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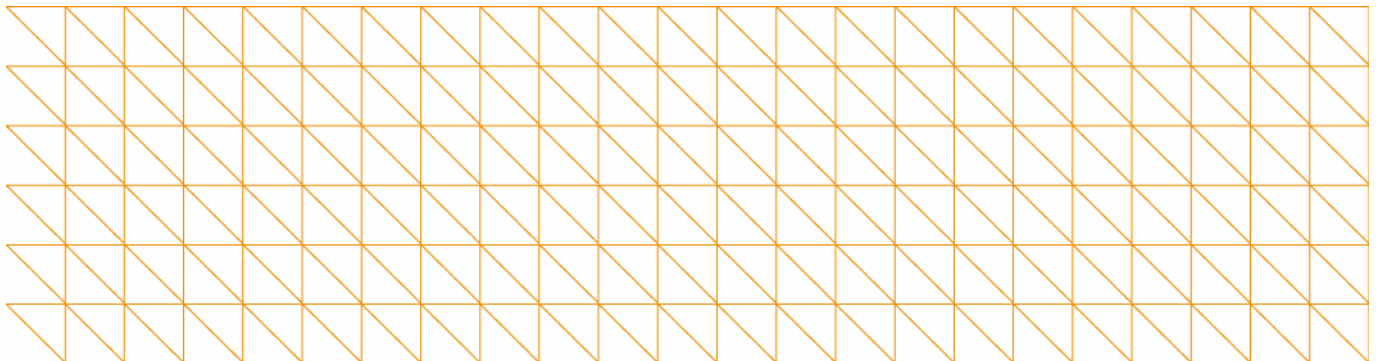
Claims Management Regulation

Fees determination 2009

Response to Consultation

CP(R) 17/08

17 December 2008





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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:
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Introduction and contact details

This document is the post-consultation report for the consultation paper, Claims Management Regulation- Fees Determination 2009.

It will cover:

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

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

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

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

Background

The consultation paper 'Claims Management Regulation – Fees Determination 2009-10' was published on 4 August 2008. It invited comments on proposals on fee levels payable by businesses that provide regulated claims management services in England and Wales.

Under the provisions of the Compensation Act 2006, businesses that provide regulated claims management services must be authorised, pay the relevant fees and comply with conduct rules prescribed by the Regulator. The Regulator must determine fee levels and consult on them before implementing.

It is Government policy that those being regulated should meet the cost of regulation and that any costs imposed should be reasonable.

Authorised persons are required to pay an application fee when authorisation is first sought to cover administrative costs. Once authorisation is approved an annual fee is payable to cover the costs of monitoring compliance with the rules of conduct that must be adhered to. This includes investigating complaints, routine audits and enforcement action when rules are breached or businesses operate without authorisation. Application and annual fees are based on the annual turnover of the business.

Previous consultations on fee levels set out the formula and impact to businesses of the fee payable on applying for authorisation and annually. As the underlying calculation of the fees has not changed an impact assessment has not been produced for the 2009-10 fee proposals.

The consultation period closed on 28 October 2008 and this report summarises the responses, including how the consultation process influenced the final shape/further development of the policy/proposal consulted upon.

A list of respondents is at Annex A.

Summary of responses

1. Three responses to the consultation paper were received, two from authorised businesses and the other from a company providing guidance to regulated businesses and support to them in their dealings with the Regulator.
2. An increase in the application fee was felt to be appropriate by all respondents. However Scott Robert LLP, the business support company, felt that while a 12.5% increase was fair and reasonable they could not see how a higher increase could be justified.
3. One respondent – Red Card Claims Limited – felt that the proposal to impose a non –compliance surcharge on businesses not providing their turnover figures at the appropriate time was reasonable. The remaining respondents felt that the idea could backfire on the Regulator. Businesses that had experienced an upturn in trading might purposely withhold the latest turnover figure because they would pay less if their last years figure plus the proposed 20% levy figure was used.
4. A concern was raised that larger business might be subsidising the smaller ones under the current fee paying regime and that some areas of regulation were more complex to regulate than others. This respondent suggested consideration be given to: '*...differential rates depending on whether a company is personal injury, employment or financial services*'.
5. Red Card Claims Limited was pleased that no increase in the annual fee was proposed as they felt that an increase might present problems to those working in the bank charges field due to the impact on cash flow resulting from the Office of Fair Trading's bank charge test case.

Responses to specific questions

1. Do you have any comments on the proposed increase in the application fee?

Andy Humphries of Renaissance Endowment Review said that the proposal regarding an increase in the application fee was appropriate.

Robert Cooper of Scott Robert LLP felt that an inflationary increase of 12.5% was fair and reasonable but questioned if an increase of 25% could be justified as it was difficult to see how the cost of processing applications for authorisation could have increased by that amount. He suggested a number of possible steps that could be taken to improve the current system, including an overhaul of the current application form and a more efficient use of electronic mail and fax.

2. Do you have any comments on the proposal to use the previous year's turnover figure if the business does not respond in time? If so, do you agree that a fixed surcharge of 20% should be added? Please state your reasons.

Renaissance felt that the possibility of the Regulator using the previous year's turnover figure plus a penalty to calculate the annual fee might be an incentive for some businesses to withhold their most recent information if turnover had increased significantly in the past year and said that:

'...the MoJ should be able to insist a firm provides turnover figures and any firm that does not is in breach of MoJ rules and as such further sanctions can be applied. For example, a firm could be refused renewal until the data is provided'.

The Scott Robert response agreed that the previous annual turnover plus penalty proposal might encourage businesses to withhold current, possibly higher, figures. They queried if such a surcharge was, in fact, within the scope of the Regulations. They suggested that if the surcharge proposal was accepted then a route of appeal should be provided for businesses. They also suggested that the Regulator might consider the use of Regulation 20, which enables the Regulator to cancel an authorised persons authorisation, where the relevant fee is not paid.

The Red Card Claims response said this way forward was entirely reasonable

3. Do you have any general comments on the fee levels and the proposed fees determination?

The Renaissance response expressed concern that the fees did not seem to reflect the cost of compliance for a particular size or type of claims management company(CMC). They said;

'It seems that larger companies subsidise the cost of compliance for smaller companies. Furthermore there are several different types of Claims Managers and some maybe more time consuming to regulate than others so I believe that consideration should be given to differential rate depending on whether a company is personal injury, employment or financial services.'

The Scott Robert response used this question to raise the idea of a financial penalty that could be levied on businesses that carry out unauthorised activity. This is not strictly a fees issue but we are considering whether this might be an appropriate form of action.

The Red Card Claims response stated that they were delighted that no increase was planned in annual fees. They said that the delays to the claims process caused by the OFT test case on bank charges had resulted in cash flow becoming a major problem for those working in this area. Any additional overheads would not be welcome at present.

Conclusion and next steps

1. A rise in the application fee at the minimum suggested was supported by all respondents to this consultation, although reservations were raised on an increase above that level. To ensure that the overall fees payable by authorised businesses remain proportionate we have decided to limit the increase to the application fee to the lowest suggested figure of 12.5%.
2. The application fee for those applying for authorisation during the 2009-10 regulation year will be as follows:

Annual turnover	Fee payable
Under £0.5m	£450
£0.5m to £1m	£675
Over £1m	£900

3. We propose to hold the annual fee (which covers the provision of the risk based monitoring and compliance work that ensure standards in the industry are maintained) at its current level for 2009-10
4. For businesses with a projected or actual annual turnover of **£103,630** or less this will mean:

Annual turnover	Annual fee payable
Under £5000	£100
£5000-£14,999	£200
£15,000-£24,999	£300
£25,000-£103,630	£400

5. For businesses with a projected or actual annual turnover **over £103,630** the fee will 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,

up to a maximum of **£25,000** where there is a contractual client relationship or **£15,000** where no contractual relationship with a client is involved.

6. The regulation year 2009-10 has been extended by a month and will run from 1 March 2009 to 31 March 2010. This change has been made to bring regulation years from 2010-11 onwards in line with the financial year. This will apply to all authorised businesses.
7. In light of the consultation responses received we have decided not to implement the proposal to impose a 20% surcharge on the annual fee payments for not providing the necessary information on turnover in time. We are now persuaded that this will not meet the policy aim of encouraging businesses to respond to the annual request for information in good time. We will instead remind businesses of the need to gather the necessary financial information at the earliest opportunity; we have already issued a reminder in the Regulation Bulletin published in November 2008.
8. Any business failing to provide their annual turnover information on time will be issued with an invoice for the last year's recorded turnover figure; this will be accompanied by a final warning to provide the information within a specified time frame. Any business failing to pay the invoice may have their authorisation cancelled in accordance with Regulation 20 of the Compensation (Claims Management Services) Regulations 2006.
9. Any business failing to provide the information on turnover within the specified period may have their authorisation suspended and ultimately cancelled.
10. We have revised the Fees Determination 2009 document published as part of the consultation to reflect the information in paragraphs 2 to 5 and removing reference to the proposed surcharge. We have also revised the definition of 'Annual Turnover' contained in paragraph 1 of the document to read:

'Annual turnover' means

a) The authorised business's or applicant's turnover for the 12 months to 30 November 2008.

b) If the business or applicant did not trade for the full 12 months to 30 November 2008, the estimated turnover for the 12 months to 30 November 2009.

c) Where the application for authorisation is made on after 30 November 2009, the estimated turnover for the 12 months to 30 November 2010.'

The revised document is included as Annex B to this paper

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 Gabrielle Kann, Ministry of Justice Consultation Co-ordinator on 020 3334 4496, or email her at consultation@justice.gsi.gov.uk.

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

Gabrielle Kann
Consultation Co-ordinator
Ministry of Justice
7th Floor
102 Petty France
London SW1H 9AJ

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 **Introduction and contact details** section of this paper at page 3.

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 respondents

Peter Maynard

Red Card Claims Limited

Andy Humphries

Renaissance Endowment Review SVS Ltd

Robert Cooper

Scott Roberts LLP

Annex B – Fees Determination 2009

This Determination is made under Regulations 15 and 16 of the Compensation (Claims Management Services) Regulations 2006¹ and sets out the application and annual fees applicable from 1 March 2009. The Fees Determination 2008 will be revoked from 1 March 2009

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 subparagraphs (a) and (b);

'Annual turnover' means

- a) The authorised business's or applicant's turnover for the 12 months to 30 November 2008.

¹ The Compensation (Claims Management Services) Regulations 2006 are pursuant to Paragraph 7 of the Schedule to the Compensation Act 2006.

b) If the business or applicant did not trade for the full 12 months to 30 November 2008, the estimated turnover for the 12 months to 30 November 2009.

c) Where the application for authorisation is made on or after 30 November 2009, the estimated turnover for the 12 months to 30 November 2010.

Application of this determination

2. This fees determination applies the fees for all applications for authorisation made on or after 1 March 2009 and sets the annual fees for all businesses authorised at and after that date².

Application fee

- 3 An applicant seeking authorisation to provide regulated claims management services must submit the relevant application fee with the application form in accordance with the following table –

Projected Annual Turnover of Authorised Business	Application Fee Payable
Under £0.5 million	£450
£0.5 million - £1 million	£675
Over £1 million	£900

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 -
- 0.386% 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.

² Certificates of authorisation issued with a commencement date of 1 March 2009 or later will expire on 31 March 2010

- (3) The fee under sub-paragraph (2) shall be no more than -
- a) £25,000 where there is a contractual relationship with a client, or
 - b) £10,000 where there is no contractual relationship with clients.

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

Annual Turnover of Authorised Business	Annual Fee Payable
Under £5,000	£100
£5,000 - £14,999	£200
£15,000 - £24,999	£300
£25,000 - £103,630	£400

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 March 2009, 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 applicant or those who control the applicant have previously had control of another authorised business then the Regulator may require the applicant to pay an annual fee calculated by reference to the annual turnover of all of those businesses³.

Rebates and adjustments

8. Where an applicant has reported an annual turnover figure based on estimated turnover to 30 September 2009 a rebate shall be made if the actual annual turnover 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 2009.
10. Where an authorised business requests cancellation of its authorisation prior to 1 June 2009 the Regulator may rebate 50% of the annual fee paid. Where an authorised business requests cancellation of its authorisation prior to 1 September 2009 the Regulator may rebate 25% of the fee.

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, the same people who ran previous businesses are running a new business, the turnover of those previous 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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Alternative format versions of this report are available on request from Sarah Henderson, Legal Service Regulation and Redress Division, on 0203 334 4239 or email sarah.henderson@justice.gsi.gov.uk.