



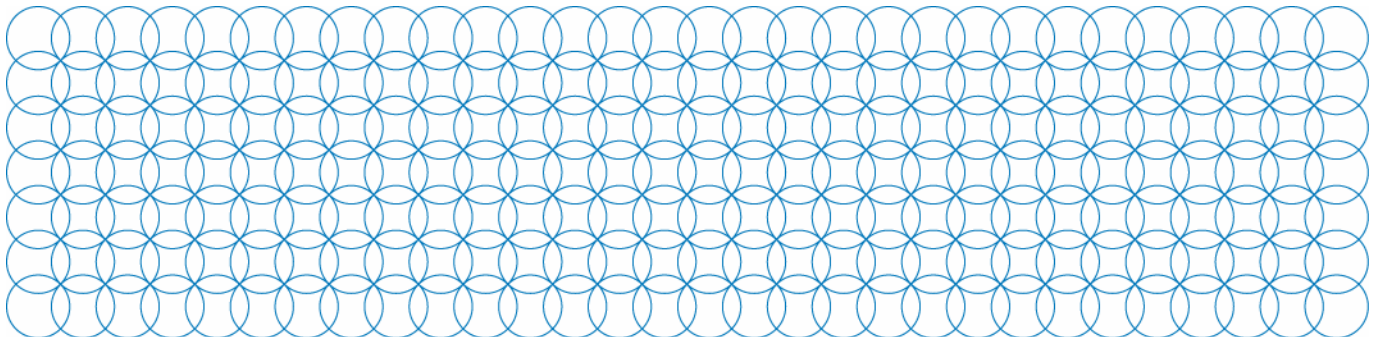
Ministry of
JUSTICE

Claims Management Regulation Fees Determination 2009-10

Consultation Paper CP17/08

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This consultation will end on 28 October 2008





Ministry of
JUSTICE

Claims Management Regulation

Fees Determination 2009-10

A consultation produced by the Ministry of Justice.

This information is also available on the Ministry of Justice Claims Management Regulation website: www.claimsregulation.gov.uk

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Executive summary

1. Part 2 of the Compensation Act 2006¹ established the statutory framework for the regulation of claims management services. Since 23 April 2007, it has been an offence to provide regulated claims management services unless authorised under the Act or exempt. 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. The regulation of claims management services will in the long term also help curb the costs to society of dealing with fraudulent claims.
2. 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. Regulation 15 of the Compensation (Claims Management Services) Regulations 2006² enables the Regulator to determine fees and consult on the fee levels.
3. The Department consulted on the fee scales for the second year of regulation. Consultation on the fee scales ran from 1 August to 24 October 2007³. The paper set out and sought views on the level of fees for both the annual and regulatory fees.
4. The responses⁴ were broadly supportive of reducing the annual fee for those with a small turnover; authorised businesses with a relatively low turnover should have a fixed fee scale of £100 to £400.
5. As set out in the fees determination, businesses pay an application fee on the following scale -

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

¹ http://www.opsi.gov.uk/acts/acts2006/ukpga_20060029_en_1

² <http://www.opsi.gov.uk/si/si2006/20063322.htm>

³ http://www.claimsregulation.gov.uk/__wysiwyg/UploadedFiles/File/covering_letter_-_feesandfeesconsultationpaper.pdf

⁴ <http://www.claimsregulation.gov.uk/userfiles/file/Post%20Consultation%20report%20on%20Fees%20Levels%202008-09.pdf>

6. Fees are levied on a pro rata basis for new businesses that are authorised after the beginning of the year. The full annual regulatory fee is calculated as -

0.386% of turnover up to £1 million, *plus*
0.332% of turnover between £1 - £5 million, *plus*
0.240% of turnover above £5 million;
Subject to maximum of £25,000, or £10,000 if there are no client contracts.

However, if the business has a turnover of less than £103,630 there is a fixed scale of annual fees as follows -

Turnover under £5000	£100
Turnover £5000 - £14,999	£200
Turnover £15,000 - £24,999	£300
Turnover £25,000 - £103,630	£400

7. The Department recognises the importance of reviewing the fee levels. This paper invites views on proposed adjustments to the fee levels for claims management regulation in the light of the information that has become available in 2008. We would also welcome comments on the fees determination generally.
8. It is Government policy that those being regulated should meet the cost of regulation, and that any costs imposed should be reasonable.

Introduction

The consultation is aimed at persons authorised to provide regulated claims management services in England and Wales under the Compensation Act 2006. It sets out the proposed fee levels to be applied to those authorised for the period running from 1 March 2009 to 31 March 2010.

Views are invited from all persons authorised to provide claims management services under the Compensation Act 2006. The Register of Authorised Persons is available at www.claimsregulation.gov.uk. Copies will also be circulated amongst the membership of the Department's Regulatory Consultative Group, which includes organisations with an interest in claims management regulation.

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 21, have been followed.

Previous consultations on fee levels have set out the formula and the impact to businesses of the fees payable on applying for authorisation and annually. Whilst the proposed increases will impact on new businesses entering the claims management market the increase is necessary to cover the cost of processing the applications. This paper does not contain an Impact Assessment as the underlying calculation of the fees has not changed and the estimates are the amounts needed to cover the full cost of regulation. If you disagree with this conclusion you are invited to send your reasons as part of your overall response to this paper.

Copies of the consultation paper are being sent to:

- Advertising Standards Authority (ASA)
- Association of British Insurers (ABI)
- Association of Independent Financial Advisers (AIFA)
- Association of Personal Injury Lawyers (APIL)
- British Insurance Brokers Association (BIBA)
- Citizens Advice Bureau (CAB)
- Claims Standards Council

- Financial Ombudsman Service (FOS)
- Financial Services Authority (FSA)
- Forum of Insurance Lawyers (FOIL)
- Law Society
- Legal Complaints Service (LCS)
- Legal Expenses Insurance Group
- Motor Accident Solicitors Society (MASS)
- Office of Fair Trading
- Solicitors Regulation Authority (SRA)
- Trade Union Congress
- Which?

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Application fee

1. Before a person can become authorised, they must complete a detailed application form and pay an 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 an annual fee.
2. At 31 July 2008, there were 1800 businesses authorised to provide claims management services across the sectors. We project that approximately 500 businesses will apply for authorisation by the end of the regulatory year 2008-09. The Monitoring and Compliance Unit carries out thorough checks in processing all applications, checking the information provided and seeking further information where necessary. Some larger businesses require additional work because of the complex ownership structure: more directors or individuals being involved whose details need to be verified. All applications are carefully scrutinised and checks made of websites, contracts and marketing materials. In many cases further information is sought to clarify or expand on the details provided in the application form. The Impact Report published on 22 May stated that in about 90% of applications it was necessary to go back to businesses to request further information or to seek changes to websites or contracts. Copies of the Impact Report are available at www.claimsregulation.gov.uk.
3. The administrative costs in processing applications are variable depending on the complexity or quality of the information provided. This coupled with the cost of running the database, have greatly increased the work required in the application process.
4. The application fees have remained unchanged for the first two regulatory years. It is proposed that the scale of application fees should increase to more closely meet the costs of processing the application. We therefore propose to increase the application fee by between 12.5% and 25%. A 12.5% increase would cover inflationary increases for the first two regulatory years based on the Retail Prices Index (RPI), plus a small amount towards the real increased costs of processing applications. A 25% increase would cover the projected total costs of processing applications.

5. The fee payable in these different circumstances would be as follows -

Annual turnover	12.5% increase	25% increase
Under £0.5m	£450	£500
£0.5m - £1m	£675	£750
Over £1m	£900	£1000

Annual Fee

6. The annual fee covers the costs of monitoring and compliance with the rules of conduct with which all authorised persons must comply, and investigating the handling of consumer complaints and the substance of complaints themselves. It also covers investigating breaches of the rules, visits, routine audits and enforcement action against those authorised who are either breaching the rules or are providing regulated services without authorisation.
7. Monitoring and compliance work is targeted at known problem areas to deal with malpractice. The objectives have been to prevent unauthorised activity and to bring authorised businesses to compliance with the rules of conduct. The regulation fee covers the provision of this risk-based monitoring and compliance work which ensures that standards in the industry, and hence consumer confidence, are maintained.
8. The scope of regulation is wide and covers a diverse range of business models, including very small businesses. However, the Department is committed to ensuring that the burdens imposed on businesses, particularly small businesses, is proportionate. The Department therefore reviewed the fee levels for claims management after one year and introduced a scale of lower fixed fees for smaller businesses.
9. We do not propose to change the annual regulatory fee for 2009-10.

Annual turnover figure – non-compliance

10. The annual fee is payable by all authorised businesses each year. Before the end of the regulatory year, the Regulator will write to each authorised business to ensure the information held is up to date and accurate. Turnover details are also requested as part of that process and must be provided by the business in order to calculate the annual fee for the next regulatory year.

11. The process of updating the information on authorised businesses held for regulatory purposes is being streamlined for 2009-10 following last year's exercise and the information requested will be simpler. More information on this process will be published separately, and will be available on the website, www.claimsregulation.gov.uk.
12. It is important to note that annual turnover figures will still be required as part of the regulatory process to ensure that authorised persons' fees are calculated using the most up to date annual turnover data. Last year annual turnover figures were required within 6 calendar weeks of receiving the request from the Regulator. In light of the high number of businesses which failed to provide the necessary information, including annual turnover data, it is proposed that in the case of an authorised business failing to provide its annual turnover by the specified date, the Regulator may use the turnover figure provided by the business for the previous regulatory year, either forecast or actual, to calculate its fee for the next regulatory year. In addition the Regulator may add a surcharge to the relevant fee if the annual turnover is not provided by the date requested. We propose the surcharge would be 20% on top of the fee:

Previous turnover under £5000	$£100 + 20\% = £120$
Previous turnover £5000 - £14,999	$£200 + 20\% = £240$
Previous turnover £15,000 - £24,999	$£300 + 20\% = £360$
Previous turnover £25,000 - £103,630	$£400 + 20\% = £480$
Previous turnover over £103,630	20% charge added to previous fee, calculated using same formula as before (see paragraph 4(2) of the Fees Determination at Annex A)

Income

13. The table below sets out income from authorisation and annual fee for the most recent year of regulation (2007-08). Also included is estimated income for 2009-10 based on the current fee model.

Table 1 – Claims Management Regulation – estimated Income

	No. of fee payers	Expected Income 2008-09 (£)	Forecast no. of fee payers	Expected income 2009-10 (£)
Application fee	500	205,000	500	205,000
Regulation fee (including first annual fee payers)	1920	1,485,000	2000	1,419,000
Total		1,690,000		1,624,000

14. The changing nature of the claims management sector means that businesses are continually leaving and entering the market. Not all businesses continued with their authorisation for regulatory year 2008-09. Some businesses failed to respond to the request for information. A number of businesses were suspended or cancelled as part of this process in line with the enforcement policy. Some businesses also surrendered their authorisation voluntarily because they no longer wished to provide a claims management service and this is expected to repeat in the next regulatory year.

15. New businesses have emerged since formal regulation commenced and sought authorisation, largely in the personal injury and financial products and services sectors. As set out in the table above, we predict that approximately 500 businesses will apply for authorisation in 2009-10, using existing figures as a basis.

Expenditure

16. 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 appeals against the Regulator's decisions to refuse, cancel or suspend authorisation and legal costs. The estimates below cover the cost of operating the regulatory regime including the authorisation process, monitoring and compliance and other regulatory work.

17. The table below sets out expenditure in relation to claims management regulation. It is anticipated that expenditure will remain the same across the two years but the ever-changing nature of the claims management market means we may need to adjust this to deal with unexpected demands such as increased enforcement action.

Table 2 – Claims Management Regulation – Expenditure

Cost Head	2008-09 (forecast)	2009-10 (forecast)
Authorisation & Monitoring and Compliance work	£1,200,000	£1,260,000
<i>MoJ Headquarter Staff costs</i>	£300,000	£315,000
Prosecutions and appeals	£100,000	£105,000
TOTAL	£1,600,000	£1,680,000

18. The proposed increase in the application fee and the surcharge to the annual regulatory fee will apply from 1 March 2009 to 31 March 2010.

19. Fee levels will be reviewed each year to ensure that they remain proportionate and that income meets the full cost of regulation. This could result in increases or reductions to reflect the changing resource requirements for claims management regulation.

Questionnaire

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

1. **Do you have any comments on the proposed increase in the application fee?**
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 set out your reasons.**
3. **Do you have any general comments on the fee levels and proposed Fees Determination?**

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

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond and contact details

Please send your response by **Tuesday 28 October 2008** to:

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

Tel: 020 7210 1325

Fax: 020 7210 0613

Email: claimsmanagementregulation@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from the above address and it is also available online at www.claimsregulation.gov.uk.

Publication of response

Following consideration of the responses, the Fee Determination 2009-10 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 Environment 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 Department.

The Department 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.

Annex A (Draft Fees Determination 2008)



Regulation of Claims Management Services

Draft Fees Determination 2009-10

Claims Management Regulation

Fees Determination 2009-10

This determination is made under Regulations 15 and 16 of the Compensation (Claims Management Services) Regulations 2006¹. This determination replaces the Fees Determination 2008, which will be revoked on 28 February 2009. The Fees Determination 2009-10 will apply 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;

'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;

'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);

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

‘Annual turnover’ means

- a) the applicant’s turnover for the 12 months to 30 September 2008; or
- b) if the authorised business did not trade for a full 12 months to 30 September 2008-
 - i) where the application is made on or before 30 September 2009, the figure the applicant expects to be the turnover of the authorised business for the 12 months to 30 September 2009; or
 - ii) if the application is made after 30 September 2009, the actual turnover for that period².

‘Surcharge’ means an additional sum added to the annual fee.

Application of this determination

- 2. This fees determination applies to all applications for authorisation made on or after 1 March 2009 and to applications for continued authorisation made for the regulatory year 2009-10.

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 (subject to change following consultation)
Under £0.5 million	£400
£0.5 million - £1 million	£600
Over £1 million	£800

Annual fee

- 4. (1) When an application for authorisation has been approved by the Regulator, the applicant shall pay an annual fee³.
- (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 See paragraph 9 on retrospective adjustment.

³ It should be noted that authorisations made after 1 March 2009 will expire on 31 March 2010, 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 10.

(3) Subject to paragraph 5(4), 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 is a fixed fee of –

Annual Turnover of Authorised Business	Annual Regulatory Fee Payable
Under £5000	£100
£5000 - £14,999	£200
£15,000 - £24,999	£300
£25,000 0 £103,630	£400

Compliance

5. (1) For the purpose of continuing authorisation, an authorised business shall provide its annual turnover to 30 September 2008 within 6 calendar weeks of the date on which the Regulator makes a written request for the information to be provided.

(2) Subject to paragraphs 9 and 10, where the information requested in sub-paragraph (1) is not provided to the Regulator within the required time, the Regulator may use the previous year's (actual or estimated) annual turnover figure of the authorised business in question.

(3) Subject to sub-paragraph (4), where the authorised business fails to provide the information requested in sub-paragraph (1) and the Regulator uses the previous annual turnover figure, the Regulator may impose a surcharge of 20% on the sum of the annual fee. In these circumstances the annual fee payable will be:

Previously Reported Annual Turnover of Authorised Business	Annual Regulatory Fee Payable
Under £5000	£120
£5000 - £14,999	£240
£15,000 - £24,999	£360
£25,000 - £103,630	£480

(4) Where the previous annual turnover is over £103,630 the fee shall comprise -

- (a) the annual fee calculated according to the formula in paragraph 4(2), plus
- (b) a 20% surcharge,

even if this takes the fee above the limit set out in paragraph 4(3).

Pro rata calculation of annual fee

6. Where an authorisation is given which has effect from a date 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.
7. But paragraph 6 does not apply to any person who the Regulator is satisfied has been providing regulated claims management services prior to being authorised.
8. 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 businesses⁴.

Rebates and adjustments

9. Where an applicant has reported an annual turnover figure based on expected turnover to the year to 30 September 2009 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 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.

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, 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.

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 an 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 Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326, 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
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 14.

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claimsmanagementregulation@justice.gsi.gov.uk.