



2 Marylebone Road
London NW1 4DF
t 020 7770 7000
f 020 7770 7600
which.co.uk

Rob Muskett
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

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Dear Mr Muskett

FCA consultation on 'How we propose to regulate claims management companies'

Which? welcomes the opportunity to respond to the Financial Conduct Authority's (FCA) consultation on its proposed approach for the regulation of claims management companies (CMCs) in England, Wales and Scotland.

Which? strongly supports the government's decision to transfer responsibility for regulating CMCs to the FCA, and to extend regulation to Scotland, where CMCs are currently unregulated. We broadly welcome the FCA's proposed approach to authorise and supervise firms, and to enforce FCA rules. CMCs can benefit consumers by increasing access to compensation among consumers who might not otherwise have made a claim. But over the past decade Which? has highlighted many issues with the sector. The FCA has highlighted six key harms. Of these six harms, the following two are the most significant:

- *Financial loss due to lack of clarity about how much they will pay and the services they will receive* – Consumers who use CMCs typically pay charges amounting to a significant share of their compensation. Figures from the Ministry of Justice show that CMCs charge, on average, 25%-30% of an individual's final compensation, with some CMCs charging as much as 40%. The National Audit Office (NAO) has also estimated that CMCs made £3.8bn-£5bn between April 2011 and November 2015 in commission from Payment Protection Insurance (PPI) claims alone.
- *Inappropriate services, and nuisance caused to wider society, by poor conduct such as aggressive or misleading marketing or sales tactics* – Nuisance calls and texts cause significant consumer harm including wasted time, annoyance and distress. The Which? nuisance call and text reporting tool has had more than 64,000 reports logged since 1 April 2015. The FCA's findings from its financial lives survey suggest these are a fraction of the actual number of unwanted calls and texts. 69% of the UK adult population (around 36 million people) have between them in the last 12 months received approximately 2.7 billion unsolicited calls, texts or emails from CMCs.

We particularly welcome the FCA's proposals to improve information on fees and the availability of free alternatives to using CMCs. The FCA has rightly proposed to extend these requirements to both CMCs' advertising and information provided to prospective customers, as well as requiring CMCs to provide regular updates on the progress of claims, including estimating fees.

We support the FCA's proposals for CMCs to be required to record all calls with customers and to keep these recordings for a minimum of 12 months, as well as keeping a record of electronic communications. Combined with the FCA's proposals to extend the senior managers and certification regime to CMCs, this should act as a deterrent to poor practices and enable more effective enforcement. This could also address the issue of 'phoenixing', whereby firms re-emerge as a new CMC following liquidation or insolvency, with some or all of the directors remaining in place.

However, improved disclosure of charges is unlikely to be sufficient to address the excessive fees charged by CMCs, which are highlighted above. While not covered in this consultation, the FCA will take on responsibility for the charge cap for PPI compensation claims, which came into effect in July 2018. The Financial Guidance and Claims Act also confers powers on the FCA to cap fees for claims management services more broadly, and imposes a duty on the FCA to use these powers in respect of claims for all financial products and services.

Which? supports the existing charge cap of 20%+VAT for PPI compensation claims as a short-term measure to tackle the most excessive fees. However, the cap does not fully address consumer harm. Simply reducing the cap further could reduce access to CMCs, leading to people missing out on compensation. Indeed the Ministry of Justice's analysis suggested that CMCs would be unable to operate on a significantly lower charging structure.

Moreover, the proposed fee cap does nothing to encourage firms that potentially owe compensation to make their redress processes simpler or easier for consumers. With PPI, firms did not sufficiently identify those customers who were likely to be eligible for compensation, proactively and effectively communicate to consumers how to complain, or make the claims process as simple as possible. Earlier this year, our survey of 1,743 PPI complainants across eight banks found that one in five (18%) said their bank was difficult to deal with. We have also uncovered examples of banks sending out lengthy forms without any guidance. One bank told us that its questionnaires are only returned in approximately 43% of cases.

To address excessive fees and the weak incentives on firms to deliver effective compensation schemes, the FCA should require financial firms to pay the costs of CMCs where the firm is at fault and the consumer is owed compensation. For firms in other sectors that sit outside the FCA's remit, the FCA should work with government and other regulators to introduce the same requirement. This approach would still enable CMCs to operate on behalf of claimants, but it would incentivise firms to encourage consumers to make claims directly to them. It would also mean that consumers receive all of the compensation they are due, regardless of how they make their claim. The FCA should also consider whether a charge cap, or other restrictions on charges, would need to be in place under a system where firms paid CMCs' fees.

Yours sincerely

Caroline Normand
Director of Policy