



1 August 2007

Dear Consultee

**CLAIMS MANAGEMENT REGULATION
CONSULTATION ON FEE LEVELS 2008-09**

The regulation of claims management services under the Compensation Act 2006 commenced fully on 23 April 2007. It is an offence to provide the regulated unless authorised, exempt or subject to a waiver. In regulating claims management services, the Act gives the regulator the power to charge those authorised to provide these services fees in connection with the application for or grant of authorisation and for the regulation of authorised persons.

The Department consulted on fee levels for the first year of regulation last August. Consultation on the fee scales set out and sought views on the fee formula for the first year of regulation. It proposed that the fees for the first full year of the regulatory regime would be based on annual turnover, closely reflecting the scale used by the FSA for general insurance intermediaries. The proposals were also discussed with the industry and other key stakeholders and had broad support.

The Department undertook to review the level of fees charged after one year, when fuller information was available on the number of businesses operating in the market, their turnover and the costs of regulation in practice. This consultation paper invites views on whether the current fee levels for claims management regulation should be retained, and whether those with a lower turnover should pay a reduced regulation fee.

Views are invited from all those authorised to provide regulated claims management services. However, responses are also welcomed from anyone with an interest in or views on claims management regulation.

I would be grateful if you could submit your comments and by Wednesday **24 October** to:

Iram Akhtar
Claims Management Regulation HQ Team
Ministry of Justice
3.10
3rd Floor Selborne House
54-60 Victoria Street



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JUSTICE

Claims Management Regulation

Consultation on Fee Levels 2008-09

Consultation Paper

CP 18/07

01/08/2007

This consultation will end on 24/10/2007



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Claims Management Regulation
Consultation on Fee Levels 2008-09

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

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Executive summary

1. Part 2 of the Compensation Act 2006 established the statutory framework for the regulation of claims management services. The regulation commenced fully on 23 April 2007. It is an offence to provide a regulated claims management service unless authorised under the Act, exempt or subject to a waiver.
2. The statutory regulation of claims management services is designed to encourage the provision of quality services, to enhance consumer protection and to provide consumers with a clear route to redress. In particular, regulation aims to improve the effectiveness and efficiency of the system for those who have a valid claim to compensation, and to tackle practices that have helped to spread the misperceptions and false expectations of compensation claims amongst consumers. This will help to build consumer confidence and promote effective competition within the sector, whilst ensuring that the sector will be able to contribute effectively to the widening of access to justice. The regulation of claims management services will in the long term also help curb the costs to society of dealing with fraudulent claims.
3. Paragraph 7 of the Schedule to the Act provides that the Secretary of State may make regulations to enable the regulator to charge fees in connection with applications for, or the grant of authorisation and periodic fees for authorised persons.
4. Regulation 15 of *the Compensation (Claims Management Services) Regulations 2006*¹ enables the Regulator to determine fees and consult on the fee levels.
5. The levels of fees currently payable are based on the applicant's turnover (para 8 below). We have been careful to ensure that burdens on businesses are proportionate throughout the development of the regulatory regime.
6. The Department consulted on the fee scales for the first year of regulation. Consultation on the fee scales ran from 4 August to 18 September 2006². The paper set out and sought views on the fee formula for the first year of regulation. It proposed that the fees for the first full year of the regulatory regime would be based on annual turnover, closely reflecting the scale used by the FSA for general insurance intermediaries. The proposals were also discussed with the industry and other key stakeholders and had broad support.

¹ <http://www.opsi.gov.uk/si/si2006/20063322.htm>

² <http://www.dca.gov.uk/consult/compensationact/consultation-paper.pdf>

7. The responses³ were generally supportive of a fee scale based on turnover. Some consultees, however, emphasised the need to ensure that fees charged reflected the cost of regulation. The views were taken into account in finalising the fee arrangements below.

8. Currently businesses pay an application fee on the following scale -

Turnover under £0.5 million	£ 400
Turnover £0.5 million - £1 million	£ 600
Turnover over £1 million	£ 800

and an annual fee of -

0.386% of turnover up to £1 million, plus
0.332% of turnover between £1 million and £5 million, plus
0.240% of turnover above £5 million

but subject to –

(a) the minimum fee being £400; and

(b) the maximum fee being £10,000 in the case of a company that does not have a contract with clients, and £25,000 in all other cases.

Fees are levied on a pro rata basis for new businesses that are authorised after the beginning of the fee year.

9. The Department undertook to review the level of fees charged after one year, when fuller information was available on the number of businesses operating in the market, their turnover and the costs of regulation in practice. This paper invites views on whether the fee levels for claims management regulation need to be adjusted in light of the information that has become available since full commencement.

10. It is Government policy that those being regulated should meet the cost of regulation, and that any costs imposed should be reasonable. While the principle of full costs recovery informed the setting of the initial fees, it was difficult to estimate the true size of the market and the number of businesses operating and so income likely to be generated. The fee levels were therefore based largely upon the scale used by the FSA for general insurance intermediaries, to some extent reflecting the anticipated cost of regulation. The Department would meet any shortfall in the first year of regulation.

³ <http://www.dca.gov.uk/consult/compensationact/response-cpl22.pdf>

Introduction

This paper sets out for consultation the fee levels to be applied to those authorised under the Compensation Act 2006 for the period running from 1 March 2008 to 1 March 2009. The consultation is aimed at those providing regulated claims management services in England and Wales.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 19, have been followed.

We produced a comprehensive full Regulatory Impact Assessment (RIA) (see <http://www.dca.gov.uk/legist/compensation.pdf>) to accompany the Compensation Bill. The RIA covered the impact of the regulations to be made under the primary legislation. We would be happy to discuss any regulatory impact issues arising as a result of the proposed fee levels.

Copies of the consultation paper are being sent to those that appear on the Register of Authorised Persons at www.claimsregulation.gov.uk as of 1 August 2007. However, responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Application fee

1. Before a person can become authorised, they must complete a detailed application form and pay a one off application fee. The Regulator must be satisfied that the applicant satisfies the necessary criteria to provide the regulated services. Once the application has been approved, the applicant must then pay a regulation fee.
2. The general approach of other regulators (e.g. the FSA) in regard to the application fee is to recover a proportion of the cost incurred in dealing with applications, with the remaining costs being met by the firms already authorised. However, in the first year of regulation with uncertainty about the numbers operating that would apply for authorisation and their turnover, the application fee reflected the cost of dealing with an application for authorisation including:
 - Verifying that the form is internally consistent and has been properly completed;
 - Checking the information on directors against the Companies House records;
 - Checking all the names against the intelligence database;
 - Checking the website of the business against the information provided and to ensure that it complies with rules on advertising.
 - Details of all claims management businesses in which those involved with an applicant have been involved in the previous five years;
 - Where there is some adverse intelligence on a business then a request is usually made for the contracts that it currently has with clients, to ensure that they meet the requirements in the Rules of Conduct;
 - The collation of essential information about the businesses that can be used subsequently in monitoring and compliance work.
3. The quality of many applications received was very poor requiring enquiries and requests to supply further information being raised with the applicants and in some instances substantive compliance issues needed to be taken up with applicants. The Monitoring and Compliance Unit carried out thorough checks as outlined above in the processing of all applications. Some larger businesses

required additional work because of the complex ownership structure, more directors or individuals being involved whose details needed to be verified, as well as careful scrutiny of a number of websites, contracts and marketing materials.

4. It is estimated that the overall cost of the authorisation process would be higher than the income accumulated from the application fees, although not substantially so. The cost of the authorisation process so far has been around £750,000, including the cost of putting in place the systems and processes for authorisation and the processing of applications. It is proposed that the scale of application fees should remain at £400, £600, and £800.

Regulation fee

5. The regulation fee covers the costs of monitoring compliance with the rules of conduct with which all authorised persons must comply, investigating the handling of consumer complaints and the substance of complaints themselves, investigating breaches of the rules, routine audits and enforcement action against those authorised who are either breaching the rules or are providing regulated services without authorisation.
6. It is an offence to offer regulated services without authorisation, so those providing the services need to be authorised to be able to operate. The regulation will help raise standards of service in the industry. The monitoring and compliance function includes careful scrutiny of marketing material, routine audits of individual businesses as necessary and investigating complaints or allegations of any impropriety in respect of a business. The regulatory services are therefore closely linked to the services received by the industry as a whole. The regulation fees cover the provision of risk-based monitoring and compliance work which will ensure that standards in the industry, and hence consumer confidence, are maintained.
7. As recipients of these benefits, those authorised under the Act make a reasonable contribution to the cost of regulation depending on the volume of business undertaken. The contribution from those with a higher turnover towards the cost of regulation is of course higher. This is because larger businesses accrue more financial benefits from operating in the industry and the higher fees they are expected to pay will cover not only the costs of regulating them but also 'cleaning up' the industry (e.g. where enforcement action against persons not authorised to provide the regulated services leads to their removal from the market), which in the long term will be beneficial to all authorised businesses.
8. The current minimum regulation fee is £400. Under the current scale the minimum fee kicks in at a turnover of £103,630 (0.386% of £103,630 is £400).

In the first year of regulation, over 200 authorised businesses reported a turnover of under £20,000 for whom this was a significant burden.

9. The Department is keen to ensure that the burdens on businesses are proportionate and have considered two main options for amending the fee structure. Option one is to reduce the minimum fee to £200 so that all businesses with a turnover of under £51,813 would pay half of what they would otherwise have paid. Option two is to use a scale of fixed fees for small businesses. For example:

Turnover under £5,000	£100
Turnover £5,000 -£19,999	£200
Turnover £20,000 - £49,999	£300
Turnover £50,000 - £103,630	£400

10. It is proposed that the scale for annual fees should remain at the present level but views are sought on whether the minimum fee should be halved to £200 or with a scale of fixed fees between £100 and £400 for smaller businesses.

Income

11. The tables below sets out income from authorisation and annual fee for the first year of regulation. Also included is estimated income for 2008/09 based on the current fee model. A large proportion of this year's revenue was raised from the application fees not be available in the future.

Table 1 - claims management regulation - Application fee

	No of fee payers	Income 2007/08 (£)	No of fee payers	Expected income 2008/09 (£)
APPLICATION FEE	1250	720,000	300	173,000
REGULATION FEE	1250	1,058,578	1250	1,057,500
TOTAL	1250	1,778,578	1250	1,230,000

12. It is anticipated that not all businesses authorised in 2007/08 will seek to renew their authorisation in 2008/09. This is because some businesses may not want to be subject to the regulation and may cease trading, some will merge and others may reorganise their activities so that they are no longer carrying out the regulated activities. Also as authorisation is a one off fee which businesses pay to become authorised, the income from these fees available in future years depends on the number of new businesses that seek authorisation.

13. The above figures are based on preliminary estimates that around 300 businesses may leave the market next year but that around the same number

may enter the claims management market. We expect that the total number of businesses operating in the market this time next year would be the same i.e. around 1250 but the overall revenue from regulation is expected to fall. This is because only the new businesses (around 300) would pay both the authorisation and annual fee while the remainder would only pay the regulation fee which based on the current fee model would produce around £1.2 million (as opposed to around £1.7 million this year). If the proposals in this paper for lower fees for small businesses are accepted, this would mean that up to 300 businesses may regulation a regulation fee lower than £400. However, overall it is expected that the fee income will cover the costs.

Expenditure

14. The cost of regulation is affected by a range of factors e.g. the number of investigations, routine audits, complaints, and enforcement actions that need to be carried out. Allowance also needs to be made for any appeals against the Regulators decision, which can be costly and time consuming. The estimates below include the cost of operating the regulatory regime including the authorisation process, monitoring and compliance and other regulatory work.
15. The authorisation process commenced in December, an initial deadline of 16 February was set to enable applications for authorisation to be processed before full commencement on 23 April. The authorisation process (including the initial checks) in respect of the businesses that applied for authorisation by the deadline was between December 2006 to April 2007. As the rules of conduct apply from the date a person is authorised, the monitoring and compliance work e.g. via reviewing contents of their website, mystery-shopping exercises, risk assessment kicked off as soon as a person was authorised. Therefore the authorisation process and the active regulation have run in parallel for most part.

Table 2 – Claims Management regulation - Expenditure		
	2007/08	2008/09)*
MCU costs		
Authorisation process	553,000	100,000
Other regulatory work	800,000*	500,000
Sub total	1,353,000	600,000
MOJ costs		
Staff	350,000	350,000
Prosecutions and appeals	113,000*	100,000
Sub total	466,000	450,000
Total	1,819,000	1,050,000

* forecast

16. Based on the above figures, we expect that the income generated from regulation will broadly cover the costs of regulation in its first full year of operation, although the full extent of the costs will not become known until the end of the financial year (i.e. March 2008). For that reason it is proposed that the current model on fees should be retained subject to a lower regulation fee for small businesses.

17. The new fee levels will apply from February 2008 to February 2009. The fee levels in the future may need to be adjusted upward or downward to reflect the changing resources year on year. The cost of regulation may fall in future years, as the regulatory processes become more streamlined and efficient. The efficiency of the regulatory regime will be reviewed after three years when claims management regulation will be integrated into the legal services regulatory regime proposed under the Legal Services Bill. The Bill contains provisions for review of the regulatory functions of all front line regulators including claims management regulation.

Questionnaire

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

Question 1 – Do you agree that the application fee should stay the same? If you disagree please set out the reasons why.

Question 2 – Do you agree that the structure or level of regulation fee should remain the same? If you disagree please set out your reasons why.

Question 3 – Do you agree that those with low turnover should pay a lower fee? If so please indicate whether the minimum fee should be reduced to £200 for all businesses with a turnover of under £51,813 OR a scale of fixed fees between £100 and £400 should be used for businesses with a turnover of under £103,630 and set out your reasons why.

The above questions are an indication of the issues where we would like further information. However, we welcome any general comments you may have on the fee levels.

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 (eg 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.

How to respond

Please send your response by **Wednesday 24 October 2007** to:

**Iram Akhtar
Ministry of Justice
Claims Management Regulation
3.10
Selborne House
54-60 Victoria Street
London
SW1E 6QW**

Tel: 020 7210 2633

Fax: 020 7201 0613

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.claimsregulation.gov.uk](http://www.claimsregulation.gov.uk) and <http://www.justice.gov.uk/index.htm>.

Publication of response

Following consideration of the responses, the Fee Levels for 2008-09 will be published on www.claimsregulation.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).

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.



Ministry of
JUSTICE

Claims Management Regulation

**Fees Rules
2008**

Draft August 2007

Claims Management Services Regulation

Fees Rules 2008

Made by the Regulator pursuant to Paragraph 7 of the Schedule to the Compensation Act 2006 and Regulation 15 and 16 of the Compensation (Claims Management Services) Regulations 2006.

Application

1. These rules apply to all applications for authorisation to commence on or after 1 March 2008 and to renewals of authorisation by businesses authorised prior to this date.

Application fee

2. A business shall pay an application fee, which is not refundable, as follows –

Turnover under £0.5 million	£ 400
Turnover £0.5 million - £1 million	£ 600
Turnover over £1 million	£ 800

Annual fee

3. The annual fee payable under these rules shall cover the period to 28 February 2008 regardless of when the application is made or the date of authorisation commences.

4. The fee shall be equal to –

0.386% of turnover up to £1 million, plus
0.332% of turnover between £1 million and £5 million, plus
0.240% of turnover above £5 million

but subject to –

- (a) The minimum fee of £200 for all businesses with a turnover of under £51,813,

OR

a scale of fixed fees for small businesses with a turnover of under £103,630 -

Turnover under £5,000	£100
Turnover £5,000 -£19,999	£200
Turnover £20,000 - £49,999	£300
Turnover £50,000 - £103,630	£400

- (b) The maximum fee being £10,000 in the case of a company that does not have a contract with clients, and £25,000 in all other cases.

The Regulator may agree to a reduced fee in the case of a business that seeks authorisation to deal only with existing business and subject to the condition that it does not take on any new business.

5. Where authorisation is given with effect from any date after 1 March 2008, the fee shall be reduced pro rata. For each month or part of a month from the date the Regulator has indicated that he is minded to authorise the business to 28 February 2009 the fee shall be one twelfth of the amount calculated in accordance with paragraph 4. However, there shall be no reduction where a business has been providing regulated claims management services after the date on which section 4.1 of the Act has been commenced.

Period for which turnover is calculated

6. The turnover figure for the purposes of Rules 2 and 4 is turnover in the 12 months to 30 September 2007 for claims management activities regulated under the Act. Regulated claims management activities are defined as activities set out in the Compensation (Regulated Claims Management Services) Order 2006 subject to any exemptions in the Compensation (Exemptions) Order 2007 for the applicant and for any other business which is or was effectively controlled by the applicant or by the partners, directors or other people able to exert an influence on the policy or management of the business.
7. If the business did not trade for a full 12 months to 30 September 2007 turnover shall be the figure forecast by the applicant to be the turnover for the 12 months to 30 September 2008. (See Rule 10 on retrospective adjustment).

Definition of turnover

8. Turnover is the addition of all amounts paid to or received by the business in respect of activities to be regulated under the Act, including –
- (a) charges, commissions, the share of any compensation, fees and subscriptions, and;
 - (b) the monetary equivalent of any services received by the business where there is no payment or where the payment is worth less than the value of the services, and;
 - (c) the value of any advertising in respect of the business that it not paid for out of funds defined in (a) and (b) above.
9. In declaring income on its application form an applicant has certified that the information given is correct. The Regulator reserves the right to request

confirmation of the figures from the applicant's auditor. If the applicant does not have an auditor, the Regulator may require the applicant to produce a report prepared by a suitably qualified accountant on the accuracy of the figures.

Rebates and adjustments

10. Where an applicant has reported a turnover figure based on forecast turnover to the year to 30 September 2008, a rebate will be made or additional charge shall be levied based on actual turnover in the year to 30 September 2008.
11. Where an authorised business requests cancellation of its authorisation prior to 1 June 2008 the Regulator may rebate 50% of the annual fee paid. Where an authorised business requests cancellation of its authorisation prior to 1 September 2008 the Regulator may rebate 25% of the annual fee paid.

Explanatory notes

1. To ensure consistency between authorised businesses the annual fee will normally be calculated by reference to turnover in the preceding 12 months to 30 September. Businesses authorised to operate prior to 6 April 2007 will be required to report their turnover in the 12 months to 30 September 2007 when applying to renew their authorisation; this figure will be used to calculate the annual fee for the year beginning 1 March 2008.
2. In the case of a new business, turnover will be the business's forecast for turnover in the 12 months to the following 30 September, with a retrospective adjustment at the end of that period so that the figure is based on actual turnover. This will usually mean that a new business will pay fees for its first two years based on its actual turnover in its first full year of business.
3. The Regulator recognises that businesses will change their structure to take account of the regulatory framework; in some cases existing businesses will be closed down and new ones created. Where it is clear that in practice a new business is effectively run by the same people who ran previous businesses then the turnover of those businesses will be taken into account in calculating turnover (as set out in rule 6). This is to ensure fairness between authorised businesses and also to avoid businesses restructuring simply to pay a lower annual fee.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Ministry of Justice Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@justice.gsi.gov.uk

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

**Laurence Fiddler
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under **the How to respond** section of this paper at page 13.

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Yours sincerely,

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