



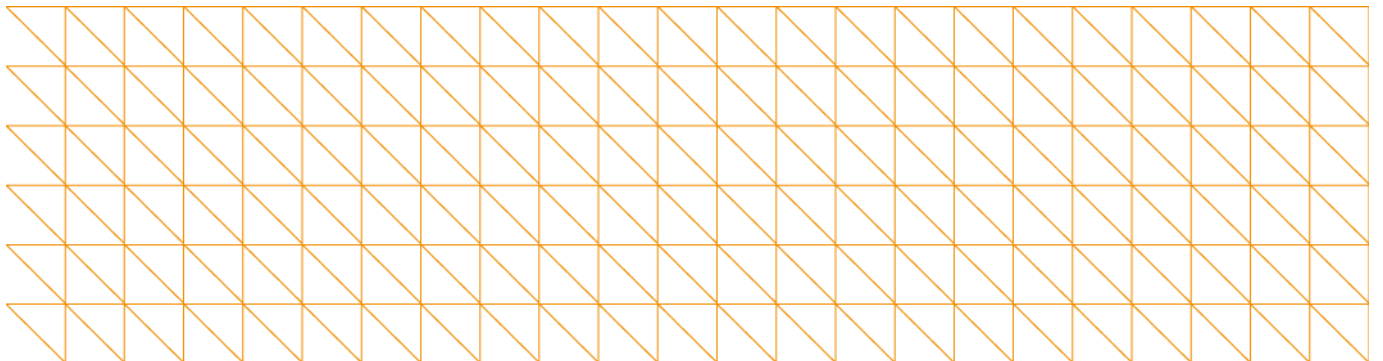
Ministry of
JUSTICE

Claims Management Regulation

Regulation fees paid by claims management businesses

Fees Determination 2012-13

Response to Consultation CP 20/11
CP(R) 2/12
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Response to consultation carried out by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

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Executive Summary

1. The consultation paper issued on 28 October 2011 set out proposals that would increase the fees paid by new applicants in 2012-13, freeze the annual regulation fees scales paid by claims management businesses but raise the maximum annual fee payable. The paper also consulted on possible additional measures to deal with any potential deficit in income arising in 2012-13 by either (i) making the changes above and increasing annual fees by 5% or (ii) to make the changes above and only if necessary increasing general annual fees at the year end, subject to further consultation. The paper also sought views on whether all businesses should provide an audited statement of turnover as standard for future annual fee renewal exercises.
2. The fee levels are designed to recover sufficient income from businesses to cover the costs of operating the regulatory regime. The consultation paper set out a number of significant factors that could start to impact on the claims market and affect fees income during 2012-13. These include the proposed ban on referral fees in personal injury claims, the introduction of Alternative Business Structures and reforms to the costs of civil litigation. All of these could lead to changes in the structure of the claims market, with a potential reduction in regulated claims businesses and a fall in the number of new applications. We therefore need to increase some fees charged to help ensure that the costs of regulation remain fully recovered from those regulated.
3. The consultation paper was sent to all regulated claims management businesses (a total of around 3200 businesses) and other interested parties across the various claims sectors. Thirteen regulated businesses responded, along with one representative organisation from the finance industry. None of the responses opposed the proposed increase to application fees. Two regulated businesses raised objections to the proposed increase of the cap on the maximum annual fee payable – the other respondents made no comment on this proposal. We sought views on the two additional ‘contingency’ options and the respondents favoured an end year adjustment to 2012-13 fee levels if needed, rather than a broad 5% annual fee increase in advance. Similarly, respondents favoured the approach whereby businesses would only be required to provide audited statements of turnover where the regulator had specific reason to believe such additional information was needed from individual businesses.
4. Whilst it is difficult to predict the impact of the reforms mentioned above on the claims market, it is possible that during 2012-13 a higher proportion of claims businesses will exit the market and fewer new businesses apply for authorisation. Such a reduction would not however mean that the number of interventions needed by the regulator to deal with businesses failure to comply with the rules will decrease. It is a minority of regulated businesses which are non compliant, which cause most complaints and require appropriate enforcement action.

5. Having considered the responses to the consultation paper and to help ensure adequate resources are recovered to regulate the industry we have concluded that the main fee increases proposed for 2012-13 should be implemented. We will therefore introduce the following measures from 1 April 2012:
- The application fee will be increased from £750 to £950
 - The lower cap (businesses that do not contract with clients) for the maximum annual fee will be raised to £17,500 and the higher cap (businesses which do contract with clients) for the maximum annual fee will be raised to £30,000
 - In view of the comments received we will hold the proposal to further align the caps (and increase to the lower cap) in 2013/14 for further review in the 2013/14 fees consultation
 - In the event of a shortfall in fees arising during 2013/14 despite the main increases proposed we will come forward with proposals to make an end year adjustment to the 2012-13 fees as part of the 2013/14 fees consultation. Our priority remains to operate the system of regulation as efficiently as possible, without recourse to any end year adjustment.
 - We do not intend to take forward the proposal that all businesses will be required to provide an audited statement of turnover during future annual fee renewal exercises. Such requests will be made to individual businesses only where there is a specific reason to require further evidence from the relevant business.

Introduction and contact details

This document is the post-consultation report to the consultation paper CP20/11 *Claims Management Regulation, Regulation fees paid by claims management businesses - Proposed fees levels for 2012-13*.

It covers:

- the background to the report
- a summary of the responses to the specific questions raised in the consultation
- next steps following consultation.

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

Claims Management Regulation Unit (HQ)
Ministry of Justice
4th floor (4.15)
102 Petty France
London
SW1H 9AJ

Telephone: 0203 334 3555

Email: claimsmanagementregulation@justice.gsi.gov.uk

This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from the above contact.

Background

6. The consultation paper was published on 28 October 2011 and we:
 - (i) Proposed an amendment to the Fees Determination 2012/13 to increase the application fee level and to increase the cap on the maximum annual fee.
 - (ii) Outlined proposals on two contingency options to (a) also increase all annual fees by 5% now or (b) to make a later in year adjustment to 2012-13 fees if needed.
 - (iii) Sought views on whether all businesses should be required to provide an audited statement of turnover during future annual fee renewal exercises.
7. The consultation period closed on 23 December 2011 and this response paper summarises the responses and sets out the conclusions.
8. Under the provisions of the Compensation Act 2006, businesses that provide regulated claims management services must be authorised, pay the relevant application and annual fees and comply with conduct rules prescribed by the Regulator. Regulation 15 of the Compensation (Claims Management Services) Regulations 2006 enables the Regulator to determine the fees. Regulation 16 enables the Regulator to revoke or amend any fee determination. Claims management regulation is intended to be self financing and the costs of operating the regulatory regime must be recovered from applicants and regulated businesses. Fee levels are based on estimates of income receipts and costs of operating the regulatory regime.

Summary of responses to specific consultation questions

9. The consultation paper was sent to more than 3,200 regulated businesses and to other interested parties from across the claims sectors – the full consultation list and list of those who responded is at **Annex A**. Fourteen responses to the consultation paper were received, thirteen from regulated claims management businesses and a response from the Finance & Leasing Association. The responses to the Questions as set out in the consultation are summarised below.

Q1 - Do you have any comments on the fee scales and proposed draft Fees Determination for 2012-13?

Application Fees – proposed increase

Four respondents commented on this proposal, none of whom opposed an increase to the application fee from £750 to £950. Two of these suggested that the proposed increase was not sufficient to ensure regulation was properly resourced and that the price of being an authorised business should be even higher. They took the view that this would discourage less scrupulous applicants.

Caps on maximum annual fees – proposed increase

Two regulated businesses raised objections to the proposed increase of the cap on the maximum annual fee payable – no other respondents commented on this proposal. The objections centred on the suggestion that such an increase would disproportionately penalise larger well run businesses and that fees should be set with regard to the amount of resources the regulator allocates to deal with complaints and enforcement action in a particular sector. It was also suggested that the case for removing the distinction between the two caps for the maximum annual fee and increasing those levels was not justified other than this being an easy way to increase revenue.

Q2 - Do you have any comments on the additional options set out in paragraphs 28-30 (of the consultation paper)?

Seven respondents commented on the two alternative ‘contingency’ options proposed to address any possible shortfall of income in 2012-13. The two options were either a 5% increase to annual fees from the start of April 2012, or to make an in year adjustment to fees which would be consulted on as part of next year’s Fees consultation. One claims business supported the option of a 5% increase, with the rest preferring an end year adjustment if needed.

Q3 - Do you have any comments on the proposal that businesses should provide audited statement of turnover as part of the authorisation process?

Nine respondents commented on this proposal. Seven claims businesses opposed the idea of there being a requirement that all businesses should provide an audited statement of turnover. One claims business and the Finance and Leasing Association supported the idea – suggesting that audited accounts would ensure businesses are paying the correct fee for authorisation and that a blanket requirement would be easier to administer. The main comment from those opposing suggested that such a requirement would create a significant and disproportionate additional cost and burden – in particular for smaller businesses. It was suggested that such a requirement should not be mandatory on all businesses but extra details on turnover should be requested on a case by case basis in keeping with the regulators risk based approach.

General comments from respondents

The following general comments on the Fees structure were received:

10. Three claims businesses suggested that larger well run firms are penalised by having to pay higher fees although they are not the cause of any significant regulatory compliance costs. It was suggested that such costs are attributable to smaller businesses - which were not facing any increase in fees. Fee levels should be apportioned to the level of individual regulatory enforcement action taken against a particular business - along the lines of “the polluter pays” principle with discounts available for businesses that do not cause any concern to the regulator over a set period. The availability of enforcement fines and the setting of higher fees in specific sectors where the most malpractice occurs were also suggested.
11. General comments were made regarding the use of turnover figures when calculating the fee payable, including a suggestion that fee levels should be based on profit rather than turnover; that the definition of turnover is not clear and that turnover related to claims work only should be used when calculating fees.
12. It was also suggested that cost saving measures and a spending freeze should be fully implemented before increasing fee levels and the need for increased fees was questioned, given the suggestion that the claims market is likely to contract in 2012-13. Consideration should also be given to giving businesses a rebate in the event of income exceeding costs.

Conclusion and next steps

13. As made clear in the consultation paper published last October, there are significant factors that are likely to start to impact on the claims market in 2012-13 and which need to be taken into account when considering future fees income. These factors include the proposed ban on referral fees in personal injury claims, the introduction of Alternative Business Structures and reforms to the costs of civil litigation.
14. It is difficult to forecast the scale of any changes but the recovery of the costs of operating the claims management regulation regime in the financial year in which those costs are incurred is essential. When considering how to achieve that objective in 2012-13 we set out the proposals in the consultation paper to increase the application fee and to increase the caps on the maximum amount payable for an annual fee. Given the uncertainty about the size of the claims market in 2012-13 we also sought views on additional contingency options of making an additional 5% increase to annual fees and on using the option of making an in year adjustment at this time next year to the 2012-13 fees.
15. We have considered the issues raised by responses to the consultation. No reasons were put forward to change the proposed increase to the application fee and we plan to raise the application fee from £750 to £950. This change is needed in view of the potential decrease in applications and seeks to recover the costs involved when dealing with applications and the authorisation process generally.
16. We note the comments suggesting that raising the caps placed on larger businesses may not be justified, especially when compared to smaller or non compliant businesses or those operating in a different non compliant sector. However, we consider that there is a case to increase the caps, particularly as they have not been revised since the start of regulation. This change will impact very modestly on a small number of businesses with high turnovers that were not substantially affected by the 2011-12 fee increases. We have decided therefore to implement increases to the higher cap to £30,000 and the lower cap to £17,500. However, we will hold the proposal to align both caps over a two year period to a single level of £30,000 and consider this again in next year's Fees consultation.
17. Responses to the consultation confirmed our concerns that a requirement for all businesses to provide an audited statement of turnover during future annual fee renewal exercises would introduce an unnecessary burden. Our preference is to request further information or extra evidence on turnover on a risk related basis when needed rather than make it a universal requirement. This targeted approach is proportionate and is in line with the Government's Better Regulation agenda for reducing regulatory burdens.

18. A suggestion was made that fee levels should be directly related to the regulatory costs incurred by individual non compliant businesses or the particular sector in which non compliance is most prevalent. In response to that point it should be noted that non compliant businesses will be subject to regulatory enforcement action that generally results in those businesses exiting or being forced out of the claims market with the result that no fees are received from businesses in that position. A general levy across all businesses is needed to ensure the effective operation of the regulatory system.
19. It was also suggested that any downturn in the claims market in 2012-13 might result in less regulatory costs and therefore remove the need for increases in fees. However, the industry is likely to continue to require significant policing and a modest reduction in the number of businesses in 2012/13 is unlikely to have a material impact on regulatory requirements and costs. We expect regulatory interventions to escalate during 2012/13 in particular in relation to financial products and services and personal injury sectors.
20. If a shortfall in fees arises during 2012-13 despite the main increases proposed we will put forward proposals to make an end year adjustment to the 2012-13 fees as part of the 2013/14 fees consultation. Our priority remains to operate the system of regulation as efficiently as possible, without recourse to any end year adjustment.

Confirmed Fees Outcomes

21. In the light of the consultation and in order to ensure a robust but proportionate self financing position we will take the following steps:
 - The application fee will be increased from £750 to £950
 - The lower cap for the maximum annual fee will be raised to £17,500
 - The higher cap for the maximum annual fee will be raised to £30,000
 - We will defer any decision on the proposal for a further increase to the lower cap in order to have a single cap of £30,000 until next year's Fees consultation
 - An option to make an end year adjustment to the 2012-13 fees will only be used at this time next year in the event of a shortfall of income. If such a step is needed we will bring forward specific proposals as part of next year's Fees consultation
 - We will only require businesses to provide an audited statement of turnover on an individual basis where we have specific reasons to need further evidence of turnover.
22. We will continue to seek efficiencies in the delivery of regulation wherever possible in 2012-13 and consider that these changes represent a proportionate approach which and should help ensure adequate resources are recovered to regulate the industry. These changes are included in the Fees Determination for 2012-13 at **Annex B** to this paper.

Consultation Co-ordinator contact details

If you have any comments about the way this consultation was conducted you should contact the MoJ Consultation Co-ordinator, via email at consultation@justice.gsi.gov.uk.

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

**Consultation Co-ordinator
Legal Policy Team, Legal Directorate
6.37, 6th Floor
102 Petty France
London SW1H 9AJ**

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of consultees and respondents

List of those consulted:

All authorised claims management companies

Association of Professional Claims Managers

Claims Management Regulatory Consultative Group – members as follows:

Advisory, Conciliation and Arbitration Service (ACAS)

Advertising Standards Authority (ASA)

Association of Regulated Claims Management Companies (ARC)

Association of British Insurers (ABI)

Association of Independent Financial Advisors (AIFA)

Association of Personal Injury Lawyers (APIL)

British Bankers Association (BBA)

British Insurers Brokers Association (BIBA)

Building Societies Association (BSA)

Citizens Advice Bureau (CAB)

Claims Standards Council (CSC)

Council of Mortgage Lenders (CML)

Direct Marketing Association (DMA) Ltd

Employment Tribunal Service

Finance and Leasing Association (FLA)

Financial Ombudsman Service (FOS)

Financial Services Compensation Scheme (FSCS)

Financial Services Authority (FSA)

Forum of Insurance Lawyers (FOI)

Law Society

Legal Ombudsman (LEO)

Legal Services Board (LSB)

Motoring Accident Solicitors (MASS)

National Debt Line

Office of Fair Trading (OFT)

Solicitors Regulation Authority (SRA)

UK Cards

Unison

Which?

List of respondents:

Richard C Hall & Partners

EMC Advisory Services Ltd

Injury Lawyers 4U

Finance and Leasing Association

Walton Accident Claims Ltd

Contact Law Ltd

Hamilton Brady Ltd

National Accident Helpline Ltd

Baltnet Claims Ltd

Xavier and Tonner Ltd

Flexicom Ltd

John Stamford & Associates Ltd

Renaissance Easy Claim Ltd

Wyvern Claims Management

Annex B – Fees Determination 2012

This Determination is made under Regulations 15 and 16 of the Compensation (Claims Management Services) Regulations 2006 and sets out the application and annual fees applicable from 1 April 2012.

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 2011.
- b) If the business or applicant did not trade for the full 12 months to 30 November 2011, the estimated turnover for the 12 months to 30 November 2012.
- c) Where the application for authorisation is made on after 30 November 2012, the estimated turnover for the 12 months to 30 November 2013.

Application of this determination

2. This fees determination applies the fees for all applications for authorisation made on or after 1 April 2012 and sets the annual fees for all businesses authorised at and after that date to the end of March 2013.

Application fee

3. An applicant seeking authorisation to provide regulated claims management services must submit an application fee of £950.00 with the application form.

Annual fee

4. (1) Authorised businesses will pay an annual fee.
- (2) Subject to sub-paragraphs (3) and (4), the annual fee shall be equal to –
0.49% of annual turnover up to £1 million, plus
0.332% of annual turnover between £1 million and £5 million, plus
0.24% of annual turnover above £5 million.
- (3) The fee under sub-paragraph (2) shall be no more than –
a) £30,000 where there is a contractual relationship with a client, or
b) £17,500 where there is no contractual relationship with clients.
- (4) Where the annual turnover of a business is £132,653 or less, then the annual fee will be a fixed fee of –

Annual Turnover of Authorised Business	Annual Fee Payable
Under £5,000	£200
£5,000 - £14,999	£300
£15,000 - £24,999	£400
£25,000 - £74,999	£500
£75,000 - £132,653	£650

Compliance

5. 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.

Pro rata calculation of annual fee

6. Where an authorisation is given which has effect from a date on or after 1 April 2012, the fee shall be one twelfth of the sum calculated in accordance with paragraph 4 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 businesses.

Rebates and adjustments

8. Where an applicant has reported an annual turnover figure based on estimated turnover to 30 November 2012 a rebate shall be due if the actual annual turnover reported is less than the estimated figure.
9. Where the actual annual turnover is more than the estimated turnover, an additional charge shall be levied based on actual annual turnover to 30 November 2012.
10. Where an authorised business surrenders its authorisation prior to 1 July 2012 the Regulator may rebate 50% of the annual fee paid. Where an authorised business requests cancellation of its authorisation prior to October 2012 the Regulator may rebate 25% of the fee.

Kevin Rousell

(Head of Claims Management Regulation)

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