



Ministry of
JUSTICE

Claims Management Regulation Consultation on Fee Levels 2008- 09

Summary of Responses

CP(R) 18/07

14/12/2007



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Claims Management Regulation

Consultation on Fee Levels 2008-09

Summary of responses to a consultation carried out 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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Introduction

This document is the post-consultation report for the consultation paper, *Claims Management Regulation: Fee Levels 2008-09*

It covers:

- the background to the issue;
- a summary of responses to the consultation;
- a detailed response to the specific questions raised in the consultation; and
- the next steps following this consultation.

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

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

Background

The consultation paper, *Claims Management Regulation: Fee Levels 2008-09*, was published on 1 August 2007. It invited comments on the fees to be applied in the second year of regulation for businesses that provide regulated claims management services.

Under the provisions of the Compensation Act 2006, businesses that provide any regulated claims management service must be authorised, pay the relevant regulatory fees and comply with conduct rules prescribed by the Regulator. The regulations under the Act enable the Regulator to determine fees and consult on fee levels.

The responses to the consultation on fee levels for the first year of regulation i.e. 2007-08 were generally supportive of the proposals. The Ministry of Justice undertook to review the fee levels after one year and consulted on the following proposals:

- (a) Whether the application fee should stay the same;
- (b) Whether the structure or level of regulation fee should remain the same;
- (c) Whether those with low turnover should pay a lower fee, and if so 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)?

The Consultation period closed on 24 October 2007. This report summarises the responses and outlines the Ministry of Justice's conclusions on the consultation.

A list of respondents is at Annex A.

Summary of responses

1. A total of seven responses to the consultation paper were received. Of these, five were from businesses which provided regulated claims management services (although one did not directly answer the specific questions), and two from others with an interest in claims management regulation including a representative of Network Partnership on behalf of a number of listed trade unions, and Cambrian Claims Limited, a small business which ceased to provide the regulated services shortly after regulation was introduced.
2. The responses to the question about the application fee were varied from calls for abolition to a suggestion to increase the fees to cover the costs of audits. One respondent felt that the fee was low but significant enough to ensure that the majority of applicants gave time and consideration before applying. Another questioned whether the application fee accurately reflected the work or checks needed to be made in relation to an application from a trade union.
3. There was general consensus among respondents that the current level of regulation fee for businesses with a very small turnover should change and they should pay a lower fee. However, Injury Lawyers 4U felt that:

‘... the level of regulatory fee should be tapered even more, so that smaller firms pay a greater proportion of the regulatory income, on the basis that they tend to be the cause of that expenditure’.
4. Some of the responses reiterated the need to ensure that fees were proportionate, and that one way of ensuring this was to allow for variation which would be a fairer way of apportioning costs of regulation. One saw fees as a mere tax, asking for them to be abolished.
5. As to the structure of regulation fee some preferred the option of introducing a lower fixed fee of £200 while others preferred a scale of fixed fees between £100 and £400.

Responses to Specific Questions

1. Do you agree that the application fee should stay the same and if you disagree please set out the reasons why?

Five of those who responded disagreed with this proposal. One called for the application fee to be abolished, one suggested it ought to increase, one asked for it to be reduced, and one asked for more variation in fee levels according to the turnover. Only one respondent agreed that the fee should stay the same - Injury Lawyers4U said:

‘.....It is low but represents a significant enough sum to ensure that the majority of applicants represents a significant enough sum to ensure the majority of applicants will give sufficient thought and time to the application before applying’.

One respondent did not offer a direct answer to the question but suggested that the fee levels should in some way reflect a person’s disability and what impact this might have on a person’s potential earnings.

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

Again five respondents disagreed with this proposal. One suggested the fee should be reduced, two asked for the fee to be varied according to the turnover, one demanded it be abolished altogether and one asked for it to be tapered downwards to ensure that smaller businesses pay more. Injury Lawyers 4U pointed out that:

‘...it is without doubt that the majority of funds allocated to regulation will be spent on smaller firms who dedicate less funds and resources to compliance and transparency...we feel that the level of regulatory fee should be tapered even more, so that smaller firms pay a greater proportion of the regulatory income, on the basis that they tend to be the cause of that expenditure.’

Whereas the response from Claims4Injury was that:

‘I agree that the structure and annual fees as set seem adequate except at the low turnover. The fee is disproportionate to turnover and a greater financial burden’.

The response from Network Partnership suggested that turnover did not equate to income and referred to two trade unions with different turnover but pointed out that no income was generated from advice or other service in relation to the making of a claim.

-
- 3. Do you agree that those with low turnover should pay a lower fee, and 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, please set out your reasons why?**

Three respondees agreed that those with a low turnover should pay a lower fee, with two opting for a scale of fixed fees and one preferring the minimum fee being reduced to £200. One respondee did not answer the question directly.

The response from Injury Lawyers4U said:

‘.....see no good reason to reduce the fees for the firms upon whom the majority of expenditure is made’.

Whereas the response from Claims4Injury was:

‘.....the minimum fee should be reduced to £200 for businesses with a turnover of under £51,813. It is becoming increasingly difficult for a one person business to operate and absorb increased overheads. Regulation costs..become high percentages of operating costs over a small turnover..... If the small CMC businesses can not survive (corner shops and supermarkets scenario springs to mind) then the industry and consumers lose out’.

Conclusion and Next Steps

1. The issue of fees payable to become authorised to provide the regulated claims management services is clearly an important one as it impacts directly on the finances of authorised businesses, particularly very small businesses. The regulation is targeted at those who provide the regulated services for commercial gain. The aim is to tackle malpractice and help raise standards of service in the regulated sectors. Where an individual or a company is providing a regulated service for which a charge is made then authorisation is required. However, the Department recognises that the scale on which businesses operate can vary significantly. A person may provide a regulated service but may only deal with a very small number of cases in any given year so to have a very low turnover.
2. The consultation paper set out what the application and annual regulation fee covered and proposed retaining the current fee scale, with a reduced minimum regulation fee for those with a low turnover. The Department has considered the responses received carefully and reviewed further the costs and estimated income from fees to reach the conclusion that the application fee should remain the same as last year. However, the regulation fee should be modified so that a scale of fixed fees will apply for those with a small turnover as detailed below.

The application fee in 2008-09 shall equal to:–

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

3. The Department is keen to ensure that burdens on all businesses are proportionate and reasonable taking into account the need to ensure that the income derived from fees covers the costs of regulation. The regulation fee scales have therefore been adjusted to take into account more the impact on those small businesses that have a very small turnover. In responding to the specific representations from those with a very small turnover a fixed fee scale applicable to those with a turnover under £103,630 is to be used for 2008-09 fees.

The annual fee for 2008-09 shall 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 scale of fixed fees for small businesses with a turnover of under £103,630 –

Turnover under £5,000 - £100

Turnover £5,000 -£14,999 - £200

Turnover £15,000 - £24,999 - £300

Turnover £25,000 - £103,630 - £400

3. This revised fee scale will help ensure that the costs of regulation are more proportionate to the turnover, particularly for those with a small turnover. While the Department recognises that those with a higher turnover make a higher contribution towards the costs of regulation, however, as regulation aims to raise the standards of service in the industry which will lead to increased consumer confidence and this will benefit the claims management industry in the long term. The new fees levels will apply from 29 February 2008.
4. The fees determination 2008 which is annexed to this paper revokes and replaces the claims management regulation fee rules 2007. The determination is also being published separately and is available from www.claimsregulation.gov.uk.

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 on page 3.

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 timescale 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.

Annex A – List of Respondents

1. Cambrian Claims Ltd
2. Claim 4 Injury
3. Direct 2 Solicitors
4. Global Legal Consultants Ltd
5. Injury Lawyers 4 U
6. Personnel Advisory Service
7. Network Partnership

Claims Management Regulation

Fees Determination 2008

December 2007

Claims Management Regulation

Fees Determination 2008

This determination is made under Regulations 15 and 16 of the Compensation (Claims Management Services) Regulations 2006¹. It revokes and replaces the Claims Management Regulation Fee Rules 2007.

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 person is providing a regulated claim management service;

'Regulated claims management service' means the prescribed services set out in Article 4 of the Compensation (Regulated Claims Management Services) Order 2006;

'Introducers' has the same meaning as in Article 12 of the Compensation (Exemptions) Order 2007;

'Exemption' means one of the exemptions set out in the Compensation (Exemptions) Order 2007;

¹ The Compensation (Claims Management Services) Regulations 2006 are pursuant to Paragraph 7 of the Schedule to the Compensation Act 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 applicant’s turnover for the 12 months to 30 September 2007 ; or

b) if the authorised business did not trade for a full 12 months to 30 September 2007—

(i) where the application is made on or before 30 September 2008, the figure the applicant expects to be the turnover of the authorised business for the 12 months to 30 September 2008; or

(ii) if the application is made after 30 September 2008, the turnover for that period².

Application of this determination

This fees determination applies to all applications for authorisation made on or after 29 February 2008 and to applications for renewal of authorisation made on or after that date.

Application fee

3. An applicant seeking authorisation for the first time to provide regulated claims management services must submit the relevant application fee with the application in accordance with the following table —

Annual Turnover of Authorised Business	Application Fee Payable
under £0.5 million	£400
Between £0.5 million - £1 million	£600
Over £1 million	£800

Annual fee

² See paragraph 8 on retrospective adjustment

4. (1) When an application for authorisation has been approved by the Regulator, the applicant shall pay an annual fee³.

(2) Subject to sub-paragraph (3) and (4), the annual fee shall be equal to –

0.386% of annual turnover up to £1 million, plus

0.332% of annual turnover between £1 million and £5 million, plus

0.240% of annual turnover above £5 million.

(3) Where a business does not have a contractual relationship with a client, the fee under paragraph 4(2) is to be no more than £10,000, and no more than £25,000 in all other cases.

(4) Where the annual turnover of a business is £103,630 or less then the annual fee is a fixed fee of -

- | | |
|---|-----------|
| a) where annual turnover is under £5,000 | £100; |
| b) where annual turnover is £5,000 -£14,999 | £200; |
| c) where annual turnover is £15,000 - £24,999 | £300; and |
| d) where annual turnover £25,000 - £103,630 | £400. |

Pro Rata Calculation of Annual Fee

5. Where an authorisation is given which has effect from a date after 29 February 2008, 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.
6. But para 5 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 applicant or those who control the applicant have previously had control of another authorised business then the

³ it should be noted that authorisations made after 29 February 2008 will expire on 28 February 2009, regardless of the date on which the application is made or the authorisation commences. Where the period of authorisation is less than 12 months a remittance of fees may be made in accordance with paragraph 5.

regulator may require the applicant to pay an annual fee calculated by reference to the annual turnover of all of those businesses⁴.

Rebates and adjustments

8. Where an applicant has reported an annual turnover figure based on expected turnover to the year to 30 September 2008 a rebate shall be made if actual annual turnover is less than the expected turnover. However, if actual annual turnover is more than the expected turnover an additional charge shall be levied based on actual annual turnover in the year to 30 September 2008.
9. 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 fee.

⁴ 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 businesses 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. This is to ensure fairness between authorised businesses and also to avoid businesses restructuring simply to pay a lower annual fee.

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14 December 2007
CP(R) 18/07