



Ministry of
JUSTICE

Claims Management Regulation

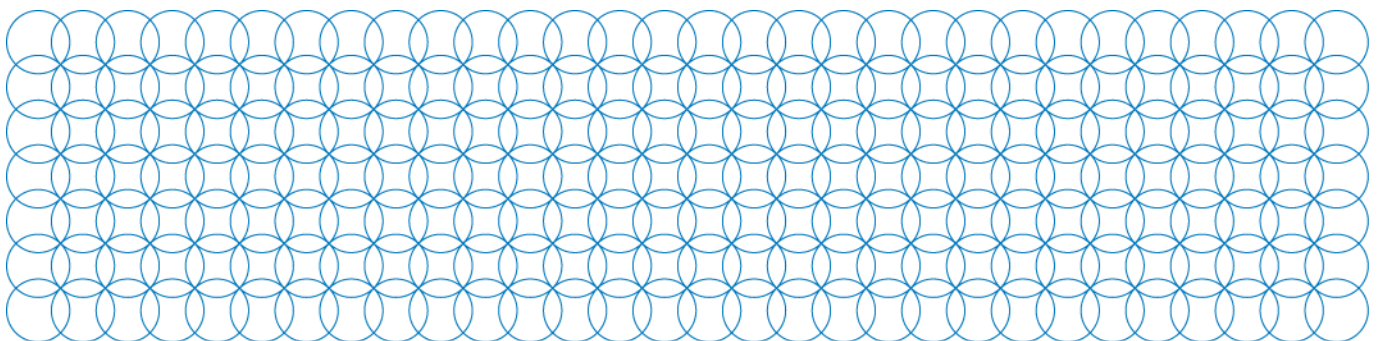
Regulation fees paid by claims
management businesses

Proposed fees levels for 2012–13

Consultation Paper CP 20/11

This consultation begins on 28 October 2011

This consultation ends on 23 December 2011





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businesses

Proposed fees levels for 2012–13

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

About this consultation

- To:** All those required to be authorised under the Compensation Act 2006.
- Duration:** From 28 October 2011 to 23 December 2011
- Enquiries (including requests for the paper in an alternative format) to:** Salahuddin Ahmed (Claims Management Unit)
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- How to respond:** Please send your response by 23 December 2011 to:
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Ministry of Justice
102 Petty France
London SW1H 9AJ
- Tel: 020 3334 3555
Fax: 020 3334 4296
Email: claimsmanagementregulation@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise will be published in January 2012 at:
<http://www.justice.gov.uk>

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Summary

1. The claims management regulation system was established in 2007 under Part 2 of the Compensation Act 2006. The system is self-financing, with applicant and authorised businesses meeting the costs of regulation through the payment of authorisation fees. The level of these fees is set in advance of the year to which they apply, based on estimates of the number of businesses likely to apply for authorisation, the turnover of businesses and the proportion of businesses expected to maintain their authorisations both in year and into the following year. This consultation sets out proposed fees for the regulation year April 2012 to March 2013.
2. Looking forward to 2012–13, there are potentially significant factors that could impact on the claims market and need to be taken into account when considering future fees income. These include the proposed ban on referral fees in personal injury claims, the introduction of Alternative Business Structures and Lord Justice Jackson's reforms to the costs of civil litigation, all of which could lead to significant changes in the structure of the claims market.
3. Details of the proposed ban on the payment of referral fees for personal injury claims will emerge in due course as the relevant legislative provisions are considered by Parliament, but we need to take into account the potential effect on the personal injury claims market and on the numbers of claims businesses operating in that sector. If claims businesses are no longer remunerated for providing access to claimants in personal injury cases, this could lead to a reduction in the level of their business (depending on their reliance on such referral fee income) with fewer claims businesses applying to provide services in that sector and existing businesses leaving the market. As a significant amount of fee revenue comes from the personal injury sector, any reduction in the sector is likely to have an impact on total fee income. We therefore need to take action now to mitigate that outcome, ensure full costs recovery and make sure that regulation remains adequately resourced.
4. For the next regulation year 2012–13 we therefore propose to take the following steps:
 - We are proposing to increase the application fee from £750 to £950;
 - We are freezing the annual fee scales; and
 - We propose to increase the current cap on the maximum annual fee.
5. These changes are designed to ensure an ongoing robust and stable self financing position and allow the proportionate payment of fees across the whole range of regulated businesses. The specific fee proposals are set out in paragraphs 22–27 and **Annex A**.

6. Given the uncertainty about the size of the claims market in 2012–13, we are also seeking views on alternative options of making an additional 5% increase to annual fees and on using the option of making an in year adjustment at this time next year to 2012–13 fees. Further details are set out below in paragraphs 28–30.
7. We are also taking this opportunity to seek initial views on whether businesses should, in future years, provide an audited statement of turnover when requested during the annual fee renewal exercise. Further details of this proposal are set out below at paragraph 32–33.

Introduction

8. This consultation is primarily aimed at persons authorised to provide regulated claims management services in England and Wales under the Compensation Act 2006 and those businesses and individuals contemplating making applications for authorisation. The Register of Authorised Persons is available at:
www.claimsregulation.gov.uk/search.aspx
9. This paper sets out the following:
 - (i) The fees for applications for authorisation and annual fees for the regulation year 1 April 2012 to 31 March 2013;
 - (ii) An initial consultation on whether businesses should provide an audited statement of turnover when requested during the annual fee renewal exercise.
10. This consultation is generally being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code, except that we are conducting the consultation to a period of eight weeks. This is to ensure there is sufficient time to put in place the arrangements for notification and collection of the amended and new fees.
11. Copies of the consultation paper are being sent to:
 - All authorised claims management businesses and organisations;
 - The Claims Management Regulation Regulatory Consultative Group – see **Annex B** for list of members.

This list of consultees is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subjects covered by this paper.

Background

Fee requirements

12. Regulation 15 of the Compensation (Claims Management Services) Regulations 2006 enables the Regulator to determine fees and consult on the fee levels. Regulation 16 enables the Regulator to revoke or amend any fee determination. Fee levels paid by authorised businesses are reviewed each year to ensure that they are proportionate and achieve the principle that regulation should be self financing. As part of that review, businesses are consulted on proposed fee levels.
13. As the claims management regulation regime is intended to be self financing, the costs of operating the regulatory regime must be recovered through the fees that businesses pay to be authorised. All applicants must pay an application fee and if authorised an annual regulation fee. For businesses already authorised the annual fee is charged in advance of the regulation year to which it relates. In the February of any given year businesses will be asked to provide details including turnover in order to calculate the annual fee payable for the following regulation year. Fee levels are based on estimates of income receipts and the costs of operating the regulatory regime.

Application fee

14. Persons that wish to provide regulated claims management services must be authorised to do so, unless they benefit from an exemption. To become authorised a person is required to pay an application fee and go through a detailed application process. If the Regulator is satisfied that the applicant meets the statutory criteria to provide the regulated services they will be granted authorisation. The application fee contributes to the cost of the Regulator carrying out detailed checks in processing all applications including checking all the information provided is accurate, establishing directors' identities, seeking further information where necessary and reviewing proposed contracts and marketing materials. Some businesses require more scrutiny due to their complex business structures and additional compliance checks are carried out on businesses on an individual risk related basis.

Annual Fee

15. Businesses approved for authorisation are required to pay the annual regulation fee before the authorisation is granted, which is thereafter paid annually. The annual regulation fee contributes to meeting the costs of monitoring, compliance and enforcement functions including investigating the handling of consumer complaints and investigating breaches of the rules, regulatory visits, audits and enforcement action against authorised businesses and businesses that may be providing regulated services

without authorisation. Monitoring and compliance work is targeted appropriately to identify and deal with key areas of non compliance and more serious malpractice across all the six claims sectors within scope of the regulatory regime, including amongst other things, unauthorised trading. The annual regulation fee covers the provision of this risk-based monitoring and compliance work, with the aim of improving standards in the industry and to provide more effective consumer safeguards.

Paying for Regulation

The claims management market

16. The claims management market can be volatile, and sensitive to changes in economic conditions, affected by reforms to the handling of claims and by new legislative provisions. As such the number of claims management businesses trading and level of business conducted are liable to be subject to often significant and difficult to predict swings.
17. This volatility and fluctuation in the claims market has been seen over the past year, when, between September 2010 and September 2011, a total of 581 businesses surrendered their authorisation. During that period we also cancelled the authorisation of another 279 businesses. This trend was however balanced by the number of new businesses becoming authorised. By the end of September 2011 the number of authorised businesses stood at 3,254 – a reduction of only 82 businesses from September 2010.
18. The personal injury sector is the largest regulated sector with 2,553 businesses that generated a turnover of £377 million in 2010–11. This accounts for 65% of the turnover in the claims market (total turnover was £581 million in 2010–11). Any reduction in the size of the claims market, and particularly that sector of the market, is likely to have a significant impact on total fee income.

Regulation costs and fees income

Costs

19. The cost of regulation is driven by a range of factors, some of which are relatively fixed and predictable and others more demand led and less certain. The more demand led factors include the scale of complaints received, the contacts from businesses and other organisations, the number of compliance exercises carried out and investigations, audits and enforcement actions conducted. The costs associated with dealing with non compliant businesses have been on an upward trend and this is likely to be unaffected by any reduction in the total number of businesses. Other variable factors include legal and other costs incurred from defending appeals against the Regulator's decisions to refuse, cancel or suspend authorisation. The volatility and evolving nature of the claims management sector can impact on the level of fees paid and the costs of regulating the conduct of regulated businesses. 2011–12 costs includes funding an expansion of monitoring, compliance and enforcement activities in respect of claims businesses providing Payment Protection Insurance claims services, and measures to tackle organised fraud in the personal injury sector. The table below sets out estimated costs for 2011–12 and 2012–13.

Table 1 – Claims Management Regulation – Estimated Costs

	2011–12 (£m)	2012–13 (£m)
Monitoring and compliance	2.50	2.10
Central costs	0.50	0.40
Total	3.00	2.50

Fees Income

20. The table below sets out the estimated income from authorisation and annual fees for 2011–12 and estimated income for 2012–13, assuming no fee changes, and that recent business trends continue. Fee income is affected by a number of factors, for example not all businesses continue their authorisation for the next regulatory year; some businesses fail to respond to requests for information and a number of businesses are suspended or cancelled as part of this process in line with the enforcement policy; some businesses will surrender their authorisation voluntarily because they no longer wished to provide a claims management service or are unable to meet the conditions of their authorisation.

Table 2 – Claims Management Regulation – Estimated Income

	2011–12 (£m)	2012–13 (£m)
Application fee	0.50	0.59
Annual fee	2.50	1.91
Total	3.00	2.50

In year fee increases

21. At this time last year we estimated a shortfall of fee income over costs. As a result we had to make an in year adjustment to the annual fee for the first time. The figures above show that we are not facing a similar situation this year as we are on target to achieve full costs recovery for 2011–12. However, given the uncertainty looking forward over the 2012–13 period and in particular the impact of the claims market reforms and risks of a reduction in the size of the claims market resulting from changes in recent policy changes and business trends, it should be noted that any in year shortfall that arises in 2012–13 may need to be addressed by a fee adjustment in the third quarter of that period.

Proposals

Fees scales for 2012–2013

Application Fee

22. We are proposing to increase the application fee from £750 to £950. This change is needed in view of the potential decrease in applications and seeks to recover the costs involved when dealing with applications. It represents a reasonable sum that can be factored into business start up costs and recouped without difficulty by most businesses once they become authorised and start trading.

Annual Fee

23. We propose a freeze on the annual regulation fees scale for 2012–13, so these will therefore remain as follows:

Turnover under £5000	Fee = £200
Turnover £5000 – £14,999	Fee = £300
Turnover £15,000 – £24,999	Fee = £400
Turnover £25,000 – £74,999	Fee = £500
Turnover £75,000 – £132,653	Fee = £650
Turnover more than £132,653	<p>Fee = 0.49% of annual turnover up to £1 million</p> <p>Fee = 0.332% of annual turnover between £1 million and £5 million</p> <p>Fee = 0.24% of annual turnover above £5 million.</p> <p>Fee = 0.332% of annual turnover between £1 million and £5 million</p> <p>Fee = 0.24% of annual turnover above £5 million.</p>

24. However, we propose a change to the cap that limits the maximum amount payable for an annual fee. At present there are two caps of £10,000 and £25,000 (depending on whether or not there is a contractual relationship with clients). This distinction was introduced in 2006–07 and in practice is no longer relevant. We therefore propose to align the cap over a two year period to an increased level of £30,000.

25. We propose to start the initial alignment in 2012–13 by increasing the higher cap to £30,000 and the lower cap to £17,500. The relevant wording of the draft 2012 Fees Determination will be amended as follows:

The fee shall be no more than:

- a) £30,000 where there is a contractual relationship with a client, or
- b) £17,500 where there is no contractual relationship with clients.

26. This is a proportionate change to a provision that has not been revised previously, with changes to the lower cap affecting only 0.7% of businesses and only 0.4% being affected by change to the higher cap. The businesses affected will be those with larger turnovers and the changes are intended to ensure a fair distribution of increased fee income across the range of authorised businesses.

27. The proposed fee scales for both the application and annual fees are set out in the draft 2012 Fees Determination at **Annex A**.

Alternative/Contingency Options

28. Given the uncertainty about the size of the claims market in 2012–13, we are seeking views on alternative options of (i) making an additional 5% increase in all annual fees and (ii) using the option of making an in year adjustment to the 2012–13 fees at this time next year. These would be considered if the estimated 2012–13 income would not be sufficient to cover the costs within that year.

29. A relatively modest 5% increase to annual fees could be made in addition to the proposals set out above. This would be a contingency option that could be considered in January 2012 when we have a clearer picture of the impact of reforms on the size of the claims market, and the outcome of this consultation is known.

30. The other contingency option put forward is to make an in year adjustment to the 2012–13 fees at this time next year – again at a time when the position of the claims market and any need to additional income to cover a potential shortfall is known.

31. We are therefore taking this opportunity to seek views on both of these contingency options to help inform further considerations.

Issue for consideration – Audited Statement of Turnover

32. All claims businesses are required to provide turnover figures as part of the authorisation process. In the February of any given year businesses will be asked to provide details, including turnover, in order to calculate the annual fee payable for the following April to March. Annual fee levels are dependent on the turnover figures provided. We are considering whether businesses should be required to provide an audited statement of turnover during the annual fee renewal exercise. This may provide a more accurate and reliable basis on which to assess the fee payable. This requirement

could be limited to medium and large turnover businesses in the first instance with consideration given to wider application in due course – although we do already ask some businesses to provide additional details of turnover on a risk related basis rather than applying such a requirement on all businesses.

33. Such a requirement might be seen as an additional unnecessary burden that increases business costs. An alternative approach would be to continue to use a requirement for an audited statement only on a targeted discretionary basis, rather than as a universal requirement and to employ other approaches to tackle individual cases where this is thought to be an issue. That approach would reflect our operational experience. We are therefore taking this opportunity to seek initial views. If taken forward, we will consult businesses and prepare an Impact Assessment, and the measure would not be introduced before 2013–14.

Questionnaire

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

1. **Do you have any comments on the fee scales and proposed draft Fees Determination for 2012–13 as set out above and at Annex A?**
2. **Do you have any comments on the “Alternative Options” set out above in paragraphs 28–30?**
3. **Do you have any comments on the proposal that businesses should provide an audited statement of turnover as part of the authorisation process?**

The above questions are an indication of the main issues being raised in this paper. **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 23 December 2011 to:

**Ministry of Justice
Salahuddin Ahmed (Claims Management Regulation Unit)
102 Petty France
London SW1H 9AJ**

Contact: Salahuddin Ahmed

Tel: 020 3334 3555

Fax: 020 3334 4296

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 2012–13 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.

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.

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, via email at consultation@justice.gsi.gov.uk

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

Consultation Co-ordinator
Ministry of Justice
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 **How to respond** section of this paper on page 15.

Annexes

Annex A – Draft Fees Determination 2012

This Determination is made under Regulations 15 and 16 of the Compensation (Claims Management Services) Regulations 2006 and sets out the application and annual fees applicable from 1 April 2012. The Fees Determination 2011 will be revoked from that date.

Definitions

1. In this determination:

'the Act' means the Compensation Act 2006;

'Regulator' has the same meaning as in Section 14 of the Act;

'Applicant' means a person who has applied for authorisation under the Act;

'Authorisation' means an authorisation to provide regulated claims management services under the Act;

'Authorised Business' means a person who is currently authorised under the Act;

'Client' means a person for whom an authorised business is providing a regulated claims management service;

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

'Turnover' means the sum of the amounts paid to, or received by, an authorised business in respect of regulated claims management services, including:

- a) charges, commission, the share of any compensation, fees and subscriptions, and
- b) the monetary value of any services received by the authorised business where it makes no payment for those services or where the payment received is worth less than the monetary value of the services, and
- c) the monetary value of any advertising in respect of the authorised business that it has not paid for out of funds referred to in sub-paragraphs (a) and (b);

'Annual turnover' means

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

Application of this determination

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

Application fee

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

Annual fee

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

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

Compliance

5. Where the authorised business does not provide the annual turnover figures requested the Regulator may use the previous year's actual or estimated annual turnover figure to calculate and issue an invoice pending the information required being supplied.

Pro rata calculation of annual fee

6. Where an authorisation is given which has effect from a date on or after 1 April 2012, the fee shall be one twelfth of the sum calculated in accordance with paragraph 4 for each month or part of a month for which the Regulator has indicated that he is minded to authorise the business under the Act. This paragraph does not apply to any person who the Regulator is satisfied has been providing regulated claims management services prior to being authorised.

7. Where the Regulator is satisfied that the business or those who control the business have previously had control of another authorised business then the Regulator may require the business to pay an annual fee calculated by reference to the annual turnover of all of those businesses.

Rebates and adjustments

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

Annex B – List of consultees

The following organisations and individuals have been consulted:

All authorised claims management companies

Association of Professional Claims Managers

Claims Management Regulatory Consultative Group – members as follows:

Advisory, Conciliation and Arbitration Service (ACAS)

Advertising Standards Authority (ASA)

Association of Regulated Claims Management Companies (ARC)

Association of British Insurers (ABI)

Association of Independent Financial Advisors (AIFA)

Association of Personal Injury Lawyers (APIL)

British Bankers Association (BBA)

British Insurers Brokers Association (BIBA)

Building Societies Association (BSA)

Citizens Advice Bureau (CAB)

Claims Standards Council (CSC)

Council of Mortgage Lenders (CML)

Direct Marketing Association (DMA) Ltd

Employment Tribunal Service

Finance and Leasing Association (FLA)

Financial Ombudsman Service (FOS)

Financial Services Compensation Scheme (FSCS)

Financial Services Authority (FSA)

Forum of Insurance Lawyers (FOI)

Law Society

Legal Ombudsman (LEO)

Legal Services Board (LSB)

Monitoring Compliance Unit (MCU)

Motoring Accident Solicitors (MASS)

National Debt Line

Office of Fair Trading (OFT)

Solicitors Regulation Authority (SRA)

UK Cards

Unison

Which?

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.

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claimsmanagementregulation@justice.gsi.gov.uk.