which provide for regulations to be made that give the Regulator the power to impose financial penalties on regulated CMCs proven to be in breach of their conditions of authorisation.
18. This will provide an additional, more tailored and proportionate enforcement option for consideration and use. For example, where the client base of a regulated CMC would be adversely affected by the suspension or cancellation of its authorisation this may be a disproportionate step because a CMC can no longer act on behalf of a client once its authorisation has been suspended or cancelled. With a financial penalties scheme, the Regulator would have an additional enforcement tool to consider that would not cause detriment to any of the regulated CMC's existing clients but would still provide an adequate sanction for breaches of the conditions of authorisation.
19. When forming the proposed financial penalty scheme set out in this consultation document, we considered the structure and performance of existing financial penalty schemes and met with other regulators, allowing us draw from their knowledge and experiences to ensure the final proposals provided a robust scheme fit for claims management regulation.

The Current Approach to Claims Management Regulation Enforcement

20. If the Regulator either receives a complaint about CMC's professional conduct or is satisfied that there are reasonable grounds to suspect a CMC has failed to comply with the conditions of authorisation (and the alleged or suspected breach is serious enough to justify an investigation), the Regulator may investigate the professional conduct of a CMC.
21. Where breaches of the conditions of authorisation are identified, in the first instance the Regulator will usually take informal action against a regulated CMC in an attempt to bring it to compliance, which may include:
- Compliance and regulatory advice
 - Letters of warning
 - Informal written undertakings
22. If the Regulator decides to take formal enforcement action, it has the power to cancel, suspend or vary the conditions of a regulated CMC's authorisation subject to the breach being serious enough that action is necessary to protect the public. Prior to taking such action, the Regulator must give written notice to the regulated CMC, and in the case of suspension or variation, the terms of that action such as the specific restrictions or requirements put in place by a variation such as the prevention of taking on new clients. The regulated CMC must also be provided with the reasons for the Regulator's decision and a summary of the evidence relied upon, and must be provided with an opportunity to provide written representations in relation to the proposed action and reasonable time within which to do so.
23. If the Regulator decides to cancel, suspend or vary the conditions of an authorisation, the Regulator must give the regulated CMC written notice, specifying the date on which the action will come into effect, if the notice is served by post there must be provision for a record of its delivery. The Regulator's enforcement policy² (Attached at annex B) serves to give guidance on its current approach to enforcement.

² www.justice.gov.uk/downloads/claims-regulation/cmr-enforcement-policy-mar-13.pdf

Claims Management Regulation Financial Penalties Scheme

Expansion of the Regulatory Enforcement Toolkit

24. Although the Regulator has utilised its existing powers effectively to date, more is being done to not only bring up standards even further but also provide a more flexible and proportionate approach to enforcement in certain instances. The Regulator's enforcement toolkit is to be expanded to bring it into line with the penalty schemes that are in operation for other relevant regulators throughout the industry such as the Financial Conduct Authority (FCA), Solicitor's Regulation Authority (SRA) and the Information Commissioner's Office (ICO). This expansion means that the Regulator will have the option to impose a financial penalty as an alternative or in addition to its current powers to vary, suspend or cancel a regulated CMCs authorisation for a breach of its conditions of authorisation.
25. Under the Regulator's Enforcement Policy, prior to any formal action being taken, the Regulator will attempt to work with a regulated CMC with the intention of bringing it to compliance, as set out in paragraph 21. Where this informal enforcement process is unsuccessful, the Regulator will then move to consider whether formal enforcement is necessary, now having the option to impose a financial penalty as an alternative or in addition to a variation of the conditions of authorisation or the suspension or cancellation of the regulated CMCs authorisation.
26. As is the case with the existing forms of formal enforcement action under the Enforcement Policy, a financial penalty will be able to be imposed with or without informal enforcement action and could be imposed alongside other enforcement action to be taken or on its own. The imposition of a financial penalty would be a two stage process, (1) the decision whether to impose a penalty and (2) a decision as to the amount of the penalty to be imposed.

When a financial penalty will be imposed

27. When considering the type of formal enforcement action to take the Regulator considers what is appropriate and proportionate response to the breach of the conditions of authorisation and other relevant circumstances such as size of client base. The Regulator will impose a financial penalty where other action would be disproportionate, have a detrimental effect on a regulated CMCs client base or would not address the issue. For example, if a regulated CMC was failing in certain aspects of its business and was found to be in breach of their conditions of authorisation through breaching the complaint handling rules, the imposition of a financial penalty may be more appropriate than a variation, suspension or cancellation of its authorisation.
28. Another example of how existing enforcement options may not be appropriate is where a CMC fails to provide information upon request to the Regulator as is required under the Conduct of Authorised Persons Rules, adherence to which is a condition of authorisation. The Regulator will usually request specific information from a CMC as part of an investigation and a failure to provide information can hinder an investigation or create delays and thus increased administration costs.

29. The power to impose a financial penalty will not be exclusive, and may be imposed alongside a variation, suspension or cancellation where deemed necessary to address the individual breaches.
30. The financial penalty will also be an appropriate sanction for use where the regulated CMC is found to be in breach of its conditions of authorisation but has remedied that breach before formal action has been imposed. This would render the imposition of a variation, suspension or cancellation of its authorisation to be no longer appropriate. Issuing a financial penalty in this situation would provide an appropriate sanction to the breaches and provide a deterrent to future mis-conduct.

Appeals to the First- Tier Tribunal against the imposition of a financial penalty

31. The First-Tier Tribunal currently has the power make any decision on an application for authorisation that the Regulator could have taken, to impose or remove conditions on a person's authorisation; remit a matter to the Regulator, suspend or cancel a person's authorisation and can not award costs. An appellant must lodge an appeal with the tribunal within 28 days of the enforcement action being imposed. The Compensation Act 2006 has been amended by the Financial Services (Banking Reform) Act 2013 to include appeals against the imposition of financial penalties. The Tribunal will have the power to hear appeals about the imposition of any penalty, the amount of the penalty, or any date by which the penalty, or any part of it, is required to be paid.

The proposals

Imposing a financial penalty

32. Following the decision that formal enforcement action is necessary, to ensure consistency in the approach to formal enforcement of each of the Regulator's powers, it is proposed that when imposing a financial penalty the Regulator would be required, under the Regulations, to follow a similar process to that required when imposing a variation to or suspension or cancellation of a regulated CMC's authorisation. That is:
- Where after an investigation into the professional conduct of a regulated CMC, the Regulator is satisfied that there has been a breach of the conditions of authorisation; he may require the regulated CMC to pay a financial penalty.
 - Before doing so, the Regulator would give written notice of the proposed penalty;
 - including the proposed amount and date by which it would be required to be paid
 - setting out the reasons for the Regulators decision and a summary of evidence relied on
 - inviting the regulated CMC to make written submissions in relation to the proposal and giving them a reasonable time within which to do so
 - Before deciding to impose a penalty the Regulator would take into account any submissions made by the regulated CMC
 - Where the Regulator is satisfied that a financial penalty should be paid he would give written notice to the regulated CMC of that decision, which would include the final amount of that penalty and the date by which it would be due.
33. The Regulator's existing enforcement powers to vary, suspend or cancel a regulated CMC's authorisation, require that the action be necessary to protect the public for the powers to be imposed. It is the case that not all breaches of the conditions of authorisation meet the public protection test but may affect other relevant organisations such as the Financial Ombudsman Service or financial institutions, where spurious or unsubstantiated claims are made or the Regulator directly when conducting regulatory investigations or breaches of certain legislation. Therefore, in relation to the imposition of financial penalties it is proposed that the public protection test will not be a requirement to be met.

Calculation of the Penalty

34. When calculating the amount of a financial penalty, it is proposed that the Regulations will require the Regulator to make an initial assessment of the Nature and Seriousness of the breach. In order to make that assessment, the Regulator proposes to use the scoring method set out in the table on the next page, which will be included in the Regulator's enforcement policy. The proposed scoring method would require the Regulator to assess the nature of the breach as either 'Basic', 'Escalated' or 'Severe'.

35. Some of the factors that the Regulator proposes to take into account when assessing the nature of the breach are outlined in the first half of the table below. The proposed scoring system then requires the Regulator to assess the seriousness of the breach as; 'Low', 'Medium' or 'High'. Some of the factors that the Regulator proposed to take into account when assessing the seriousness of the breach are outlined in the second half of the table below which also sets out the scores that it is proposed are attributed to each level.

Nature	Score
<p><u>Basic</u></p> <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
<p><u>Escalated</u></p> <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
<p><u>Severe</u></p> <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
<p>Low</p> <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
<p>Medium</p> <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
<p>High</p> <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

36. The two relevant scores obtained from the 'nature' and 'seriousness' categories would then be added together. This total score would indicate a relevant penalty within a range of:

- i. £500 - £100,000 for regulated CMCs with a turnover of less than £500,000, and
- ii. 0.1% and 20% of turnover for regulated CMCs with a turnover of over £500,000

37. The table below sets out a breakdown of the relevant penalty ranges:

Band	Nature / Seriousness Rating	Score	Penalty Range (Fixed)	Penalty Range (%)
			- Turnover up to £500,000 in previous 12 months	- Turnover £500,000 or more in previous 12 months
A	Basic/Low	3	£500 - £3,000	0.1% - 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%
	Severe/High	9	£75,000 - £100,000	15% - 20%

38. Once a penalty range has been identified, The Regulator will start with a figure placed in the centre of the relevant penalty range. An assessment of a regulated CMC's turnover will then also need to be made. To facilitate this, the Regulator will request and obtain turnover information from the regulated CMC as part of the investigation. It is proposed that the calculation of the financial penalty will be based on turnover received from regulated claims management activities for the 12 months prior to the date of the request for turnover information that is made by the Regulator, usually at the start of the investigation.

39. In situations where this information may not be forthcoming, the Regulator proposes to rely on the turnover information that the regulated CMC provided upon their application for authorisation or upon their renewal of authorisation. Where the Regulator has grounds to believe these figures would not be an accurate reflection of the regulated CMCs current turnover it will use estimated figures based on the turnover, size and business models of similar sized CMCs operating the same sector. The CMC would be given the opportunity to provide written representations regarding the Regulator's estimated figure and be provided with the opportunity to provide further clarity if necessary.

40. The financial means of a CMC as well as other factors such as the level of deterrent from future breaches and the level of any benefit gained or loss avoided will therefore need to be considered. This will allow the Regulator to move up or down within the applicable penalty range from the starting mid-point or into another penalty range in order to ascertain an appropriate and proportionate figure. The intention of this policy is to require regulated CMCs with greater means to pay higher levels of penalties to

ensure that the deterrent and punishment level is relative to its size and has sufficient impact as well as ensuring that the financial penalties imposed on CMCs with less means are also proportionate.

41. As highlighted by the penalty table; where the nature or seriousness of a breach or breaches overall are deemed to be of a relatively minor nature with minimal wider detriment caused, the Regulator proposes to class these as '**Band A - Minimal**' which would contain a penalty range of £500 - £3,000, or 0.1% - 0.6% of reported turnover dependent on the size of the regulated CMC.
42. Where the nature and seriousness of the breaches are deemed to be more significant, the Regulator proposes to split the penalty ranges broadly into three higher level ranges which would increase dependent on the nature and seriousness overall. The Regulator proposes to class breaches where the nature or seriousness overall are deemed to be more serious but towards the lower end of the general scale as '**Band B - Low**' which would contain a range of £3,000 - £25,000, or 0.6% - 5% of reported turnover in the 12 months prior to the request for turnover information made by the Regulator for the regulated CMCs reporting turnover of £500,000 and above.
43. Under the proposed financial penalties scheme, as the overall nature and seriousness of the breaches increases so would the applicable penalty band. The Regulator proposes to set a penalty range for breaches that are assessed to fall under the '**Band C - Medium**' category at £25,000 - £50,000 (or 5% - 10% of reported turnover in the 12 months prior to the request for turnover information made by the Regulator for CMCs reporting turnover of £500,000 and above).
44. It is proposed that the penalty range for breaches that are assessed to fall under '**Band D - High**' category would be £50,000 - £100,000 (or 10% - 20% of reported turnover in the 12 months prior to the request for turnover information made by the Regulator for CMCs reporting turnover of £500,000 and above).
45. The regulated CMC would be notified in writing of the Regulator's intention to impose a financial penalty as set out in paragraph 32 of this consultation. The Regulator expects that there may be instances where the representations provided by a CMC satisfy the concerns of the Regulator enough that the overall nature and seriousness of the breach is reassessed and thus the penalty is placed into a lower range. Conversely, there may be instances where representations bring further issues to light which may mean that the proposed penalty enters a higher range.
46. Dependent on the circumstances of each individual case, the Regulator proposes to remain flexible and may deem it necessary not to impose a penalty and either cease the enforcement action or impose other formal action to vary, suspend or cancel the authorisation of a CMC. Informal action may also be considered appropriate depending on the circumstances. In such cases, the Regulator proposes to issue another notice to the CMC setting out its final proposals.
47. It is proposed to exercise the power in paragraph 16 of the Schedule to the Compensation Act 2006 (as inserted by the Financial Services (Banking Reform) Act 2013) to provide that any unpaid financial penalty can be enforced as a debt.

48. Regulated CMCs must report the turnover that results from regulated claims management activity as part of the application for authorisation process and also the annual authorisation renewal process. For the 2012/13 regulatory year, 2076 (90%) regulated CMCs reported an annual turnover of below £500,000. For the same period, 230 (10%) regulated CMCs reported turnover of £500,000 and above.
49. Overall, the financial circumstances of a regulated CMC would need to be considered to ensure that it is able to pay any fine imposed. It would therefore be important to obtain turnover information for the 12 months period prior to the start of the investigation as early as possible at the start of the investigation process in order to assist the assessment process accordingly.

Consequential amendments

Surrender of Authorisation

50. Presently, CMCs are able to surrender their authorisation at any time by giving notice to the Regulator. As soon as the regulated CMCs authorisation is surrendered, they are no longer authorised and cannot provide regulated claims management services or continue to act for any existing clients. There are occasions when a regulated CMC will surrender its authorisation as enforcement action is commenced against it. As the CMC is no longer authorised the Regulator enforcement action ceases as the business is no longer within the Regulators remit. In the majority of these cases the business of the regulated CMC is transferred to another regulated CMC that is already trading or has been dormant since authorisation and in some cases the mis-conduct continues.
51. In order to prevent such a situation we propose to restrict CMCs from being able to surrender their authorisation without the consent of the Regulator, in particular in situations where the Regulator has notified a CMC of its initial intention to impose a financial penalty but where this has not yet been formally imposed. This would allow any formal enforcement action to proceed, which is particularly relevant to the imposition of a financial penalty as the penalty itself could then be enforced as a civil debt.

Enforcement of financial penalties after imposition

52. Once a financial penalty has been imposed, the Regulator intends to enforce the financial penalty after the expiry of the 28 day period in which any appeal must be lodged. Once this has passed, any remaining financial penalty would be enforced as a civil debt, via the Courts where necessary. The Regulator envisages however that there may be occasions where it may need to enforce the debt more quickly, particularly where the Regulator may be aware that a CMC is at risk of liquidation and as such may need to register itself as a creditor with the administrators in order to ultimately enforce the debt.

Implementation and transitional arrangements

53. The Regulator proposes to introduce the financial penalties scheme by the end of 2014. We propose that the power to impose a financial penalty would only be available for instances where non-compliant action takes place after the commencement date of the regulations which implement the policy. It would not have retrospective effect for breaches that may have been identified or taken place prior to the policy commencement date. Existing enforcement provisions to vary, suspend or cancel the authorisation of a CMC would however be available to be used by the Regulator for breaches that occurred prior to commencement of the financial penalty powers. These could be used in conjunction with the new financial penalty powers for new breaches that occur after commencement where necessary.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper:

1. Do you have any comments regarding the manner in which an initial assessment of the nature and seriousness of a breach or breaches will be made in order to formulate an initial proposed penalty level?
2. Do you have any comments regarding the intention to separate the applicable penalty scales between CMCs that report less than £500,000 and those that report £500,000 or above turnover in the 12 months prior to the start of an investigation?
3. Do you have any comments regarding the proposed minimum financial penalty of £500 for CMCs that report less than £500k turnover and 0.1% of turnover for those that report £500,000 turnover or above?
4. Do you have any comments regarding the proposed maximum financial penalty of £100,000 for CMCs that report turnover of less than £500,000 and 20% of turnover for those that report £500,000 or above?
5. Do you have any comments regarding the proposed manner in which the Regulator intends to make a final assessment of a financial penalty?
6. Do you have any other comments regarding the intention to remain consistent with the current enforcement procedure when considering and imposing a financial penalty?
7. Do you have any comments regarding the proposed changes to surrender of authorisation procedure?
8. Do you have any evidence regarding the potential impact that the availability of an additional financial penalty sanction could have on businesses? We would be particularly interested to understand the impact the proposals might have on Micro, Small and Medium sized businesses.
9. We welcome your views in terms of any potential equality impacts of the proposals. Are there other ways in which these proposals are likely to impact on race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment or pregnancy and maternity that you are aware of? If so, please tell us how, together with any supporting extra sources of evidence.

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 28 April 2014 to:

Claims Management Regulation HQ Enquiries Team

Ministry of Justice

Post Point 10.11, 10th Floor

102 Petty France

London SW1H 9AJ

Tel: 020 3334 3173 / 6396

Email: 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.

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 6 months time. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

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).

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 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.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

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