

# **Claims management: how we propose to regulate claims management companies**

**Consultation Paper**

CP18/15\*\*\*

June 2018



## How to respond

We are asking for comments on this Consultation Paper (CP) by 3 August 2018.

You can send them to us using the form on our website at: [www.fca.org.uk/cp18-15-response-form](http://www.fca.org.uk/cp18-15-response-form).

### Or in writing to:

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

### New address from 1 July 2018:

Financial Conduct Authority  
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0300 500 0597

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### How to navigate this document onscreen



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takes you to helpful abbreviations

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# 1 Summary

## Why we are consulting

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- 1.1** On 1 April 2019<sup>1</sup> we will become the regulator of claims management companies (CMCs) established or serving customers, in England, Wales and Scotland. At the same time the Financial Ombudsman Service (Ombudsman Service) will become responsible for resolving disputes about CMCs.
- 1.2** This Consultation Paper (CP) sets out the draft rules and guidance we propose to make in relation to claims management, and asks a series of questions about the proposals. These draft rules set out the standards that we think CMCs regulated by the FCA should have to meet.
- 1.3** We also set out why and how we enforce our rules, and the process for CMCs to become authorised by the FCA. This CP also sets out proposed changes to the compulsory and voluntary jurisdictions<sup>2</sup> of the Ombudsman Service, and is a joint consultation with the Ombudsman Service on those changes.
- 1.4** The responses we receive will tell us whether our proposals are fit for purpose, or whether we should make changes before we make the rules. We will publish our final rules in a Policy Statement (PS). Meanwhile, the Ombudsman Service will analyse and respond to comments received in relation to the proposed changes to its voluntary jurisdiction.

## Who this applies to

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- 1.5** Who needs to read this document:
- CMCs established or serving customers, in England, Scotland and Wales, including those who deal with section 75<sup>3</sup> claims
  - organisations (that are not CMCs) affected by CMCs, such as those that use CMCs to generate leads
  - trade bodies representing CMCs, or trade bodies representing firms that receive claims about their products/services from CMCs
  - bodies representing customers' interests

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1 The 1 April date of transfer of regulation to the FCA is subject to Parliamentary approval of secondary legislation effecting the transfer.

2 The Ombudsman Service resolves disputes about firms as defined in its compulsory jurisdiction. After public consultation, it opened its voluntary jurisdiction to allow businesses to sign up for certain types of complaints not otherwise covered by the compulsory jurisdiction. Businesses are not required by law to join the voluntary jurisdiction. But in doing so, they formally agree to deal with complaints – and comply with the Ombudsman Service's decisions – in the same way as under the compulsory jurisdiction.

3 Under section 75 of the Consumer Credit Act 1974, the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the retailer or trader.



- other bodies currently involved in regulating businesses that provide claims management services, for example, the Information Commissioner's Office (ICO)

## 1.6 Who else might be interested in this document

- customers who use, or are considering using, firms that provide claims management services

## The wider context of this consultation

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**1.7** Since 2007 the Government has become increasingly concerned about misconduct in the claims management sector. In 2015 it commissioned the independent Brady Review to examine the nature and extent of the problems in the market and make recommendations to improve the way it was regulated.<sup>4</sup>

**1.8** The Government accepted these recommendations. The Financial Guidance and Claims Act 2018 (FGCA) enables the transfer of regulation of CMCs to the FCA from the existing Claims Management Regulator (CMR),<sup>5</sup> and extend regulation to Scotland. The Government recently consulted on the implementing legislation<sup>6</sup>, and the policy intention that the regime should include CMCs dealing with section 75 claims. We have worked with Government on this secondary legislation, which has not yet been approved by Parliament and as such our proposals are subject to the consultation by HM Treasury (the Treasury) and parliamentary approval. If the legislation changes following publication of our CP, we may need to reflect those changes in the rules we make.

## What we want to change

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**1.9** We want CMCs to be trusted providers of high quality, good value services that help customers pursue legitimate claims for redress, and benefit the public interest. We have three main areas of focus:

- Customers – We want customers to be empowered and confident in choosing a value-for-money service which is appropriate for their needs.
- CMCs – We want CMCs to help customers secure redress in a way that complies with our rules and be authorised so that they meet a common set of standards.
- Regulatory – We want to regulate in a way which prioritises high standards of conduct and improves public confidence in claims management services.

**1.10** Many CMCs help to secure redress for customers, including those who might otherwise not have made a claim. Our Financial Lives survey<sup>7</sup> indicates that 67% of customers who used a CMC over the last three years to make a financial services claim,

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4 [www.gov.uk/government/publications/claims-management-regulation-review-final-report](http://www.gov.uk/government/publications/claims-management-regulation-review-final-report)

5 The Claims Management Regulator is part of the Ministry of Justice.

6 [www.gov.uk/government/consultations/claims-management-regulation-consultation-on-secondary-regulations](http://www.gov.uk/government/consultations/claims-management-regulation-consultation-on-secondary-regulations)

7 [www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults](http://www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults)

wouldn't have done so without the involvement of a CMC. CMCs can also act as an effective check and balance against poor practice by firms.

**1.11** However, a number of reports have highlighted harm to customers in this sector, including the Brady Review, our Financial Lives survey, and those published by the CMR and the Legal Ombudsman's (LeO). These reports helped us develop a view of the sector which we have used to inform our policy proposals. Specifically we identified the following harms in the sector, which we discuss in more detail in Chapter 2:

- customers may experience financial loss due to lack of clarity about how much they will pay and the services they will receive
- poor service (eg poor communication on claim status)
- customers may pay higher prices in other markets due to spurious or fraudulent claims
- customers may buy inappropriate services, and nuisance can be caused to wider society, by poor conduct such as aggressive or misleading marketing or sales tactics (eg unsolicited calls and texts)
- customers may buy inappropriate services due to unauthorised activity
- customers may suffer financial loss or delays to their claim due to disorderly wind down

### **Developing our policy proposals and carrying across CMR rules**

**1.12** To address the harms identified we have considered the existing CMR rules<sup>8</sup> which cover a number of the issues we are concerned about such as information disclosure to customers and rules on marketing. We are proposing to carry many of these rules across, making amendments where appropriate. We also propose to supplement these rules by applying new standards to CMCs in a number of areas. The majority of these standards will apply from 1 April 2019. However, some requirements will apply from a later date, including our proposed prudential standards. Where this is the case we highlight it in the relevant chapter. This CP sets out these changes, some of which we summarise below.

### **Pre and post-sale disclosure**

**1.13** Harms identified in this sector include that customers are not always aware of the total charges they will pay, what the CMC will do for them and what they must do themselves or how they can make a claim without being charged. So we propose that, before a CMC agrees a contract with a customer, they will need to give them a short summary document containing important information. This will include, among other things, an illustration or estimate of the fees charged, an overview of the services the CMC will provide and the tasks customers will need to undertake themselves. Where a statutory ombudsman scheme or a statutory compensation scheme exists in relation to the claim, the summary document must also include a statement confirming that the customer is not required to use the CMC to pursue the claim, and may present the claim themselves and for free.

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8 [www.gov.uk/guidance/claims-management-company-regulations-guidance-and-legislation](http://www.gov.uk/guidance/claims-management-company-regulations-guidance-and-legislation)

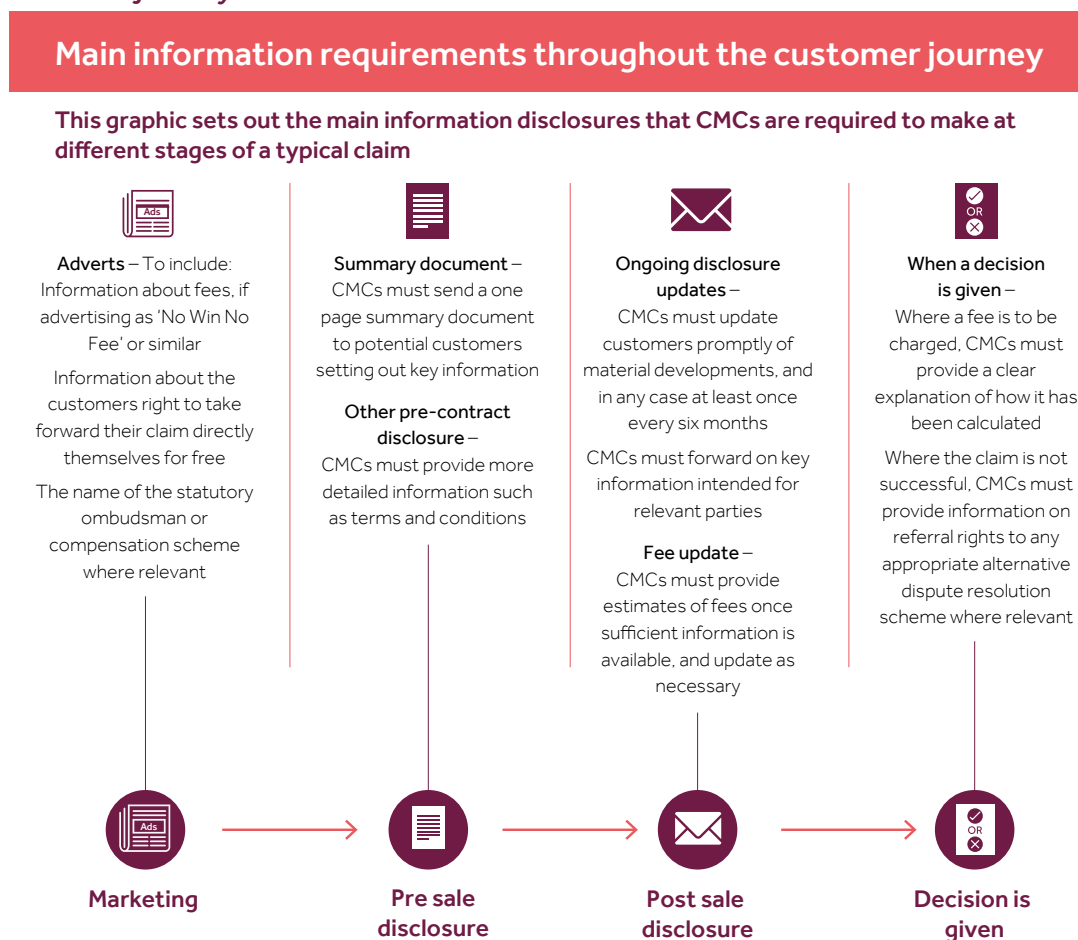
**1.14** We are also aware that some CMC customers are concerned they are not regularly updated by CMCs on the progress of their claim or about the fees they will have to pay. Where CMCs have an ongoing relationship with their customers, they will need to provide them with regular updates about the status of their claims. Specifically, when CMCs know the likely value of a claim they must provide the customer with an updated estimate of any potential fees.

**1.15** We give further details on these requirements in sections 4.22–4.38.

### Marketing by CMCs

**1.16** Another harm identified in this sector is that customers do not always understand they will have to pay fees or a proportion of any redress to the CMC that handled their claim. Where CMCs advertise a 'no-win, no-fee' or similar service, the advert will have to include a prominent indication of the fees the CMC will charge or how they would be calculated. The advert will also have to indicate, where relevant, that there are statutory ombudsman or compensation schemes that the customer could use for free. We give further details on this requirement in sections 4.15–4.21.

**Diagram 1: summary of the main information requirements throughout the customer journey**



**1.17** **Call recording** A large proportion of CMCs' business is conducted by telephone and this is where much of the harm in the market occurs, such as poor service or misleading or aggressive marketing. We are therefore proposing that CMCs will have to record all calls with customers and keep the recordings for a minimum of 12 months.

We also propose that CMCs will have to keep a record of electronic communications such as e-mails and text messages. We give further details on this requirement in sections 4.10-4.14.

### **Prudential requirements**

- 1.18** Where customers or markets rely on the services provided by firms, a sudden exit from business by a firm could cause them harm, for example sudden disruption midway through a customer's claim. CMCs which are not solely lead generators should have sufficient capital resources to withstand unexpected shocks to their finances in order to reduce this risk of harm. We propose that CMCs will need to meet prudential requirements related to the type of business they undertake, their total income, their expenditure, and whether they hold client money. We give further details on this requirement in chapter 6.

### **Client money**

- 1.19** CMCs must ensure their clients' money is safe. CMCs that hold client money will need to segregate it from their own money and hold it on trust. These CMCs will also need to maintain accurate and up-to-date records that identify the client money they hold on behalf of each client. We give further details on this requirement in chapter 7.

### **Other proposals**

- 1.20** We are consulting on a number of other proposals. These include:
- Some CMCs buy leads (lists of people with possible claims) from third parties. Some of these third parties pass on customers' details without ensuring that they have customers' consent to do so. We propose requiring CMCs which buy leads from third parties to carry out sufficient due diligence to determine whether the lead generator is authorised and has appropriate systems and processes in place to ensure compliance with relevant data protection, privacy and electronic communications legislation. CMCs will need to keep a record of this process.
  - From 1 April 2019 all authorised CMCs will be subject to our rules on complaints handling. The Ombudsman Service will therefore deal with complaints about CMCs under its compulsory jurisdiction. The Ombudsman Service is consulting on extending its voluntary jurisdiction. This will mean that customers of CMCs outside our regulatory remit, such as CMCs in Northern Ireland, who do not deal with customers in England, Wales or Scotland, can refer complaints to the Ombudsman Service, if the CMC has volunteered to be within the Ombudsman Service jurisdiction and is within the existing territorial scope of the voluntary jurisdiction as set out in DISP 2.6.4R.
  - We are also consulting on a number of changes to existing FCA regulation as a consequence of our taking over the regulation of CMCs. These include amendments to our Supervision manual (SUP) so that it will also apply to CMCs.
  - We propose that the changes set out in this CP will apply from 1 April 2019 when regulation of CMCs transfers to the FCA, unless the relevant section specifies otherwise.



- 1.21** Chapters 3–9 provide more detail on these proposals. They provide a description of the Handbook rules and guidance we propose applying to CMCs, including those rules we will carry across from the CMR. It is important for CMCs to consider the rules and guidance alongside the relevant sections of the CP and the FCA Handbook. These are found in Appendix 1.

### Next steps

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- 1.22** We want to know what you think of our proposals in this CP. Please send us your responses to the consultation questions in this paper by 3 August 2018.
- 1.23** Use the online response form on our website, email us at [CP18-15@fca.org.uk](mailto:CP18-15@fca.org.uk) or by writing to us at:

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

**New address from 1 July 2018:**

Financial Conduct Authority  
12 Endeavour Square  
London E20 1JN

- 1.24** We will review all responses, speak to interested stakeholders and publish our feedback, including the final text of the proposed rules in this consultation (see Appendix 1), in a PS which will be published in Q4 2018.



## 2 The wider context

### The harms we are trying to prevent or reduce

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- 2.1** When working well, CMCs can provide useful services for customers. However, the Brady Review found a number of harms in the CMC sector, which we have discussed with the CMR. This is further reinforced by complaints data on the sector published by the LeO, and information we have from other sources such as our Financial Lives survey. We set out the key harms in this sector below.

#### **Customers may experience financial loss due to lack of clarity about how much they will pay and the services they will receive**

- 2.2** As the Brady Review set out, customers may not always understand clearly the service they will receive, the costs of the service, or the availability of alternative services, which are often free. In such circumstances, customers may end up paying more than they would have done, had they had more details.

#### **Poor service (eg poor communication on claim status)**

- 2.3** Customers may also experience a poor level of service such as unexpected delays in compensation pay-outs or resolution of claims. The LeO complaints data suggests that excessive costs and delays or failures to progress a claim were the two areas which were the subject of the most complaints in 2016/17.<sup>9</sup>

#### **Customers may pay higher prices in other markets due to spurious or fraudulent claims**

- 2.4** Evidence shows that some CMCs have encouraged customers to make spurious or fraudulent claims, such as 'cash for crash' schemes or fraudulent or exaggerated holiday sickness claims. 20% of the Insurance Fraud Bureau's (IFB) intelligence reports (over 450 reports) were linked to at least one CMC between 2014 and 2016.<sup>10</sup> Nearly 50% of IFB live operations in 2015 featured a CMC.<sup>11</sup> High levels of spurious or fraudulent claims may lead to financial loss for customers due to increased costs – for example, an increase in spurious or fraudulent motor accident claims may lead to higher insurance premiums for everyone. In addition, CMCs that encourage customers to make spurious or inappropriate claims like these harm the industry's reputation and can also result in the customer committing an offence.

#### **Customers may buy inappropriate services, and nuisance can be caused to wider society, by poor conduct such as aggressive or misleading marketing or sales tactics (eg unsolicited calls and texts)**

- 2.5** The Brady Review found examples of misleading or aggressive marketing, including misrepresentation of the service offered to customers, such as advertising focusing on enhancements to the value of compensation claims rather than benefits relating to convenience or saving time. This can result in customers purchasing services which are not appropriate to their needs.

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9 [www.legalombudsman.org.uk/raising-standards/data-and-decisions-cmcs/](http://www.legalombudsman.org.uk/raising-standards/data-and-decisions-cmcs/)

10 [www.insurancefraudbureau.org/media-centre/news/2016/ifb-welcomes-recommendations-into-regulation-of-claims-management-companies/](http://www.insurancefraudbureau.org/media-centre/news/2016/ifb-welcomes-recommendations-into-regulation-of-claims-management-companies/)

11 [www.abi.org.uk/globalassets/blogs/regulation20of20cmcs.pdf](http://www.abi.org.uk/globalassets/blogs/regulation20of20cmcs.pdf)



**2.6** CMCs make and send a high number of calls and texts to customers. Our Financial Lives survey found that 69% of the UK adult population (or around 36 million people) have between them in the last 12 months received approximately 2.7 billion unsolicited calls, texts or emails from CMCs offering to help them make a claim, for example about a recent accident or mis-sold payment protection insurance (PPI). This equates to around 50 calls/texts per year for each adult in the UK.<sup>12</sup> While CMCs can legitimately make contact with customers with appropriate consent, there is evidence to suggest many customers consider these calls a nuisance. They can cause stress and inconvenience, particularly to the elderly and vulnerable. Poor controls by CMCs around data handling and obtaining consent can make this worse.

### **Customers may buy inappropriate services due to unauthorised activity**

**2.7** A number of CMCs do not have appropriate authorisation. Customers who use unauthorised firms are unlikely to receive a service which meets the required standards, and they may not have access to appropriate redress from bodies such as LeO or, from April 2019, the Ombudsman Service. If such firms are used, customers may suffer financial loss by receiving lower payouts than they might otherwise have done, or even failing to recover any monies. They might also suffer from excessive fees that had not been made clear to them in advance. Competition and confidence in the claims management sector is also affected due to poor quality service.

### **Customers may suffer financial loss or delays to their claim due to disorderly wind down**

**2.8** When CMCs exit the market in a disorderly way this can result in harm to the customer. For example, if the customer is not kept informed about the status of their claim while the CMC is leaving the market, this may lead to delays or financial loss as claims are 'timed out'. Further, if the CMC holds client money, this may be lost if the CMC does not have the appropriate systems and controls in place to ensure this money is held separately from its own money.

**2.9** Some CMCs re-emerge following liquidation or insolvency by setting up as a new CMC or taking over an existing authorised CMC with some or all of the directors remaining in place. This is known as 'phoenixing'. One significant adverse consequence of this is that some individuals may close down one CMC but quickly move to another without fulfilling their obligations to customers. The CMR reported 30 possible examples of this to us between 2015 and 2016.

## **Scope of FCA regulation**

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**2.10** We will regulate 6 activities, subject to the Treasury's consultation on the implementing legislation, across 6 claims sectors. Diagram 2 sets out these activities and claims sectors. We propose to cover all the activities by introducing 7 permissions that we will use in our regulation of the CMC sector. CMCs established or serving customers, in England Wales and Scotland will need the permission or permissions which cover the activities they carry on in the relevant sector. We propose to have

12 We have used two questions (CM1 and CM1a) from the Financial Lives survey 2017 to calculate these figures. There are some caveats to this number. The calculated figure comes with a margin of error; for example, the true proportion of UK adults recalling one or more unsolicited approaches lies between 66% and 71%. All surveys need to caveat the accuracy of respondent recall, an issue that is arguably more relevant for questions like this. The calculation assumes that the frequency of approaches for those coding 1 to 6 at CM1a were, respectively: one a day, 2.5 a week, one a week, one a month, 3.5 a week and one in the last year; this means that for those coding CM1a, 4 and 5, the calculation is likely to build in an underestimate. Please see [www.fca.org.uk/publication/research/financial-lives-survey-2017-questionnaire.pdf](http://www.fca.org.uk/publication/research/financial-lives-survey-2017-questionnaire.pdf), p. 328, for the survey questions.

one permission for lead-generation activities covering all the sectors, and 6 sectoral permissions covering the activities of advising a claimant, investigating a claim, and representing a claimant.

**Diagram 2: The activities and claims sectors we will regulate**

CMC sectors						
	Personal Injury	Financial Services and Products	Housing Disrepair	Specified Benefits	Criminal Injuries	Employment
	Claims for damages for personal injuries or death	Claims in relation to financial services and products	Claims relating to certain landlord and tenant legislation, for the disrepair of premises under a term of a tenancy agreement or lease, or under the common law relating to nuisance	Claims relating to certain industrial injuries, benefits, supplements or allowances	Claims under the Criminal Injuries Compensation Scheme	Includes claims in relation to wages and salaries and other employment-related payments, and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment
<b>Regulated Activities</b>	Seeking out of claims - seeking out persons who may have a claim					
	Referrals of claims - referring details of a claim, potential claim or of a potential claimant to another person					
	Identification of claims - identifying a potential claim, or potential claimant					
	Advising a claimant or potential claimant - providing advice on a claim or potential claim					
	Investigating a claim - investigating or commissioning the investigation of the circumstances, merits or foundation of a claim with a view to using the results in pursuing the claim					
	Advice, investigation or representation of a personal injury claim	Advice, investigation or representation of a financial services or products claim	Advice, investigation or representation of a housing disrepair claim	Advice, investigation or representation of a specified benefit claim	Advice, investigation or representation of a criminal injury claim	Advice, investigation or representation of a specified benefit claim
	Representing a claimant - representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made					

**Scottish CMCs and CMCs that deal with section 75 claims**

**2.11** At present the regulation of CMCs under the Compensation Act 2006 extends only to CMCs operating in England and Wales. The Government has extended CMC regulation to Scotland through the FGCA. Many Scottish CMCs are already authorised by the CMR, as this is a requirement for CMCs who provide services in England and Wales. For other CMCs operating in Scotland only, this will be the first time they will be regulated for providing claims management services. We note that these CMCs will also have to have regard to the implementation of Part 1 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018.

**2.12** The Government’s proposed policy intention is that claims made under section 75 of the Consumer Credit Act 1974 are within the scope of our regulation. They are considering whether they need to amend the proposed implementing legislation to achieve this. For the purposes of this consultation, we are assuming that the regime will include CMCs handling this sort of claim.

**Firms not subject to FCA regulation**

**2.13** The draft legislation on which the Treasury is consulting provides that various categories of organisation are excluded from FCA regulation. For example, claims management conducted by legal practitioners will be excluded. For more detail, please see the Treasury consultation document.

**Other changes to the regulatory environment for CMCs**

**2.14** The FGCA provides for a fee cap for PPI claims which will come into effect before we take over responsibility for claims management regulation. This fee cap is 20% (excluding Value Added Tax) of the amount recovered for the customer. The cap will come into effect in July 2018. It will be enforced by the CMR, until responsibility for regulation is transferred to the FCA.<sup>13</sup>

13 We have added guidance in CMCOB5 to reflect this position.



- 2.15** The FGCA 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. The FGCA cap will remain in place until we use our own powers to impose a new fee cap.
- 2.16** In order to substantially reduce the number of nuisance calls received by customers in the UK, the FGCA has introduced a prohibition on cold calling in relation to claims management services, except where the customer has consented to such calls. The ICO will enforce this ban. These proposals, together with the new rules imposed by the General Data Protection Regulation (GDPR)<sup>14</sup> should mean customers receive far fewer unwanted calls from CMCs than they currently do.
- 2.17** To bring the PPI issue to an orderly conclusion in a way that protects consumers and market integrity, we have introduced a deadline for PPI complaints. A complaint needs to be referred to the provider of PPI or to the Ombudsman Service on or before the 29 August 2019 (by 11:59pm) or the complainant will lose their right to have their complaint assessed. We provide more details on our website.<sup>15</sup>
- 2.18** Our proposals for the fees CMCs will need to pay to us will be consulted on later in the year. This will include the general levy used to fund the Ombudsman Service.
- Our authorisations, supervision and enforcement regime**
- 2.19** Subject to the Treasury's consultation and parliamentary approval, on the proposed approach to the temporary permission regime, all CMCs that are currently regulated by the CMR and those which will be regulated for the first time will be entitled to obtain a temporary permission. They will need to do this in advance of 1 April 2019: they can register for temporary permissions by submitting their details to us on the form we will make available and by paying the relevant fee.
- 2.20** After 1 April 2019, all CMCs will need to apply for re-authorisation. There will be 2 application periods and each CMC will be allocated to one of these application periods. They will either need to submit their application for authorisation during that period or, failing that, cease to carry out regulated activities altogether.
- 2.21** New CMCs entering the market after 1 April 2019 will also need authorisation: they will not be entitled to a temporary permission and need to apply to the FCA for authorisation. They will not be limited to a particular application period, but will not be able to perform regulated activities until we have authorised them.
- 2.22** In order to become authorised, CMCs will have to demonstrate that they will satisfy and continue to satisfy the FCA's Threshold Conditions.<sup>16</sup>
- 2.23** We expect CMCs to comply with our rules from the date of transfer (except where we have disapplied a rule or modified the effect of a rule). We will supervise firms both in temporary permission and once authorised to ensure they comply with our rules, and take enforcement action where appropriate.

14 <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

15 [www.fca.org.uk/ppi/](http://www.fca.org.uk/ppi/)

16 Firms must comply with Threshold Conditions in order to be authorised. See chapter 3 of this consultation for further information on what Threshold Conditions are.

**2.24** Generally CMCs should use our contact centre as their first point of contact with us. We will supervise this sector using a combination of market-based and thematic work, programmes of communication, engagement and education that target the key risks of harm we have identified for their relevant sectors. We use a range of tools to ensure compliance but aim to resolve problems cooperatively without resorting to our statutory powers if possible.

**2.25** We will have wide-ranging powers to tackle breaches of our rules and other legal requirements by individual CMCs. These include:

- withdrawing a firm's authorisation
- suspending firms from undertaking regulated activities
- fining firms who breach our rules
- applying to the Court for injunctions<sup>17</sup> and restitution orders
- bringing criminal prosecutions<sup>18</sup> where appropriate, for example in relation to the carrying on of unauthorised business

**2.26** Our strategy is to use these powers to achieve 'credible deterrence'. This means that we try to improve standards across the market by showing there are meaningful consequences to breaking our rules.

**2.27** More details about our approach to authorisation, supervision and enforcement can be found on our website.<sup>19</sup>

### **The Senior Managers & Certification Regime**

**2.28** The Senior Managers & Certification Regime (SM&CR) sets out how we regulate people working in financial services. The aim of the SM&CR is to reduce harm to consumers and strengthen market integrity by creating a system that enables firms and the FCA to hold individuals to account. As part of this, the SM&CR aims to:

- encourage staff to take personal responsibility for their actions
- improve conduct at all levels
- make sure firms and staff clearly understand and can demonstrate who does what

**2.29** The SM&CR currently applies to all banks, buildings societies, credit unions and the largest investment firms. We're extending the SM&CR to all firms authorised to provide financial services under the Financial Services and Markets Act 2000 (FSMA). In 2017 we consulted on applying the SM&CR to all firms currently regulated by the FCA,<sup>20</sup> and

17 In Scotland the equivalent order is an interdict, and in this and other chapters of this CP the word 'injunction' and the word 'order' also mean 'interdict'.

18 The FCA is empowered to bring criminal prosecutions in England in Wales. However in Scotland, the FCA's role is limited to being a "specialist reporting agency", with the Crown Office and Procurator Fiscal Service (COPFS) being the responsible body for taking forward the prosecution of crime.

19 [www.fca.org.uk/publications/corporate-documents/our-approach-supervision](http://www.fca.org.uk/publications/corporate-documents/our-approach-supervision) & [www.fca.org.uk/publications/corporate-documents/our-approach-enforcement](http://www.fca.org.uk/publications/corporate-documents/our-approach-enforcement) & [www.fca.org.uk/publications/corporate-documents/our-approach-authorisation](http://www.fca.org.uk/publications/corporate-documents/our-approach-authorisation)

20 See CP17/25 and CP17/40 for details of these consultation papers.



we will finalise these rules this summer. We also plan to apply the SM&CR to CMCs and will consult on this in a separate consultation paper.

**2.30** Key features of the SM&CR regime include:

- **The Senior Managers Regime**, requiring firms to allocate responsibility and accountability to designated senior managers in a Statement of Responsibilities. These individuals require approval by us to do their job.
- **The Certification Regime**, which applies to individuals who have the potential to cause 'significant harm' to either the firm or its customers. These individuals are not senior managers, and firms need to make sure these people are fit and proper to do their jobs at least every year.
- **The individual Conduct Rules**, which are basic standards of behaviour that people working in financial services are expected to meet. This will apply to almost all staff in firms whose role is connected to financial services, and is not limited to individuals who are subject to the Senior Managers Regime or Certification Regime. Firms need to train their staff on the conduct rules and how they apply to them. They will need to report to us breaches of Conduct Rules which result in disciplinary action.

**2.31** We have not included the detail of our proposals for applying the SM&CR to CMCs in this CP because we are still finalising the rules that will apply to the other firms we regulate. We will publish a separate consultation paper that will set out how we plan to apply the SM&CR to CMCs in autumn 2018.

## How these proposals link to our objectives

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### Consumer protection

**2.32** Our proposals should strengthen protections for consumers who use CMCs. They aim to ensure that consumers receive all the necessary information they need, such as costs, services provided and alternative options, to allow them to make an informed decision about whether to use a CMC service. They also aim to ensure that customers' money is held safely and CMCs that leave the market will do so in an orderly manner.

### Market integrity

**2.33** We want to see a CMC market which operates without any connection to financial crime. Our proposals to introduce measures to reduce fraudulent claims and improve due diligence aim to achieve this.

### Competition

**2.34** We want to see a well-functioning market where customers are empowered to choose a value-for-money service which is appropriate to their needs. Our proposals aim to ensure CMCs compete fairly on the basis of both price and quality by better informing customers about the costs and benefits of the options available to them. This should benefit both CMCs and their customers.

## What we are doing

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- 2.35** All CMCs we regulate will need to follow certain rules so they manage their business effectively and treat their customers fairly. We set out these rules in the FCA Handbook.<sup>21</sup> These will include rules based on existing CMR rules as well as new requirements. We propose to apply the rules which generally apply to all the firms we regulate, such as our Principles for Businesses (PRIN), to CMCs.
- 2.36** We are also proposing to apply rules that are specific to CMCs. These will help address the specific harms identified in the sector and take account of the business models of CMCs. These will be contained in a separate section of our Handbook called the 'Claims Management: Conduct of Business sourcebook' (CMCOB).
- 2.37** We recognise that these changes will result in additional costs to CMCs. Overall we believe these changes will benefit customers by increasing their trust and confidence in CMC services, and that the costs of our proposed rules are proportionate to these benefits. Over time the changes should bring a greater level of professionalism to the CMC market and enhance the reputation of the sector.

## Equality and diversity considerations

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- 2.38** We have considered the equality and diversity issues that may arise from our proposals. We provide our equality impact assessment (EIA) in Annex 4. This assesses the impact of our proposals on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation).
- 2.39** Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 2.40** We welcome any views on our EIA.

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21 [www.handbook.fca.org.uk/](http://www.handbook.fca.org.uk/)



## 3 High level standards

- 3.1** This chapter sets out the high-level standards that apply to all FCA-regulated firms. We propose to apply these standards to CMCs in addition to the specific rules set out in later chapters. These will provide CMCs with a clear statement of the standards of behaviour we expect and will help address the harms identified in the market, in particular the lack of clarity for some customers about the service being provided and the poor service some customers have experienced.

### The key high level standards which are proposed to apply to CMCs are:

- Principles for Businesses (PRIN). These are the fundamental obligations that firms must comply with at all times.
- Threshold Conditions (COND). This sets out minimum conditions which all firms must meet if they want to be authorised. Once authorised, firms must continue to meet these standards on an ongoing basis.
- Senior Management Arrangements, Systems and Controls (SYSC). This sets out how we expect senior management in firms to take responsibility for the running and oversight of their firm as well as the systems, controls and compliance arrangements that should be in place. This includes the requirement that firms should have policies and procedures to counter the risk they might be used to further financial crime.
- Standards for how firms should treat whistleblowers.
- General Provisions (GEN). This sets out some of the standards that apply to all firms in terms of their interactions with us, including statutory disclosure statements and use of the FCA name or logo.

### Principles for Businesses (PRIN)

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- 3.2** We propose to apply PRIN to all CMCs.
- 3.3** PRIN is a general statement of the fundamental obligations that FCA-regulated firms must meet at all times. As well as setting out our overarching expectations for firms, the 11 Principles underpin other, more detailed rules and guidance. CMCs will need to consider carefully the detailed rules and guidance which flow from the Principles.



**Table 1: FCA Principles for Businesses**

No	Principle heading	Principle content
1	Integrity	A firm must conduct its business with integrity
2	Skill, care and diligence	A firm must conduct its business with due skill, care and diligence
3	Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems
4	Financial prudence	A firm must maintain adequate financial resources
5	Market conduct	A firm must observe proper standards of market conduct
6	Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly
7	Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading
8	Conflicts of interest	A firm must manage its conflicts of interest fairly, both between itself and its customers and between a customer and another client
9	Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement
10	Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them
11	Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the firm of which the FCA would reasonably expect notice

**Q1: Do you agree with our proposal to apply our Principles for Businesses to CMCs?**

### Threshold Conditions

**3.4** As set out in FSMA<sup>22</sup> firms must comply with Threshold Conditions in order to be authorised. In order to help CMCs understand what is required, we propose to apply the guidance in the Threshold Conditions section of our Handbook (COND) to CMCs. CMCs should refer to this guide to understand the impact of the Threshold Conditions in more detail. As they are set out in FSMA we are not consulting on the Threshold Conditions themselves. However, we welcome any comments on the application of COND to CMCs.

22 See Schedule 6 of the Financial Services and Markets Act 2000. <https://www.legislation.gov.uk/ukpga/2000/8/schedule/6>



- 3.5** At the point of application, and on an ongoing basis, CMCs must continue to meet the Threshold Conditions in order to be authorised by the FCA. These are broadly as follows:
- Location of offices – for a firm incorporated in the UK, its head office and if it has a registered office, that office must be in the UK
  - Effective supervision – a firm must be capable of being effectively supervised by the FCA
  - Appropriate Resources – a firm must have appropriate financial and non-financial resources to carry on the relevant regulated activity
  - Suitability – a firm must be a fit and proper person having regard to all the circumstances as specified in FSMA
  - Business model – the firm's business model must be suitable for a person carrying on the relevant regulated activity

**Q2: Do you have any comments on the application of COND to CMCs?**

## Systems and controls

- 3.6** We propose to apply most of our rules and guidance about systems and controls to all CMCs. These are set out in SYSC and they explain how CMCs should organise and manage their affairs. We are also proposing that the guidance in 'Financial Crime: a guide for firms' should apply to CMCs.
- 3.7** The rules and guidance in SYSC expand on Principle 3: 'A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems'. They describe what we will expect from CMCs in order to comply with Principle 3. Those in charge of CMCs should take responsibility for how the CMC carries on its business, including acting in a way that enables us to monitor its business properly and that it conducts its affairs responsibly.
- 3.8** The table below provides a summary of the key rules that will apply to CMCs. It is not a comprehensive list and CMCs should familiarise themselves with the detail of SYSC and what it requires.

**Table 2: Summary of key applicable SYSC rules**

Sourcebook chapter	Key rule & references
<b>SYSC 4 General organisational requirements</b>	<p>A firm must have robust governance arrangements (SYSC 4.1.1R)</p> <p>A firm (with the exception of a sole trader) must have adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels (SYSC 4.1.4R)</p> <p>A firm (as above) must allocate responsibility for ensuring that the firm complies with the regulatory system to those who direct the business (SYSC 4.3.1R)</p>

Sourcebook chapter	Key rule & references
<b>SYSC 5 Employees, agents and other relevant persons</b>	A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them (SYSC 5.1.1R)
<b>SYSC 6 Compliance, internal audit and financial crime</b>	A firm must have policies and procedures sufficient to ensure compliance of the firm with the regulatory system and to counter the risk that the firm might be used to further financial crime (SYSC 6.1.1R)
<b>SYSC 8 Outsourcing</b>	A firm is responsible for the compliance of its outsourced operations (SYSC 8.1.6R)
<b>SYSC 9 Record-keeping</b>	A firm must keep orderly records of its business to enable the FCA to monitor the firm's compliance (SYSC 9.1.1R)
<b>SYSC 10 Conflicts of interest</b>	A firm must take appropriate steps to identify and to prevent or manage conflicts of interest between the firm and a client, or between two clients (SYSC 10.1.3R)  A firm must have arrangements to prevent these conflicts of interest from adversely affecting the interests of its clients (SYSC 10.1.7R)  If the preventative arrangements are not sufficient to manage the risks of damage, the firm must disclose the conflicts of interest to the client before undertaking business for them (SYSC 10.1.8R)
<b>SYSC 18 Whistleblowing</b>	The FCA would regard as a serious matter any evidence that a firm had acted to the detriment of a whistle blower (SYSC 18.3.9R)

**3.9** The senior management of a CMC must ensure that their staff are able to do their jobs competently. CMCs must make sure that their staff are properly advising customers about making their claim, and know about the relevant claims sector. Given that each sector has different procedures for pursuing a claim, this is essential to ensure customers receive a good service.

**3.10** CMCs will also be required to prevent conflicts of interest or to manage them properly. An example of this could be when a CMC arranges a hire car for a customer, while also processing the claim for damages to a car. A CMC might benefit from a prolonged period to process the customer's claim to make a greater profit from the car hire. However, it is in the customer's interest to process the claim in a timely manner. To manage conflicts of interest such as this, CMCs will need to have systems in place to either remove or manage the conflict to reduce customer harm caused by conflicts of interest. In the above example we would not expect the customer to suffer harm due to delays caused by the CMC.

**3.11** We do not expect a small CMC dealing with a low number of customers to have the same systems and controls as a large CMC. We do expect the same outcome. We encourage CMCs to take a proportionate approach when interpreting their responsibilities under the rules. As SYSC4.1.4R sets out, CMCs must have internal control mechanisms to ensure they implement decisions taken and procedures established at the CMC, while taking into account the nature, scale and complexity of the business of the CMC, and the nature and range of the services and activities undertaken in the course of that business.

### Financial crime controls

**3.12** SYSC6.1.1R states that firms should have policies and procedures in place to counter the risk that they might be used to further financial crime. CMCs should consider the guidance in FIN (Financial Crime: a guide for firms) to understand the policies



and procedures they could establish to comply with our financial crime rule. We are updating this guidance to make clear that it is relevant to CMCs.

### Whistleblowing

**3.13** Our expectations about whistleblowing are part of our aim to build and maintain trust in financial markets and ensure the integrity of individuals in the industry. Our requirements for whistleblowing are set out in SYSC 18. The FCA is a 'prescribed person'<sup>23</sup> under the Public Interest Disclosure Act 1998 (PIDA). The PIDA provides the legal framework for protecting workers from harm if they blow the whistle on their employer. Under PIDA, workers may tell the relevant prescribed person about suspected wrongdoing they believe may have occurred, including crimes and regulatory breaches. Passing on information like this is known as making a disclosure.

**3.14** We give more information about our treatment of whistleblower disclosures, including protection of identity, on our website.<sup>24</sup>

#### **Q3: Do you agree with our proposal to apply SYSC to CMCs?**

### General Provisions

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**3.15** We propose applying our General Provisions (known as GEN) to CMCs. GEN contains rules that mainly cover the administrative duties that apply to all the firms we regulate. These rules aim to make sure customers are not misled, that all firms operate on a level playing field and that they are transparent about their regulatory status.

**3.16** GEN describes:

- the ban on firms claiming or implying that we have endorsed their business (GEN 1)
- how to interpret our Handbook of rules and guidance (GEN 2)
- how firms authorised by us must describe their regulatory status (status disclosure) (GEN 4)
- restrictions on using our name and our logo (GEN 5)
- the ban on taking out indemnity insurance against the risk of having to pay financial penalties (GEN 6)
- the ban on firms charging a customer more than a basic rate to call its telephone line where a contract with the customer has been entered into (GEN 7)

**3.17** Please note this is not a complete list and we expect CMCs to familiarise themselves with GEN more broadly.

#### **Q4: Do you agree with our proposal to apply GEN to CMCs?**

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<sup>23</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604935/whistleblowing-prescribed-persons-guidance.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604935/whistleblowing-prescribed-persons-guidance.pdf)  
<sup>24</sup> [www.fca.org.uk/publication/corporate/how-we-handle-disclosures-from-whistleblowers.pdf](http://www.fca.org.uk/publication/corporate/how-we-handle-disclosures-from-whistleblowers.pdf)

## 4 Conduct standards

- 4.1** This chapter explains our proposals for applying various conduct of business rules to CMCs. These rules will be included in a new Handbook sourcebook called 'Claims Management: Conduct of Business sourcebook' (CMCOB). These proposals will raise standards across CMCs and tackle harms such as the lack of clarity some CMCs provide about their services. They will also help to address the number of nuisance calls and texts made by the industry and reduce the level of spurious or fraudulent claims.

### CMCs will need to:

- Comply with the client's best interests rule. This means that CMCs will need to 'act honestly, fairly and professionally' in accordance with the best interests of its customers.
- Comply with general conduct of business rules including not presenting a claim which the CMC knows or has reasonable grounds to suspect is fraudulent or without merit.
- Provide a mandatory cooling off period of 14 days.
- Undertake sufficient due diligence on lead generators from whom they accept leads to ascertain that the lead generator is authorised and has appropriate systems and processes in place to ensure compliance with relevant data protection legislation and privacy electronic communications legislation. They will also need to keep a record of the source of any leads.
- Record calls they have with customers and keep the recording for a minimum of 12 months.
- Ensure advertising which uses 'no win, no fee' or similar language includes information about the cost of the service and free alternative options where these are available to customers.
- Give the customer a single page summary document with key information on fees and alternative options, where available.
- For those with an ongoing relationship with the customer, regularly update the customer about the progress of their claim, including an estimate of the fee that will be charged.
- Have clear, effective and appropriate procedures in place for customers who are in arrears with their fees and specific policies for the fair treatment of vulnerable consumers.

### General conduct of business rules to apply to CMCs

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- 4.2** CMCs should read the instrument attached at Annex 1 to see the full set of conduct rules that we propose to apply and the guidance that we propose to give. The rest of this chapter highlights some key provisions we believe may be of particular interest.

#### Customer's best interest rule

- 4.3** We expect CMCs to act in the best interests of their customers. So we are proposing a rule that requires this, and that CMCs must 'act honestly, fairly and professionally' in accordance with the best interests of its customers.

#### Investigating the basis of a claim

- 4.4** To address the harm resulting from high numbers of spurious and fraudulent claims in this sector, we propose a specific rule prohibiting CMCs from presenting a claim which is fraudulent, has no good, arguable base, or is frivolous or vexatious. We also intend to prohibit CMCs from advising their customers to make such claims. We propose



that CMCs should take reasonable steps to investigate the existence and merits of a potential claim, and to substantiate the claim's basis before a claim is submitted.

### Vulnerable consumers

- 4.5** Our 'Future Approach to Consumers'<sup>25</sup> shows how different consumers can become vulnerable at different times in their lives and the need for firms to adapt to these changing circumstances to take the needs of vulnerable consumers into account. To help achieve this, we propose that CMCs should have procedures in place to identify and protect vulnerable consumers. A vulnerable consumer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a CMC is not acting with appropriate levels of care.<sup>26</sup>

### Cancellation and termination rights

- 4.6** It is important that customers are given sufficient time to consider their options and whether a CMC is the right option for them, and if not, to be able to cancel a contract. If the customer is unhappy about the service they are receiving they should be able to terminate a contract. We propose to incorporate similar rules on cancellation rights as the current CMR rules. We will require CMCs to set out a mandatory cooling-off period of 14 days after signing an agreement. Customers will be allowed to withdraw from a contract in that time and recover any sums paid to the CMC. We also propose to permit customers to terminate a contract at any time with CMCs only able to charge reasonable fees for any work already undertaken.
- 4.7** The separate requirements that apply to arrangements subject to regulation 8 of the Damages-Based Agreements Regulations 2013 (terms and conditions of termination in an employment matter), or any similar Regulations made for Scotland under Part 1 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, will continue.

**Q5: Do you agree that CMCs should be obliged to comply with these proposed general conduct of business rules?**

### Using third-party lead generators

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- 4.8** We propose that CMCs should undertake due diligence on any lead generator from whom they accept leads. For example, the CMC should check that the lead generator is authorised (or is entitled not to be authorised) and has processes in place to ensure leads are obtained in line with relevant data protection legislation and privacy and electronic communications legislation which includes the government cold calling ban. We propose that CMCs must not use a lead generator if the CMC is not satisfied about the systems and processes in place for that lead generator. CMCs will also need to keep a record of the source of any leads.
- 4.9** CMCs that get leads from third parties based overseas must also ensure that the third parties have followed the relevant requirements. Generally, leads from third parties based in the UK or outside the EEA must have been acquired in line with UK requirements. Leads from third parties within the EEA (except the UK) need to be acquired in line with the requirements set down by that EEA state.

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<sup>25</sup> [www.fca.org.uk/news/press-releases/fca-publishes-future-approach-consumers](http://www.fca.org.uk/news/press-releases/fca-publishes-future-approach-consumers)

<sup>26</sup> [www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability](http://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability)

**Q6: Do you agree that CMCs should be obliged to comply with these proposed rules on using third-party lead generators?**

## Recording calls

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**4.10** In line with the Brady Review's recommendation, we propose to require CMCs to record all calls and electronic communications such as text messages and e-mails with all their customers and potential customers. We propose that CMCs will need to keep call recordings for a minimum of 12 months after the latest of:

- the CMC's final contact with the customer
- the conclusion of the contract with the customer
- the settlement of the claim
- the decision by the customer to no longer pursue the claim or the withdrawal of the claim by the customer
- any related ongoing legal proceedings have finished
- the conclusion of the handling of any complaint made by the customer to or about the CMC

**4.11** A recording of a sales call to a customer which does not result in any further contact will therefore need to be kept for 12 months.

**4.12** CMCs carry out a large amount of business by telephone; so this is where much of the harm in the market happens. For example, harms resulting from misleading or aggressive sales or marketing techniques, and cold calling. So we consider it appropriate to require CMCs to record all customer calls about the claim, from advising a customer about the claim to conversations giving information and updates. It would also apply whether the CMC or the customer makes the call.

**4.13** Among other benefits, this will help us to identify if a CMC is not complying with the prohibition on cold calling without consent. Having this information means we will be able to work with the relevant authorities to identify and act on poor practices.

**4.14** CMCs would not have to record communications with third parties (eg financial services providers) under these new requirements.

**Q7: Do you agree with our proposal to require CMCs to record all calls and electronic communications with their existing and potential customers?**

**Q8: Do you agree with our proposal to require call recordings to be kept for a minimum of 12 months from the latest of the events specified at paragraph 4.10 above?**



## Marketing by CMCs

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- 4.15** In CMCOB we refer to marketing by CMCs as 'financial promotions' to be consistent with other FCA sourcebooks and to reflect the relevant legislation.
- 4.16** Under existing CMR regulation, one of the categories of regulated business is 'advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action'.
- 4.17** Under the new regulatory regime, the Government consultation proposed that seeking out (except to the extent the activity is caught by the financial promotions regime), referring details of, or identifying claims – including potential claims – will be a regulated activity. Broadly speaking, lead generation will be a regulated activity, and a firm carrying on that activity will need the relevant FCA permission. Similarly, marketing of claims management services will be a financial promotion and is therefore directly regulated by the FCA.
- 4.18** The financial promotions rules will apply to CMCs operating in all sectors. So CMCs will have to comply with our Handbook rules, and take note of any relevant Handbook guidance. PERG 8<sup>27</sup> in the FCA Handbook gives guidance about how the Financial Promotions Order and the exemptions in it apply to firms.
- 4.19** Principle 7 requires that communications, including marketing activity should be clear, fair and not misleading. We also propose rules so that, where any marketing includes reference to the cost of the claim being on a 'no-win, no fee' basis, or similar language, the CMC should also set out details of their charges.
- 4.20** Where the customer may be able to make the claim themselves for free, either to the person against whom they wish to complain, or to a statutory ombudsman or compensation scheme, this needs to be made clear in the promotion. CMCs must also not state that claims made through them have an increased chance of success where there are statutory ombudsman or compensation schemes that the customer could use themselves and for free. Where these alternatives do not exist we propose that CMCs should not state that the customer will obtain a better outcome or the claims will be resolved more quickly than if they were to claim directly, if they cannot support these statements with robust evidence.
- 4.21** We will also incorporate the existing CMR prohibitions against cold calling in person (eg 'door-stepping') and against advertising in medical or care facilities or public buildings without the prior approval of the management of the facility or building.

### **Q9: Do you agree with our proposals for marketing by CMCs?**

## Communicating with customers – pre-contract and ongoing disclosure

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### **Pre-contract disclosure**

- 4.22** Before a CMC enters into a contract with a customer, we propose to require them to set out the following information in a one-page summary document so the customer can make a fully informed decision about whether to use the CMC:

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<sup>27</sup> [www.handbook.fca.org.uk/handbook/PERG/8/?view=chapter](http://www.handbook.fca.org.uk/handbook/PERG/8/?view=chapter)



- A fee illustration or estimate setting out how fees and charges will be calculated (we discuss this further in para 4.27 below).
- When the customer may be able to make the claim themselves for free to a statutory ombudsman or compensation scheme, or an alternative dispute resolution scheme that the CMC is aware the respondent uses, a statement to that effect.
- A summary of the services that the CMC will provide so the customer can easily understand what the CMC will be doing at each stage of the claims process. This information should cover a summary of the main stages of a claim, including making the initial claim, chasing responses, agreeing a claim and getting compensation. The CMC will also need to set out what customers will be expected to do, such as form-filling, attending court etc.
- Information about rights to cancel the agreement during the cooling-off period and to terminate the contract after that period including any termination fees payable by the customer.

**4.23** We also propose that CMCs provide other information to the customer which does not need to be in the single-page summary. This includes:

- information about the terms and conditions of the contract
- where the customer has been introduced to a CMC by a third party, information about any fees the CMC has paid to the third party
- an outline of the CMC's complaints procedure, including a statement that the CMC is a member of the Ombudsman Service

**4.24** When CMCs compile this single-page summary, and when they present other information to the customer, they should bear in mind that the key requirement for communication with customers is that all communications should be clear, fair and not misleading, for example, avoiding jargon wherever possible.

**4.25** We are carrying over the existing CMR Client Specific Rule 10 to the new rules. This requires CMCs to make reasonable enquiries to find out if there are other ways the customer can make their claim. We have proposed guidance to clarify the purpose of this rule. It is most common in personal injury claims where a customer has some form of legal expenses insurance from, for example, their car or home insurance. In these cases, we would expect CMCs to check this before they enter into a contract with a customer and highlight to the customer that they may be able to use this alternative service if it is available.

**4.26** We are also carrying over the existing CMR Client Specific Rule 14, with a minor modification. Our proposed rule requires CMCs to take reasonable steps to ensure that the customer understands the contract they are agreeing to. We have proposed guidance to indicate to CMCs that they should take further steps in this regard when dealing with vulnerable customers.

### **Fee disclosure**

**4.27** We propose introducing a standard approach to calculating 'typical examples' to illustrate fees for those CMCs which charge by reference to the amount recovered.



These CMCs will be required to illustrate the total fees (including Value Added Tax) they would charge, in pounds and pence, using three standard figures for claims redress: £1,000, £3,000 and £10,000.<sup>28</sup> This information should include a clear statement that the standardised figures used for the cost illustrations are not to be taken as an estimate and that the fees charged in practice may vary.

**4.28** Requiring CMCs to disclose fees on this standardised basis makes it simpler for customers to compare the fees that different CMCs may charge. It also helps customers understand how a percentage charging model will give different amounts for charges which increase as the compensation amount increases. If the CMC charges on an hourly basis it may not be possible to give an exact figure for the likely charge. In these cases, we would expect the CMC to provide a best estimate of their total fee (including VAT). This should be based on the typical number of hours the CMC expects to spend on a claim of that type and the CMC's hourly rate. It would be unacceptable if this was shown to be consistently less than the actual fee charged across a range of customers. Regardless of the type of illustration or estimate provided at this stage, as we set out below, we propose to require CMCs to promptly update customers with a reasonable estimate of the fee that will be charged, or with any revision to previous estimates, once they have sufficient information to do so.

**4.29** CMCs that are lead generators and pass leads to a third party will need to set out a prominent statement, which can be done orally, when communicating with customers that they receive a fee for introducing customers to a third party or for passing on their details. An example of the fee would be payments that lead generator CMCs receive from solicitors or others for introducing personal injury claims. These CMCs would also need to let the customer know that they may be able to make the claim themselves for free to a statutory ombudsman or compensation scheme. The CMC will need to ensure payments they receive are not at odds with the general ban on referral fees in this sector.<sup>29</sup>

**Q10: Do you agree with our proposals for existing pre-contract disclosure requirements?**

### Providing customers and others with information on an ongoing basis

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**4.30** We propose requiring CMCs to update the customer about significant developments of their claim. Updates should be regular even when there has been no progress.

**4.31** Regular updates ensure the CMC is less likely to lose contact with the customer. The customer will also better understand how their claim is progressing and the reason for any delays. We propose that CMCs should update their customers about key developments, and inform the customer at least every six months about what stage the claim is at. If there have been no material developments, our proposed guidance suggests that CMCs should explain why.

**4.32** We propose that, where the CMC has not offered a fixed fee, the CMC should update customers about the cost of fees for handling a claim, once the CMC has enough information to reasonably estimate this and this differs from the illustration or

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<sup>28</sup> From our survey of firms' typical claim size, the significant majority of claims would fit into this range.

<sup>29</sup> Section 56 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

estimate given at the pre-contract stage. The CMC will be likely to make this disclosure after hearing from the firm the customer is claiming against with key details about the claim. In a financial services claim, for example, a CMC is likely to have sufficient information to produce a revised estimate once it knows how much compensation the customer is claiming, including interest where relevant. If this estimate changes the CMC should provide a further update to the customer. This requirement will also apply to agreements entered into before 1 April 2019. However, CMCs will have until 1 July 2019 to provide this information.

- 4.33** Similarly, when the customer receives the invoice or compensation payment with the fee deducted, we propose that CMCs should give customers a clear explanation of how that fee was calculated. This should help reduce customer confusion and dissatisfaction about fees. The customer should be clear about the actual fee they will be charged before it is deducted from any compensation payment, and they should understand how it has been calculated. Further, the CMC should not take a payment from the customer without written consent from the customer to do so.
- 4.34** We propose that, when a customer's claim is rejected by the respondent, the CMC must tell the customer whether there are any statutory ombudsman or compensation schemes, or any other alternative dispute resolution services used by the respondent.
- 4.35** We propose requiring CMCs to forward key information intended for relevant parties promptly and in any event within 10 working days. For example, if the CMC receives information about a financial services claim against a bank from a customer, they should forward this information to the bank promptly.
- 4.36** These requirements only relate to those CMCs handling a claim where regular ongoing contact with customers is expected. For example, they will not apply to CMCs that only carry out lead generation which involves passing the claims management onto another party and so have no ongoing relationship with the customer.

**Q11: Do you agree with our proposals for ongoing disclosure?**

### Collecting fees

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- 4.37** We propose to require CMCs to provide customers with a clear explanation of their fees and charges whenever they issue a request for payment. We also propose to require CMCs to have clear, effective and appropriate policies and procedures for dealing with customers in arrears, including specific policies for vulnerable customers.
- 4.38** We propose supporting Principle 6 of our Principles for Businesses with rules and guidance to ensure that customers in arrears should be treated fairly. CMCs should only make extra charges to customers in arrears where necessary to cover the CMC's costs.

**Q12: Do you agree with our proposals for collection of fees by CMCs?**



## 5 Supervision and reporting

- 5.1** This chapter sets out the rules we propose to help us supervise CMCs. This includes CMCs' obligations to report key information, events and changes to us both on a regular and one-off basis.
- 5.2** Our supervisory model is built on analysing data and having good communications with the firms we regulate. Supervising the sector effectively will help to address all of the harms identified in this market.

### We propose:

- applying the relevant sections of our Supervision manual (SUP) to CMCs
- requiring CMCs to notify us of significant changes in their business
- when carrying out due diligence on lead generators, requiring CMCs to notify us if they become aware of other firms carrying on claims management activity without authorisation
- requiring CMCs to report important data about their business to us annually

- 5.3** The table below summarises the key sections of SUP that we propose applying to CMCs in line with the other firms that we regulate. It then goes on to give more detail on the main proposals.

**Table 3: Key sections of SUP that will apply to CMCs**

SUP chapter	Key rules and guidance
<b>SUP 1A</b> <b>The FCA's approach to supervision</b>	Sets out the relationship between the FCA and authorised firms, the 'three pillar' supervision model and the supervision tools we can use.
<b>SUP 2</b> <b>Information gathering by the FCA or PRA on its own initiative</b>	The FCA can gather information in multiple ways: through meetings with firms, visits, information requests or mystery shopping. SUP 2 also explains the limitations of the FCA's powers when accessing protected items or those subject to banking confidentiality.  A firm must take reasonable steps to ensure that outsourced suppliers are open and co-operative with the FCA's information gathering work.
<b>SUP 3</b> <b>Auditors</b>	A firm which must appoint an auditor to produce a client asset report must: <ul style="list-style-type: none"> <li>• ensure the office of auditor is not left vacant for more than 28 days</li> <li>• ensure the auditor is independent of the firm</li> </ul> An auditor of a firm must cooperate with the FCA in the discharge of their duties in accordance with SUP.  A client asset report must: <ul style="list-style-type: none"> <li>• be produced annually in the form prescribed by the FCA</li> <li>• contain the auditor's opinions on the matters required</li> <li>• deliver the final report to the firm and the FCA at the same time</li> </ul> An auditor can access certain types of the firm's documents.
<b>SUP 5</b> <b>Reports by skilled persons</b>	The FCA may appoint or require the appointment of a skilled person to provide it with a report. If a firm appoints a skilled person, they must require that person to co-operate with the FCA and waive any duty of confidentiality.

SUP chapter	Key rules and guidance
<b>SUP 6</b> <b>Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements</b>	Explains: <ul style="list-style-type: none"> <li>• how a firm might apply for authorisation, or permission to carry out a regulated activity, or to vary or cancel that permission</li> <li>• how the FCA must determine these applications</li> <li>• how the FCA might refuse applications to cancel permission or impose requirements upon the firm when cancelling permissions</li> </ul>
<b>SUP 7</b> <b>Individual requirements</b>	The FCA can vary a firm's permission to carry out a regulated activity and the FCA can set individual requirements and limitations on its own initiative.
<b>SUP 8</b> <b>Waiver and modification of rules</b>	The FCA can waive or modify rules for firms, if they have applied for or consented to those changes. This explains the procedure firms and the FCA must follow to do this.
<b>SUP 9</b> <b>Individual guidance</b>	The FCA can give individual guidance to a firm. This chapter sets out the procedure for firms to obtain such guidance.
<b>SUP 11</b> <b>Controllers and close links</b>	A firm must notify the FCA in writing of a change in control.
<b>SUP 15</b> <b>Notifications to the FCA</b>	Firms must notify the FCA either orally, in writing, or using a form (depending on the notification) about significant changes in business.
<b>SUP 16</b> <b>Reporting requirements</b>	Sets out the information a firm should report to us on a regular basis.

**Q13: Do you agree with our proposed application of the existing SUP rules to CMCs?**

## Notification of significant changes in business

**5.4** We propose applying our notification requirements to CMCs. This means that CMCs will have to notify the FCA when there is a significant change in their business. The table below sets out each notification requirement.

**Table 4: Key notification requirements that will apply to CMCs**

SUP provision number	Notification reason	Notification method/timing
<b>11.4.2R-11.4.9G</b>	Change in control of firm	In writing, as soon as the decision to change control is made, or (if change occurs without the firm's knowledge) within 14 days once aware of the change
<b>15.3.1R</b>	Matters having a serious regulatory impact eg failure to satisfy a Threshold Condition or any matter affecting the firm's ability to provide adequate provision of services which could result in serious detriment to the customer	Using the Notification Form, or if appropriate, telephone, as soon as the CMC is aware that event has or may have occurred or that it might occur in the future



SUP provision number	Notification reason	Notification method/timing
<b>15.3.8G (Principle 11)</b>	Anything relating to the firm of which the FCA would reasonably expect notice, such as business restructuring or a significant failure in systems or controls	Orally or in writing within a time period depending on the event, but before other internal or external communications
<b>15.3.11R</b>	Significant breach of a rule or requirements in or under the Act	Using the Notification Form as soon as the firm is aware, or has information which reasonably suggests, that such an event has, may have or might occur
<b>15.3.15R</b>	Civil, criminal or disciplinary proceedings brought against firm	Immediately
<b>15.3.17R</b>	A significant event involving fraud, errors or other irregularities	Immediately
<b>15.3.21R</b>	Event related to insolvency, bankruptcy and winding up	Immediately
<b>15.3.32R</b>	Significant infringement of any applicable competition law	Immediately on awareness or information reasonably suggesting infringement using Notification Form
<b>15.5.9R</b>	Change in name, address and telephone number	Reasonable advance notice using Notification Form

### CMC specific notifications

**5.5** As well as the notifications outlined above, we propose requiring CMCs to notify us if they become aware of another CMC undertaking regulated activity without the appropriate authorisation when carrying out due diligence on a lead generator. They should use the Notification Form found in SUP 15 Annex 4 to do so.<sup>30</sup> If CMCs come across other firms carrying on regulated activity more generally without the requisite permissions, CMCs are encouraged to use the same form or, e-mail or call us to report this, but they are not required to do so.

**5.6** All the data that should be included in notifications can be given in the formats set out in SUP 15 Annex 4 and using the methods set out in SUP 15 Annex 4. All regulatory reporting (ie that reporting which is required regularly and are not driven by a specific event occurring) will need to be sent to us via the appropriate online system.

**Q14: Do you agree with the new notification requirements and guidance we are introducing into SUP 15?**

<sup>30</sup> [www.handbook.fca.org.uk/form/sup/SUP\\_15\\_ann\\_04\\_20130401.pdf](http://www.handbook.fca.org.uk/form/sup/SUP_15_ann_04_20130401.pdf)

## Ongoing reporting requirements

**5.7** In addition to the overarching obligations of Principle 11, we are proposing a set of specific data reporting obligations for CMCs, which we set out in the table below.

**Table 5: Ongoing reporting requirements we propose applying to CMCs**

Form name	Information required	Handbook location of requirement	Frequency	Submission
<b>CMC001 – key data from CMCs</b>	Includes staff numbers, client money held, prudential resources, professional indemnity insurance, detailed product information and information on third party generator leads	SUP 16.25 and SUP 16 Annex 44R with guidance notes in SUP 16 Annex 45G	Annually	Within 30 business days of the firm's accounting reference date (ARD)
<b>CMC-Complaints</b>	Includes the number of complaints, reason for complaint and any redress paid to customer	DISP 1.10 and DISP 1 Annex 1B	Annually	Within 30 business days of the firm's ARD
<b>Standing Data</b>	Basic firm details, such as the firm's postal and website addresses and contact details	SUP 16.10	An annual check and update the FCA if the information is incorrect	Within 30 business days of the firm's ARD

### Timing and method for collecting data

**5.8** We propose that the regular reporting requirements for CMCs will be completed annually and electronically. Apart from standing data requirements, which should be updated when changes occur and checked at least once a year, all other data requirements are due within 30 business days of the CMC's ARD each year. The only exceptions to this are any CMCs with an ARD between 1 April 2019 and 30 June 2019, who will not be required to report until their first ARD which occurs on or after 1 July 2019 (and which, in most cases, will not be until 2020). We are still considering the best system for electronic reporting, and will provide more information as part of our PS.

### Administration fee

**5.9** As for all the firms we regulate, we propose to apply a late submission administration fee of £250 for the reporting requirements covered in this chapter. We may also take enforcement action against a CMC if the information it provides is incomplete or inaccurate.



- Q15:** Do you have any comments on the reporting requirements set out in this CP and the accompanying legal instrument? We are particularly interested in any specific data requirements that you think should not apply to CMCs and any additional data to what we have set out that you think would be valuable for the FCA to collect from the sector.
- Q16:** Do you agree with the proposal for the FCA to impose an administration fee on CMCs for late data submissions?



## 6 Prudential standards & wind-down procedures

- 6.1** This chapter describes our prudential standards and sets out how we propose to apply them to CMCs. It also explains our proposals for the wind-down procedures that CMCs should follow if they plan to cease carrying on claims management activity, or are going out of business (whether voluntarily or involuntarily).

### Our key proposals

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- 6.2** Our approach to the firms that we regulate prudentially is to focus on the harms that they could cause to customers and markets. We set prudential requirements in proportion to the risk of such harms arising.
- 6.3** Where customers or markets rely on the services provided by firms, a sudden exit from the market by the firm could cause them harm, such as disruption to customer claims. Firms should have sufficient capital resources to withstand unexpected shocks to their finances in order to reduce this risk of harm. If a firm exits the market, we also need to ensure that it does so in an orderly way.

#### We propose:

- that all CMCs will need to have sufficient financial resources to meet their liabilities
- that CMCs, other than those which are solely lead generators, hold a minimum level of eligible capital to meet the prudential resources requirement, which is the higher of:
  - £10,000 for Class 1 CMCs and £5,000 for Class 2 CMCs, or
  - the CMC's fixed overheads requirementwe propose that these requirements will apply from 1 August 2019
- if the CMC holds client money they will need to hold an additional £20,000 in eligible capital. This includes CMCs that are lead generators holding client money. For CMCs that hold client money, we propose that they will need to comply with this requirement from 1 August 2019
- to keep the existing professional indemnity insurance (PII) requirements that apply to CMCs that represent customers in personal injury claims
- to require CMCs to carry out specific wind-down procedures if they decide not to carry on claims management activity, or are going out of business (whether voluntarily or involuntarily)

### General solvency requirement for all CMCs, including those which are solely lead generators

- 6.4** All FCA-authorized firms are required to have adequate resources. This means that as a minimum all CMCs, including those which are solely lead generators, must have sufficient financial resources to meet their liabilities as they fall due. We propose to reflect this in a general solvency requirement.

### Additional prudential requirements for CMCs which are not solely lead generators

- 6.5** In addition to the general solvency requirement, we are proposing that CMCs which are not solely lead generators hold extra prudential resources to act as a buffer above



their basic solvency. This follows our approach to our other prudential regimes such as for insurance mediation (MIPRU 4), debt management firms (CONC 10) and personal investment firms (IPRU-INV 13). Prudential resources include, for example, share capital, reserves, retained earnings and subordinated debt.

**6.6** CMCs that act solely as lead generators generally would not provide investigatory, advisory or representation services to customers. Therefore, if a lead generator were to exit the market in a disorderly manner, the likelihood and severity of harm is expected to be lower. Therefore, we do not intend to apply this additional requirement to CMCs which are solely lead generators.

**6.7** In order to ensure that the additional prudential resources requirement for CMCs is proportionate to the risk of harm that they pose to customers and markets, we propose classifying them into two groups, based on their annual reported turnover in the year ending on its ARD:

- Class 1 CMC – a CMC with annual total income of £1 million or above, and
- Class 2 CMC – a CMC with annual total income below £1 million

**6.8** Based on this threshold, Class 1 CMCs would comprise the largest 10% of all CMCs by turnover. We feel these CMCs justify higher capital requirements due to the greater risk of harm they pose to customers.

**Q17: Do you agree with our proposal to apply bespoke prudential standards to CMCs, other than lead generators, and to separate these CMCs into two groups for the purposes of applying prudential requirements?**

### Prudential resources requirement

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**6.9** For existing CMCs, we propose that the prudential resources requirement should be the higher of:

- £10,000 for Class 1 CMCs and £5,000 for Class 2 CMCs, or
- the CMC's fixed overheads requirement

**6.10** The CMC's fixed overheads requirement is calculated as 2 months of the CMC's total expenditure in the year ending on its accounting reference date (excluding certain types of expenditure such as fully discretionary staff bonuses, and interest paid to customers on client money).

**6.11** For CMCs that have not yet started trading and are seeking authorisation, we propose that the prudential resources requirement would be the higher of:

- the fixed minimum amount of either £10,000 (for Class 1 CMCs) or £5,000 (for Class 2 CMCs) based on their projected total income for the next year, or
- the fixed overheads requirement calculated as the projected total expenditure for the first 12 months of trading

**6.12** These requirements aim to ensure that CMCs are able to wind down in an orderly way. CMCs can only make an orderly exit from the market if they have the financial resources to meet both the costs of:

- winding down, and
- continuing to run the business until it is wound down or its activities are restructured

**Q18:** Do you agree with our proposal to set the prudential resources requirement for CMCs, other than lead generators, on the basis of a fixed minimum amount and the fixed overheads requirement? If not, what other approach would achieve the same outcome of ensuring an orderly wind down?

### Specific requirements for client money

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**6.13** Another factor we considered is whether a CMC holds client money. CMCs that hold client money have greater inherent risk to, and potential impact on, customers. They also usually need more time and resources to wind down. We propose to add a further £20,000 to a CMC's prudential resources requirement if it holds client money. This requirement would also apply to CMCs that act solely as lead generators, but only if they hold client money.

**Q19:** Do you agree with requiring CMCs that hold client money to have additional prudential resources and/or do you feel the level we propose is appropriate?

### When the prudential resource requirement will apply

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**6.14** We know that some CMCs may initially be unable to meet the proposed prudential resources requirement. So we propose a transitional period of 4 months from April 2019. This should allow CMCs enough time to meet the prudential standards by either choosing to raise extra capital if they need to, or adjusting their business models. For CMCs that hold client money, we propose that they will also have until 1 August 2019 to comply with the additional £20,000 prudential resources requirement.

**Q20:** Do you agree that CMCs should meet the prudential resources requirement from 1 August 2019?

### Professional indemnity insurance

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**6.15** Currently, only CMCs that represent customers in personal injury claims<sup>31</sup> are required to have professional indemnity insurance (PII).

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<sup>31</sup> Refers to personal injury claims as defined within the meaning of the Civil Procedure Rules.



- 6.16** We considered whether to extend this PII requirement to all CMCs to address the harm that could be caused by a CMC's professional negligence, wrongful acts, errors and omissions. The PII requirement would not replace the other prudential standards, but would be additional to the CMC's prudential requirements.
- 6.17** Although we recognise that PII is a risk management tool used by firms, we do not consider it to be a substitute for regulatory capital because the loss coverage provided by PII is incomplete due to the various limits, excesses and exclusions that PII contracts normally contain. PII also does not provide firms with the financial resources required to wind down.
- 6.18** As PII plays an important role in managing risk through loss control, this is particularly relevant for CMCs that represent customers in personal injury claims. Therefore, we propose to keep the existing PII requirements that apply to CMCs that represent customers in personal injury claims, but not to extend them.
- 6.19** We propose to carry over the same minimum terms for the PII policy that were set out in the Compensation (Claims Management Services)(Amendment) Regulations 2008. These minimum terms are as follows:
- the minimum level of indemnity (or liability) must be £250,000 for each and every claim, and at least £500,000 for all claims dealt with during the period of insurance
  - any excess the CMC must pay on the policy can be no more than £10,000 per claim
  - the policy should provide cover for legal defence costs, and
  - the policy should be underwritten on a claims made and reported basis (this means both that the claim must be made against the CMC and the CMC must report it to the insurer during the period covered by the policy)
- 6.20** We will keep the minimum terms for the PII policy under review to ensure that they adequately address the liabilities that could arise over time.

**Q21: Do you agree with our proposal that the PII requirements for CMCs that represent customers in personal injury claims be retained but for the PII requirements not to be extended to all CMCs?**

**Q22: Do you agree with our proposal to carry over the minimum terms for the PII policy as set out in the Compensation (Claims Management Services) (Amendment) Regulations 2008?**

## Wind-down procedures

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- 6.21** We propose requiring CMCs to carry out specific procedures if they intend to cease carrying on claims management activity or are going out of business (whether voluntarily or involuntarily). This will mean customers can continue with their claims with minimal disruption and without delay.

- 6.22** We propose that CMCs that carry on any of the regulated activities of investigating claims, providing advice to claimants and representing claimants must notify their customers if they are to cease carrying on claims management activity or are going out of business. Where relevant, this notification should explain the next steps the client could take, including whether the customer may be able to make the claim themselves for free, either to the respondent against whom they wish to complain, or to a statutory ombudsman or compensation scheme, or an alternative dispute resolution scheme that the CMC is aware that the respondent uses.
- 6.23** We propose that this notification should be sent within 20 working days of it being determined that the CMC will cease carrying on claims management activities. Telling customers at this stage, rather than when the CMC loses its authorised status, will allow their customers to decide what steps to take to continue with their claim or complaint. For example they might continue with their claim using another CMC and need help with transferring their claim.
- 6.24** We also propose that CMCs must:
- For customers with an open or ongoing claim, return to the customer a copy of all information and documents relating to the claim within 40 working days of it being determined that the firm is to cease carrying on claims management activity.
  - Inform all relevant third parties (such as solicitors, an ombudsman or the organisation the complaint has been lodged against) that the CMC will cease carrying on claims management activity or will go out of business. They must also tell the third party who will be acting for the customer in place of the firm going forward, where this is known.
  - Notify the customer if it passes details of the customer's claim to a third party to progress it (such as another CMC).
- 6.25** Any lead generator which has indicated to customers that it is passing on a lead to someone who will assist them with a claim, but has not done so within 20 days of it being determined that the lead generator is to cease carrying on claims management activities, will need to inform those customers of this.

**Q23: Do you have any comments on the approach to wind-down planning that is being proposed, or evidence to support an alternative approach?**



## 7 Client money

- 7.1** This chapter sets out the rules we propose applying to CMCs that receive or hold client money on behalf of their customers when providing 'claims management services'.<sup>32</sup>
- 7.2** Money will be client money if a CMC receives the money into accounts that it (the CMC) controls, and holds it on behalf of a customer. That is, it is not the CMC's own money. A CMC is holding client money even if it is held for a short period of time or it is a small amount.
- 7.3** We will include these rules in a new Chapter 13 of the FCA's Client Assets sourcebook (CASS 13).

### What are our key proposals?

- 7.4** These proposed rules build on elements found in the existing CMR rules and add new requirements. We propose to apply the same client money rules to all CMCs to ensure the same level of protection for all CMC customers.
- 7.5** Our experience shows that an effective client money regime needs to be based on segregating client money from a firm's own money and holding it in a statutory trust. Adopting this approach for CMCs requires them to keep accurate records and accounts. This helps to protect this money from loss, as well as ring-fencing it for customers in case the CMC goes out of business.

#### Our proposals add the following new requirements:

- adding £20,000 to a CMC's capital resources requirement if it holds client money (see Chapter 6 on prudential standards and wind-down procedures)
- requiring that CMCs must pay out client money to clients as soon as reasonably practical
- creating distribution rules, which specify how client money must be distributed to clients in the event the CMC goes out of business
- requiring CMCs to appoint a person to be accountable for client money oversight

#### Our proposals strengthen elements found in the CMR Client Account rules<sup>33</sup> by:

- requiring CMCs to hold all client money in one or more client bank accounts and in accordance with the statutory trust requirements set out in CASS 13
- requiring that CMCs must maintain accurate records and accounts. This includes undertaking internal and external reconciliations each business day
- requiring that CMCs have an annual CASS audit, carried out by an external auditor

32 Claims management services are defined in s419A FSMA. 'Client' means a person for whom a CMC acts to provide a regulated 'claims management service'.

33 Ministry of Justice Claims Management Services Regulation Client Account Rules 2006.

**7.6** We explain these and other proposed requirements of the client money rules more fully below.

### **CASS oversight officer**

**7.7** We propose requiring CMCs to appoint a person who is accountable for overseeing the CMC's client money. This person will be responsible for:

- oversight of the client money operations of the CMC
- reporting client money matters to the CMC's governing body, and
- completing the client money aspects of the CCR005<sup>34</sup> return

**Q24: Do you agree with our proposals on appointing a CASS oversight officer? If not, why not?**

### **Segregation of client money**

**7.8** We propose that a CMC must:

- hold all client money in one or more dedicated client bank accounts
- use accounts held at an approved bank in the name of the CMC and include the word 'client' in the account title
- receive and hold client money as trustee<sup>35</sup> on the terms of a statutory trust set out in CASS 13, and
- pay a customer any interest earned on their client money

**7.9** Client money received or held by the CMC will be held on trust for the relevant customers. This means client money does not belong to the CMC itself and cannot be used by it for any reason.

**7.10** A CMC must complete and sign a client bank account acknowledgement letter for each client bank account it opens. It must then send this letter to its approved bank asking the bank to countersign the letter.

**7.11** These letters ensure that the approved banks know that any money in a client bank account does not belong to the CMC, but to the CMC's customers. The proposed rules provide a template acknowledgement letter and guidance on how CMCs should complete it. These letters must be in place before any client money is held by the CMC from the point when our rules come into effect.

**7.12** We also propose that, before a CMC opens a client bank account, and at least once a year after that, it must take steps to establish that the approved bank it has chosen is an appropriate place to hold client money. This is because a CMC must review the risks of holding client money at a particular approved bank.

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<sup>34</sup> See Appendix 1, Annex F to this CP, Annual Claims Management Report form SUP 3 16 Annex 44R: CMC001 Key data for Claims Management and Annex 45G guidance notes on this return.

<sup>35</sup> S137B FSMA states (broadly) that rules may make provision which results in clients' money being held on trust in accordance with the rules. We propose to exercise this rule making power to ensure that CMCs hold client money on the terms which we consider to be appropriate and in the best interests of clients as a whole.



### **Paying out client money as soon as is reasonably practical**

**7.13** We propose that, when a CMC receives money that belongs to its customer, it must pay this money to that customer as soon as is reasonably practical. This is to minimise the risk that the client's money is unreasonably delayed in the CMC's client bank accounts. It also minimises the time the customer is exposed to the risk of losing its money if the CMC goes out of business.

**7.14** How quickly the CMC can make the payment to the customer will depend on a number of factors, including the method of payment. But the firm must take concrete and appropriate steps within 2 business days of receiving the client money to ensure it is paid to the customer.

**7.15** When a CMC draws a cheque or other payable order to pay a customer, so discharging its fiduciary duty<sup>36</sup> to the customer, it must continue to treat the sum as client money until the customer cashes the cheque or order.

**Q25: Do you agree with our proposals on segregating client money and paying out client money as soon as practicable? If not, why not?**

### **Record keeping**

**7.16** We propose that a CMC must:

- keep the records and accounts it needs so that it can, at any time and without delay, distinguish client money held for one customer from client money held for any other customer, and from its own money
- generate these records internally (for example, cash books and client ledgers), separate from, and in addition to, any external records it has (for example, bank statements), and
- maintain their records and accounts so that they are accurate and that they set out all payments relating to customers.

### **Client money reconciliations**

**7.17** Client money reconciliations are essential for a CMC to ensure its books and records are accurate, complete and up to date. Performing reconciliations allows a CMC to identify discrepancies in its own records, and between its records and the approved bank's records.

**7.18** We propose that CMCs must conduct internal and external reconciliations each business day.

**7.19** To conduct an internal reconciliation, a CMC must use the values recorded in its own internal records and ledgers to do the following:

- work out the aggregate amount of client money held in its client bank accounts at the end of the previous business day ('client money resource')

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<sup>36</sup> An individual in whom another has placed the utmost trust and confidence to manage and protect property or money.



- check that this was at least equal to the amount of client money that the CMC needed to segregate for its customers at the end of that business day ('client money requirement')

**7.20** The CMC must not use externally generated values (eg bank statements) to do this task.

**7.21** An external reconciliation is required to check the accuracy of the CMC's internal records and ensure that the firm is actually holding the amount of client money it should be holding. This is done by comparing the CMC's internal records against the records of any third party approved banks with whom client bank accounts are held.

### Client money excess and shortfalls

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**7.22** We propose that, where the reconciliation reveals a shortfall in client money, the CMC must top up the client money bank account with its own money.

**7.23** Where the reconciliation shows an excess of client money, we propose that the CMC must take the excess from the client money bank account and treat the excess as the CMC's own money.

**7.24** For internal reconciliations, we propose that a CMC must top up any shortfall or take out any excess within one business day.

**7.25** It is important that CMCs remove excesses from client bank accounts so that it is clear which monies are client monies, and that there is none of the firm's money in the client bank account. If a CMC's money is mixed into a client bank account, general creditors can attempt to trace that money if the CMC goes out of business. This would increase the costs an insolvency practitioner faces when distributing client money, so reducing the amount that can be returned to clients.

### Notification requirements

**7.26** We propose that a CMC should be required to notify us, in writing, when it has breached specific rules. For example, if it fails to:

- carry out either an internal or an external reconciliation, or
- top up any shortfall in client money following the reconciliation

**7.27** We will review any notifications and decide what action we may need to take in response.

**Q26: Do you agree with our proposals on record keeping; reconciliations, including on top up of any shortfall and withdrawal of excess; and on notification requirements? If not, why not?**



### External audit

- 7.28** As we set out in Chapter 5, we propose that all CMCs subject to the client money rules must appoint an auditor to produce a CASS audit report. This report sets out the auditor's opinion on whether or not the CMC has complied with the CMC client money rules.
- 7.29** The auditor will be responsible for submitting the report to us. However, the CMC will need to:
- cooperate with the auditor, and
  - provide them with relevant information to complete their report
- 7.30** Generally speaking a CASS audit report must be sent to the FCA within 4 months of the end of the period covered by the report. The period covered by the CMC's first report must end not more than 53 weeks after it becomes subject to the CASS audit requirements. The first audit report must be submitted to the FCA within 4 months of the end of the period covered by that report.

**Q27: Do you agree with our proposals for an external client audit to be carried out? If not, why not?**

### Money due to the CMC

- 7.31** A CMC may receive money from a third party that includes fees owed to the CMC. A CMC might also receive money from a customer for services it has provided, for example an expert witnesses.
- 7.32** Once payments are contractually due and payable to the CMC, the amounts in question are not client money and the rules reflect that they do not need to be treated as client money.

### Client money distribution in the event of firm failure

- 7.33** If a CMC goes out of business while holding client money we propose requiring the CMC to treat all client money as if it is held in a notional pool. Then, we propose that the CMC must distribute that money on a pro-rata basis according to the amount it owes each customer. This will ensure a fair distribution of the client money held by the CMC.

**Q28: Do you agree with our overall proposals for a CMC client money regime? If not, why not?**

**Q29: Are there any of our proposals where more prescriptive rules or additional guidance would be beneficial? If so, what rules and guidance would you propose and why?**

## 8 Dispute resolution

- 8.1** This chapter sets out rules in our 'Dispute resolution: Complaints' sourcebook (DISP) which we propose to apply to all CMCs we regulate. These are the rules which cover how firms should handle complaints, and when complaints must be referred to the Ombudsman Service.
- 8.2** The FCA is responsible for setting the rules for the complaints under the 'compulsory jurisdiction' of the Ombudsman Service. Having robust, fair procedures for dealing with complaints helps to reduce harms in the CMC sector, particularly those involving poor service standards. Also the Ombudsman Service is an independent third party. Having them consider complaints helps to build consumers' trust that they will get a fair outcome when they complain.
- 8.3** The Ombudsman Service also has its own 'voluntary jurisdiction', which covers some types of complaints not covered by the compulsory jurisdiction. Firms join the voluntary jurisdiction by agreement with the Ombudsman Service. This chapter also sets out the Ombudsman Service's proposals about applying the voluntary jurisdiction to CMCs and is a joint consultation with the Ombudsman Service on those proposals.

### What are our key proposals?

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#### We propose to:

- bring CMCs carrying on business in Great Britain within the compulsory jurisdiction of the Ombudsman Service
- apply our complaints handling requirements in DISP to ensure that complaints are dealt with consistently, fairly and promptly
- give CMCs outside our regulatory regime access to the voluntary jurisdiction so that a greater range of CMC customers can make complaints to the Ombudsman Service

#### The Financial Ombudsman Service

- 8.4** The Ombudsman Service has a statutory duty to resolve disputes 'quickly and with minimum formality'. It therefore operates differently to the way a court operates. Its decisions are based on what, in its opinion, is 'fair and reasonable in all the circumstances of the case.'
- 8.5** The Ombudsman Service is free for consumers to use. When the Ombudsman Service decides to uphold a complaint, it can make a monetary award against the firm for an amount it considers gives fair compensation for the loss or damage suffered. The Ombudsman Service can also direct the firm to take such steps in relation to the complainant that it considers 'just and appropriate'.
- 8.6** The Ombudsman Service has a statutory award limit which is currently £150,000. (While it can recommend a firm pay any amount of redress, its recommendations are only binding and enforceable up to this limit if accepted by the complainant).



Any amounts above this limit are voluntary, and it is up to firms whether or not they pay the higher amount.

- 8.7** The Ombudsman Service has a published 'conflicts of interest' policy<sup>37</sup> which outlines how it deals with potential and perceived conflicts of interest, and will take active steps to ensure that they don't arise. A conflict, or a perceived conflict, might occur, for example, when the Ombudsman Service handles the complaint brought by a CMC on a customer's behalf, as well as a complaint about the CMC managing that claim. The Ombudsman Service is considering how its internal procedures and guidelines may need to develop to deal with any such conflict, and will continue to monitor this.

### Compulsory jurisdiction of the Ombudsman Service and complaints handling rules (DISP)

- 8.8** We propose to apply our complaints handling rules and guidance in DISP to all CMCs we authorise<sup>38</sup> – those established, or serving customers, in England, Scotland or Wales. This will mean that complaints about authorised CMCs should come within the compulsory jurisdiction of the Ombudsman Service.

**Q30: Do you agree with our approach to apply our complaint handling rules and guidance in DISP, including the compulsory jurisdiction of the Ombudsman Service, to all CMCs we authorise?**

- 8.9** The table below summarises the key sections of DISP that we propose applying to CMCs in line with the other firms that we regulate. It is not complete and CMCs should familiarise themselves with DISP more generally.

**Table 6: Key sections of DISP that will apply to CMCs**

Sourcebook chapter	Key rules and references
<b>DISP 1.2 Consumer awareness rules</b>	Firms must publish information about internal procedures for handling complaints and about the Ombudsman Service.
<b>DISP 1.3 Complaints handling rules</b>	Firms must have procedures in place to reasonably and promptly handle complaints and firms must ensure that complaints can be made free of charge.  The procedures should recognise that complaints require resolution.  The procedures should ensure that lessons are learned from complaints.  Firms must take steps to address any recurring or systemic problems.  A senior member of staff must have oversight for compliance with the rules until any SM&CR proposals come into effect. Further details will be given in the upcoming CP on how we propose to apply the SM&CR to CMCs.
<b>DISP 1.4 Complaints resolution rules</b>	Complaints must be investigated impartially and assessed fairly. Redress must be offered where appropriate, and a clear explanation must be given about the assessment of the complaint.

<sup>37</sup> [www.financial-ombudsman.org.uk/about/conflicts-of-interest.html](http://www.financial-ombudsman.org.uk/about/conflicts-of-interest.html)

<sup>38</sup> Some of the proposed rules will also cover CMCs which do not become authorised firms, for example we propose that the compulsory jurisdiction will cover complaints against CMCs which do not become authorised firms about acts or omissions before 1 April 2019.

Sourcebook chapter	Key rules and references
<b>DISP 1.5</b> <b>Complaints resolved by close of the third business day</b>	When a complaint has been resolved by close of the third business day following receipt of the complaint, a 'summary resolution communication' must be sent to the complainant. This must refer to the availability of the Ombudsman Service and indicate whether the firm agrees to waive any relevant time limit.
<b>DISP 1.6</b> <b>Complaints time limit rules</b>	A firm must send a prompt written acknowledgement of the complaint and keep the complainant informed thereafter. The firm must, by the end of eight weeks after receiving the complaint: <ul style="list-style-type: none"> <li>• send a 'final response' which offers redress or remedial action where appropriate or clearly explains why the complaint has been rejected, or</li> <li>• send a written response which explains why the firm has been unable to provide a final response, and when it expects to provide one, and</li> <li>• in either case, send information about referral rights to the Ombudsman Service together with an explanatory leaflet.</li> </ul>
<b>DISP 1.7</b> <b>Complaints forwarding rules</b>	If a firm considers another firm is solely or jointly responsible for the matter being complained about, a firm should forward the complaint to the responsible party, if known.
<b>DISP 1.8</b> <b>Complaints time barring rules</b>	A firm may reject a complaint received outside the relevant time limits but it must explain its decision to do so in a final response letter. The time limits are generally 6 years after the event or, if later, 3 years from the date when the complainant became aware of the cause for complaint.
<b>DISP 1.9</b> <b>Complaints record rules</b>	A firm must retain records of complaints for 3 years from the date the complaint was received.
<b>DISP 1.10</b> <b>Complaints reporting rules</b>	A firm must submit a report of complaints to the FCA annually. Please see section 5.7 on reporting requirements for more detail. If the number of complaints in the 12-month reporting period exceeds 1,000, the CMC will also be required to publish that complaints data.
<b>DISP 2</b>	Jurisdiction of the Ombudsman Service.
<b>DISP 3</b>	Complaint handling procedures of the Ombudsman Service.

**Q31: Do you agree with our proposal to apply our rules in DISP Chapter 1 to CMCs?**

**Voluntary jurisdiction of the Ombudsman Service**

- 8.10** As noted previously, while we make rules which state the complaints in respect of which the jurisdiction of the Ombudsman Service is compulsory (the 'compulsory jurisdiction'), the Ombudsman Service has its own 'voluntary jurisdiction' which financial firms may choose to participate in ('VJ participants').
- 8.11** The proposed national compulsory jurisdiction for CMCs is different to that covering financial services firms regulated by the FCA. This means in particular where CMCs carry on activities in Northern Ireland, consumers in Northern Ireland may not have access to the Ombudsman Service under the compulsory jurisdiction.
- 8.12** The Ombudsman Service therefore thinks it is appropriate for the voluntary jurisdiction to be available to VJ participants in relation to claims management activities not covered by the compulsory jurisdiction, including those CMCs which



carry on claims management activities in Northern Ireland in relation to customers outside of Great Britain, subject to the usual territorial restrictions of the voluntary jurisdiction (activities carried on from an establishment in the UK, or elsewhere in the EEA – if the conditions in DISP 2.6.4R(2) are met). They propose to amend DISP 2.5.1R as well as making other consequential changes to the voluntary jurisdiction.

**Q32: Do you agree with the Ombudsman Service's proposal to grant CMCs outside our regulatory regime access to the voluntary jurisdiction?**

## 9 Enforcement

### Enforcing our rules

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- 9.1** This chapter explains why and how we enforce our rules. It outlines our powers, processes and the enforcement action we can take.
- 9.2** Our enforcement work ensures there are real and meaningful consequences for CMCs and individuals who do not follow our rules and who cause actual or potential harm to customers and markets. Our enforcement staff work closely with our authorisation and supervision functions, as well as with other regulators and law enforcement agencies to detect misconduct, including unauthorised business.
- 9.3** FSMA sets out our enforcement powers, so we are not consulting on them. But we will apply the same approach to CMCs when carrying out enforcement investigations, using sanctions and decision-making, as we do with all other regulated firms.

### Proposal

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#### We intend to:

- apply our Enforcement Guide (EG) to CMCs
- apply our Decision and Procedure and Penalties Manual (DEPP) to CMCs

### Our approach to enforcement

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#### Opening an investigation

- 9.4** We will open an investigation to find out if there has been serious misconduct. When we open an investigation, we do not assume that there has been misconduct or that anyone involved in the investigation is guilty of misconduct. The purpose of the investigation is to get a clear understanding of the facts so that we can make a decision about whether and, if so what kind of, action may be needed.
- 9.5** A key difference between the FCA's investigation powers and those of the CMR is our ability to compel firms and individuals to give us information. These powers are set out in FSMA, and include the ability to:
- require firms and individuals to give us information and documents
  - get a search warrant to search and seize documents
  - require individuals to give information in an interview



- 9.6** You can find more information about these powers in Chapter 3 of EG (see 'More information about our enforcement' below).
- 9.7** When we have completed our investigation, we will determine whether there has been misconduct on the part of a firm and/or individuals. Based on this, we will then consider the appropriate response. We can use a range of measures to best address a firm's or individual's wrongdoing.
- 9.8** Examples of our powers include the ability to:
- censure firms and individuals through public statements
  - impose financial penalties
  - apply to the Court for an injunction to stop certain conduct or to freeze assets
  - seek an order requiring redress or restitution where the misconduct has caused harm to customers
  - prosecute<sup>39</sup> firms and individuals who carry out regulated activities without authorisation
  - withdraw a firm's authorisation, preventing it from operating in financial services

### **How we make decisions and impose penalties**

- 9.9** DEPP<sup>40</sup> sets out our policy and decision-making procedure for giving statutory notices. These are warning notices, decision notices and supervisory notices, and they set out our reasons for proposing and deciding to take action.
- 9.10** DEPP also shows the framework we use to decide whether to impose a financial penalty and how we calculate the amount of the penalty. One of the key differences in our approach and powers compared to the CMR is that we calculate any financial penalty using a different framework. There is no upper cap on the amount of the penalty we can impose. DEPP also sets out our policy on suspensions, restrictions and prohibitions (such as banning someone from holding any role in financial services). There is more information on these topics in Chapters 6 and 6A of DEPP.

### **Resolving and contesting cases**

- 9.11** We have a process for resolving cases by agreement with the firm, which involves the firm entering into a 'focused resolution agreement'. This means that the firm can contest some aspects of our case but still be able to get some discount on the amount of our proposed penalty. We explain this in Chapter 5 of DEPP. Generally, decisions on resolution will be taken by Executive Directors in the FCA ('settlement decision makers'), and our Regulatory Decisions Committee (the RDC) will decide any contested issues.
- 9.12** The RDC is a committee of the FCA's Board, but is separate from our executive management structure. Apart from the Chairman, the members of the RDC are not employed by the FCA and none of them will have been involved in the enforcement

39 The FCA is empowered to bring criminal prosecutions in England in Wales. However in Scotland, the FCA's role is limited to being a "specialist reporting agency", with the Crown Office and Procurator Fiscal Service (COPFS) being the responsible body for taking forward the prosecution of crime.

40 [www.handbook.fca.org.uk/handbook/DEPP/](http://www.handbook.fca.org.uk/handbook/DEPP/)



investigation. If the firm or individual disagrees with the RDC's decision they can refer a case to the Upper Tribunal (Tax and Chancery Chamber), and that Tribunal (which is entirely independent from us) will consider it afresh. We give more information about the RDC in Chapter 3 of DEPP.

### **More information about our enforcement**

- 9.13 Our Enforcement Guide**<sup>41</sup> – This sets out our approach to enforcement and how we use our powers of investigation, gather information and conduct an investigation. It also sets out our approach to imposing financial penalties and other disciplinary sanctions, varying or cancelling a CMC's permissions, imposing prohibition orders on individuals, seeking injunctions, and redress. It explains how we will use our powers under the Consumer Rights Act 2015 against unfair terms and consumer notices.
- 9.14 Explaining our approach to enforcement** – In March 2018 we published our 'Approach to Enforcement' document.<sup>42</sup> This explains how we address harm and add public value through our statutory powers to investigate, take relevant civil, criminal and/or disciplinary action. It also explains how this approach aligns with our Mission.<sup>43</sup>
- 9.15** We have also published a short enforcement information guide.<sup>44</sup> It includes a flowchart that shows the process of a typical FCA enforcement case where we take action under FSMA for a breach of our Principles for Businesses and our Handbook rules. It sets out the options to contest or resolve a case, the opportunities to make representations, and who the decision-makers are.

**Q33: Do you have any comments on our proposal to apply the same approach to enforcement investigations and action to CMCs and individuals as we do to other regulated firms, as set out in EG?**

**Q34: Do you have any comments on our proposal to follow the same procedures for decision-making and imposing penalties in relation to CMCs and individuals set out in DEPP?**

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41 [www.handbook.fca.org.uk/handbook/EG/](http://www.handbook.fca.org.uk/handbook/EG/)

42 [www.fca.org.uk/publications/corporate-documents/our-approach-enforcement](http://www.fca.org.uk/publications/corporate-documents/our-approach-enforcement)

43 [www.fca.org.uk/publication/corporate/our-mission-2017.pdf](http://www.fca.org.uk/publication/corporate/our-mission-2017.pdf)

44 [www.fca.org.uk/publication/corporate/enforcement-information-guide.pdf](http://www.fca.org.uk/publication/corporate/enforcement-information-guide.pdf)



## 10 Authorisations

**10.1** This chapter sets out information regarding our proposed approach to authorisation of CMCs that are currently authorised by the CMR and will be transferring to the FCA. It also sets out the approach for firms new to claims management regulation, including firms that wish to carry on regulated claims management activity in Scotland. We explain the temporary permissions process and the periods in which applications for authorisation must be submitted.

**It is important that all CMCs are aware of what they need to do and when. The key elements are:**

- All CMCs need to meet minimum standards, known as Threshold Conditions, both at the time of authorisation and afterwards.
- All CMCs that want to continue to carry on regulated activity after 1 April will need a temporary permission: CMCs can obtain temporary permission by notifying the FCA and paying the relevant fee between 1 Jan and 31 March 2019.
- CMCs will need to apply for re-authorisation to replace their temporary permission. CMCs will need to do so in one of two application periods, depending on the sector in which they operate:
  - Application period 1: All financial services CMCs and those firms being brought into regulation (for example, those operating only in Scotland).
  - Application period 2: All other CMCs (for example those involved in personal injury or housing disrepair but not financial services).
- Failure to submit an application within the relevant period will mean their temporary permission expires and the firm will have to cease carrying on regulated activities.
- Applications will generally be submitted electronically to the FCA.
- CMCs with temporary permission will appear on the FCA Register and once they have been re-authorised this will be reflected in the FCA Register.
- For new CMCs, they will need to decide whether to submit their application to the CMR or the FCA.

**10.2** In order to make a successful application for re-authorisation, CMCs must demonstrate that they satisfy, and will continue to satisfy, the minimum standards set out in FSMA, called the Threshold Conditions<sup>45</sup>, for all the regulated activities that they want to carry on.

**10.3** The Brady Review noted concerns over the frequency and ease with which CMCs can re-emerge as a new CMC following liquidation or insolvency with some or all of the directors remaining in place. This is known as 'phoenixing'. This can currently happen even where the CMC has wound up due to removal of permission resulting from misconduct. We will be alert to this, and will have a number of ways of tackling the issue. One of our Threshold Conditions relates to a firm's suitability. This means that the CMC must be fit and proper, having regard to all the circumstances, including the CMC's connection with any person. We also consider whether those who manage the CMC's affairs have adequate skills and experience and act with probity. We will not authorise CMCs who do not satisfy this Threshold Condition or any of our others. Firms are unlikely to pass our fit and proper test if they have ongoing connections with persons involved in serious previous misconduct.

<sup>45</sup> For further information on Threshold Conditions, see chapter 3 of this CP.

- 10.4** Changes in the control of an authorised person need to be notified to the FCA. We can object to a change or increase in control on various grounds, including the reputation, knowledge, skills and experience of any person who will direct the CMC.
- 10.5** We propose to consult later in the year on the application of our SM&CR to CMCs. Under the SM&CR those who occupy senior manager positions will need to be individually approved by the FCA and will be accountable for their actions. We have the power to make orders prohibiting individuals from holding such positions, where appropriate.
- 10.6** Subject to the Treasury's consultation and parliamentary approval, all CMCs that are currently regulated by the CMR and those who will be regulated for the first time will be entitled to obtain a temporary permission. They will need to do this in advance of 1 April 2019: they can notify an intention to register for temporary permission by submitting their details to us on the form we will make available and paying the relevant fee.
- 10.7** In addition, any existing CMCs brought into scope of FCA regulation, and who are currently unregulated, will need to obtain temporary permission in the same way and at the same time. This includes CMCs in Scotland that would have been regulated by CMR, had Part 2 of the Compensation Act extended to Scotland prior to the transfer. It also includes CMCs who handle claims related to section 75 of the Consumer Credit Act 1974 (but no other claims management business which is currently regulated), and which currently do not hold a CMR authorisation.
- 10.8** CMCs will need to submit their application for re-authorisation in one of two application periods:
- the first period from 1 April 2019 until the end of May 2019 for financial services firms and those firms being brought into regulation as part of the transfer of regulation to the FCA<sup>46</sup>
  - the second period from 1 June 2019 until the end of July 2019 for all other firm types (for example those involved in personal injury or housing disrepair but not financial services)
- 10.9** Failure to submit an application during the allocated application period will result in CMCs losing their temporary permission and being unable to carry on regulated claims management activities.
- 10.10** New CMCs will continue to be able to submit applications to CMR until 1 April 2019. If CMR grants that application before 1 April, the CMC will be entitled to obtain temporary permission as mentioned above. If the application has not been determined by CMR before that date, the application will be treated as though it had been made to the FCA provided that the CMC submits a further form to the FCA and pays the top up fee. As above, we will make the appropriate form available in due course and will consult on the fee later this year.
- 10.11** New CMCs thinking of applying to the CMR for authorisation in the first few months of 2019 should consider carefully whether they wish to submit their application to the CMR, or wait to submit it directly to the FCA on or after 1 April.

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<sup>46</sup> This includes for example some firms in Scotland that are not currently required to be authorised by CMR.



- 10.12** We expect that the majority of CMCs with temporary permission who apply for re-authorisation, and new CMCs applying to be authorised for the first time, will submit their applications electronically to the FCA.<sup>47</sup> We will provide details of how to do so closer to the transfer of regulatory responsibility to the FCA.
- 10.13** We will regulate 6 activities across 6 claims sectors. We propose to simplify this into 7 permissions that we will use to regulate the CMC sector. CMCs established in, or serving customers in England Wales and Scotland will need the permission or permissions which cover the activities they carry on in the relevant sector. We propose to have one permission for lead-generation activities covering all the sectors, and 6 sectoral permissions covering the activities of advising a claimant, investigating a claim, and representing a claimant. Depending on what activities they carry on, some CMCs will require just one permission and others may require several permissions. This will enable CMCs to be assessed against only the permissions that they need. We are able to limit a permission to certain activities, either at the firm's request or our own initiative.
- 10.14** Once authorised, a CMC that wants to carry on regulated claims management in a sector for which they don't have the necessary permission, will need to apply for a variation of their permissions. Equally, CMCs will be able to apply to vary their permissions if they no longer carry on particular activities.
- 10.15** We are required to determine all applications for claims management permissions as quickly as possible and in any event within 6 months from submission of complete applications, or 12 months from the date of submission if the application is incomplete.
- 10.16** The FCA operates a public register of all authorised firms. All CMCs that have temporary permission will be included in the Register. Once those CMCs are re-authorised, the register will be updated to reflect this. Equally, new CMCs that are authorised will also be included in the Register.
- 10.17** While we provide information to firms and individuals to help them understand the changes necessary for authorisation, this is not an open-ended process. We must decide whether a firm should be authorised within a reasonable period and ultimately within statutory deadlines. We do not expect firms to constantly evolve their business model during the application process. Our experience also shows us that some firms are simply not ready to meet the conditions for authorisation. In these circumstances, we will formally refuse to authorise a firm although more often, the firm will withdraw its application before we make a formal refusal. This chapter sets out information on the steps that CMCs will need to take to become FCA-authorised. We are not seeking feedback on this chapter.

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<sup>47</sup> Electronic submission of applications will be required although we will accept paper applications in certain circumstances (eg where required under the Equality Act).

## Annex 1

### Questions in this paper

- Q1:** Do you agree with our proposal to apply our Principles for Businesses to CMCs?
- Q2:** Do you have any comments on the application of COND to CMCs?
- Q3:** Do you agree with our proposal to apply SYSC to CMCs?
- Q4:** Do you agree with our proposal to apply GEN to CMCs?
- Q5:** Do you agree that CMCs should be obliged to comply with these proposed general conduct of business rules?
- Q6:** Do you agree that CMCs should be obliged to comply with these proposed rules on using third-party lead generators?
- Q7:** Do you agree with our proposal to require CMCs to record all calls and electronic communications with their existing and potential customers?
- Q8:** Do you agree with our proposal to require call recordings to be kept for a minimum of 12 months from the latest of the events specified at paragraph 4.10 above?
- Q9:** Do you agree with our proposals for marketing by CMCs?
- Q10:** Do you agree with our proposals for existing pre-contract disclosure requirements?
- Q11:** Do you agree with our proposals for ongoing disclosure?
- Q12:** Do you agree with our proposals for collection of fees by CMCs?
- Q13:** Do you agree with our proposed application of the existing SUP rules to CMCs?
- Q14:** Do you agree with the new notification requirements and guidance we are introducing into SUP 15?



- Q15:** Do you have any comments on the reporting requirements set out in this CP and the accompanying legal instrument? We are particularly interested in any specific data requirements that you think should not apply to CMCs and any additional data to what we have set out that you think would be valuable for the FCA to collect from the sector.
- Q16:** Do you agree with the proposal for the FCA to impose an administration fee on CMCs for late data submissions?
- Q17:** Do you agree with our proposal to apply bespoke prudential standards to CMCs, other than lead generators, and to separate these CMCs into two groups for the purposes of applying prudential requirements?
- Q18:** Do you agree with our proposal to set the prudential resources requirement for CMCs, other than lead generators, on the basis of a fixed minimum amount and the fixed overheads requirement? If not, what other approach would achieve the same outcome of ensuring an orderly wind down?
- Q19:** Do you agree with requiring CMCs that hold client money to have additional prudential resources and/or do you feel the level we propose is appropriate?
- Q20:** Do you agree that CMCs should meet the prudential resources requirement from 1 August 2019?
- Q21:** Do you agree with our proposal that the PII requirements for CMCs that represent customers in personal injury claims be retained but for the PII requirements not to be extended to all CMCs?
- Q22:** Do you agree with our proposal to carry over the minimum terms for the PII policy as set out in the Compensation (Claims Management Services) (Amendment) Regulations 2008?
- Q23:** Do you have any comments on the approach to wind-down planning that is being proposed, or evidence to support an alternative approach?
- Q24:** Do you agree with our proposals on appointing a CASS oversight officer? If not, why not?
- Q25:** Do you agree with our proposals on segregating client money and paying out client money as soon as practicable? If not, why not?

- Q26:** Do you agree with our proposals on record keeping; reconciliations, including on top up of any shortfall and withdrawal of excess; and on notification requirements? If not, why not?
- Q27:** Do you agree with our proposals for an external client audit to be carried out? If not, why not?
- Q28:** Do you agree with our overall proposals for a CMC client money regime? If not, why not?
- Q29:** Are there any of our proposals where more prescriptive rules or additional guidance would be beneficial? If so, what rules and guidance would you propose and why?
- Q30:** Do you agree with our approach to apply our complaint handling rules and guidance in DISP, including the compulsory jurisdiction of the Ombudsman Service, to all CMCs we authorise?
- Q31:** Do you agree with our proposal to apply our rules in DISP Chapter 1 to CMCs?
- Q32:** Do you agree with the Ombudsman Service's proposal to grant CMCs outside our regulatory regime access to the voluntary jurisdiction?
- Q33:** Do you have any comments on our proposal to apply the same approach to enforcement investigations and action to CMCs and individuals as we do to other regulated firms, as set out in EG?
- Q34:** Do you have any comments on our proposal to follow the same procedures for decision-making and imposing penalties in relation to CMCs and individuals set out in DEPP?
- Q35:** Do you have any comments on the costs and benefits as set out in our cost benefit analysis?
- Q36:** Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?



## Annex 2

# Cost benefit analysis

1. The Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) of our proposed Handbook rules. Specifically, section 138I requires us to publish 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'. It also requires us to include estimates of those costs and benefits, unless they cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.
2. The Government has consulted on modifying section 138I in relation to rules on claims management activity.<sup>48</sup> In particular, the analysis and the estimate required by section 138I are to be of the difference between the proposed rules and the current regulatory regime under the Compensation Act 2006 and overseen by the Claims Management Regulator (CMR). And for this purpose, the current regime is to be taken to extend not only to England and Wales but also to Scotland. This CBA has been prepared on that basis.

### Measuring costs and benefits of our proposals

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3. This CBA considers the impacts of our proposals for the regulation of CMCs. It does not include an assessment of the direct impacts of the Government's decision to transfer the regulation of CMCs to the FCA. The Treasury has produced its own impact assessment (IA) for this.<sup>49</sup> The Treasury's IA included the costs to the FCA, as well as costs to CMCs from the temporary permissions regime, exit from the current CMR, administration costs for reauthorisation, FCA authorisation fees, complaint transfers, the FCA levy and Financial Ombudsman Service (Ombudsman Service) case fees. It also included the non-monetised benefits to customers and industry.
4. CMCs operating in England and Wales are currently regulated by the CMR. As explained above, we have used the current regulatory framework as the baseline against which we want to establish the incremental impact of our proposed requirements.
5. As required, we have set out below an analysis of the costs and the benefits. Where possible, we also provide estimates of those costs and benefits.
6. We have estimated the monetary value of the costs for CMCs of complying with our proposals, but we have not been able to quantify other costs, such as loss of revenue to CMCs, and most benefits to customers. We have only been able to assess these on a qualitative level. This is either because we consider that such costs and benefits cannot reasonably be estimated in monetary values, such as improvements in customer confidence, or because it is not reasonably practicable to produce an estimate. For example, we are unable to establish the amount of money that customers would no longer lose as a result of CMCs being better capitalised under our proposed prudential rules.

48 [www.gov.uk/government/consultations/claims-management-regulation-consultation-on-secondary-regulations/claims-management-regulation-consultation-on-secondary-regulations](http://www.gov.uk/government/consultations/claims-management-regulation-consultation-on-secondary-regulations/claims-management-regulation-consultation-on-secondary-regulations)

49 [www.parliament.uk/documents/impact-assessments/IA17-005.pdf](http://www.parliament.uk/documents/impact-assessments/IA17-005.pdf)



7. But, where we have been able to do so, we provide estimates of the potential transfer from CMCs to customers in monetary terms. We do this by using potential lowering of charges to customers as a result of CMCs improving their pre-sale information and financial promotion materials.

#### **Firms affected by our intervention**

8. The 2016/17 CMR Annual Report<sup>50</sup> notes that authorised CMCs declared turnover of £726m for the 12 months to 30 November 2016. Based on March 2018 CMR data, there are 1,154 authorised CMCs, 899 of which reported a positive (non-zero) turnover. We are treating these 899 as 'active' CMCs.<sup>51</sup>
9. Our proposed prudential requirements apply different standards to CMCs with turnover above £1m (Class 1) and below £1m (Class 2).
10. At the time of writing, exact firm size information was unavailable for the 899 CMCs treated as active. Based on CMR revenue data for the 12 months to 30 November 2016, 10.7% of active CMCs declared a turnover exceeding £1m, while 89.3% of active CMCs declared a turnover below £1m. Assuming that the share of large and small CMCs has remained constant, 96 of the 899 active CMCs are estimated to fall into Class 1, with the remaining 803 falling into Class 2.
11. To shape our analysis of the cost implications of our policy proposals, in Q4 2017 (November 2017) we undertook a survey of 967 CMCs<sup>52</sup> in England, Wales and Scotland, which are authorised by the CMR (our 'CMC survey'). We received 324 responses.
12. Of those that responded to the CMC survey, 20.5% declared that they will not be seeking FCA authorisation. The share of Class 2 CMCs planning to withdraw from the market (22.6%) is higher than the share of Class 1 CMCs planning to withdraw from the market (7.7%).
13. So, for the purposes of this CBA, we have assumed that, of the CMCs currently authorised under the CMR regime to operate in England and Wales, 89 Class 1 CMCs and 621 Class 2, or 710 of the currently authorised CMCs in total, will be affected by our proposals.<sup>53</sup>
14. The new regulatory regime will also apply to CMCs operating in Scotland. We have assumed that the Scottish CMCs with turnover above £1m are likely to be authorised by the CMR already as they will also be active in England and/or Wales. We also assume that Scottish CMCs with turnover below £1m will seek FCA authorisation. As explained at paragraph 2 above, for the purposes of this CBA we treat the current regulatory framework as if it applied in Scotland.

50 [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/636773/6.3344\\_MOJ\\_MFT\\_Claims\\_Management\\_Report\\_v6.4\\_WEB\\_2.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636773/6.3344_MOJ_MFT_Claims_Management_Report_v6.4_WEB_2.pdf)

51 The remainder reported a zero turnover, and we are treating these as 'inactive' CMCs.

52 The number of CMCs surveyed was based on information on active firms available at the time.

53 Of the 96 currently active Class 1 firms, we expect 7.7% will not seek FCA authorisation (as informed by the survey), and therefore expect 89 Class 1 firms to be regulated by the FCA. Of the 803 currently active Class 2 firms, we expect 22.6% will not seek FCA authorisation (as informed by the survey), and therefore expect 621 to be regulated by the FCA. Firms authorised by CMR include 26 based in Scotland and 5 in Northern Ireland.



15. We are assuming that we will also be taking over regulation of CMCs who specialise in making claims under section 75 of the Consumer Credit Act 1974 (s75 CMCs).<sup>54</sup> Based on our discussions with the Ombudsman Service, we estimate this will add 9 further Class 2 CMCs to the total number coming under our remit.
16. We estimate there are 17 Scottish and 9 s75 CMCs not currently authorised by the CMR.<sup>55</sup> Our calculations in this CBA are based on these assumptions, summarised in Table 1:

**Table 1: Estimated number of active CMCs**

	Total	Inactive	Active (Class 1)	Active (Class 2)
CMR authorised (March 2018) <sup>56</sup>	1,154	255	96	803
Active CMCs that will seek FCA authorisation	710		89	621
Scottish CMCs not currently CMR authorised	17			17
s75 CMCs	9			9
<b>Total including additional Scottish and s75 CMCs</b>	<b>736</b>		<b>89</b>	<b>647</b>

17. As business models and operations differ across CMCs, we think the exact population of CMCs that incur incremental costs will differ across the proposed rules. To estimate the industry-level costs in our analysis below, each CMC population in the table above is adjusted to reflect the fact that only certain subsets of CMCs are expected to incur additional costs. Where such adjustments are made, this is highlighted in the relevant section.
18. For example, some CMCs only carry out the activity of identifying or seeking out customers who may have a claim, and/or referring details of a claim or potential claim. We generally refer to these CMCs as lead generators. Based on CMR data for the 12 months to 30 November 2016, 26% of active Class 1 CMCs and 49% of active Class 2 CMCs fall within this category. When estimating industry-level costs of proposed pre-sale disclosure and ongoing disclosure requirements, this subset of CMCs is assumed to incur no additional cost for these elements of our proposed changes.

**Generating robust estimates**

19. Our CMC survey captured the responses of a large proportion of active CMCs, most of whom were aligned in their expectations about incremental costs. However, it is noticeable that the reported total cost of compliance rises significantly as revenue increases.
20. A consequence of the sizeable compliance costs reported by larger firms in our CMC survey is that averages in the survey are sensitive to the responses of large CMCs.

54 [www.legislation.gov.uk/ukpga/1974/39/section/75](http://www.legislation.gov.uk/ukpga/1974/39/section/75)

55 Based on data held by Companies House and the Ombudsman Service.

56 The total and inactive numbers of CMCs is based on March 2018 CMR data. The Class 1/Class 2 split of active CMCs is estimated based on the split in CMR revenue data for the 12 months to 30 November 2016.

Given that the weighting of Class 1 and Class 2 CMCs in the survey does not exactly match the CMR data on the entire industry, we calculate separate averages from these two groups' responses. We then use the respective number of CMCs estimated above to generate industry-level cost estimates. This stratification is done to make the survey more representative.

21. Moreover, survey-based estimates of compliance cost are reported as a +/-5% range around the mean average to reflect biases that may be present in the survey.
22. Where we make assumptions which are not derived from the survey we present what we think is a reasonable estimate of the impact of proposed rules. Where relevant, these assumptions are made for both Class 1 and Class 2 CMCs.
23. Irrespective of how per-firm estimates are generated, it should be noted that this is done purely to increase the robustness of industry-level estimates. Per-firm cost estimates correspond to the mean cost and do not capture the potentially wide range of costs that a particular firm may incur. For the avoidance of doubt, individual CMCs may in practice bear costs greater or lesser than the per-firm averages used to estimate overall costs to the industry, depending on their individual size and makeup. CMCs should consider our proposals in relation to their specific firm and provide feedback on this basis, supported by evidence where they believe costs differ.

## Market failure analysis

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24. The recent Ministry of Justice (MoJ)<sup>57</sup> consultation, the Brady Review<sup>58</sup> and the FCA Financial Lives survey<sup>59</sup> provided evidence that the market for CMC services differs from our expectations of a well-functioning market. These differences are summarised in the table below.<sup>60</sup>

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57 <https://consult.justice.gov.uk/digital-communications/cutting-costs-for-consumers-financial-claims/>

58 [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508160/PU1918\\_claims\\_management\\_regulation\\_review\\_final.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508160/PU1918_claims_management_regulation_review_final.pdf)

59 [www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf](http://www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf)

60 This list is not exhaustive but a summary of the CMC market.



**Table 2: Expectations and observed realities of the market for CMC services**

Expectations in a well-functioning market:	Observations in the market for CMC services:
As a result of competition, services would be offered at prices which cover a proportion of the fixed costs of running a company and of reasonable returns. This should especially hold true for simple, standardised services.	Charges vary significantly among different CMCs offering comparable services. This suggests some customers are paying charges that are too high. <sup>61</sup>
Customers would know about relevant ombudsman schemes, and take this into account when deciding whether to use a CMC and how much to pay for it.	Some customers believe that using a CMC is the only way to process their claim. <sup>62</sup>
Marketing activities would provide customers with the appropriate information on the availability of CMC services, without involving unsolicited contacts (eg nuisance calls).	Aggressive marketing and sales tactics, including persistently high volume of nuisance calls, are prevalent. This is partly because of poor due diligence on how lead generators acquire contact numbers. <sup>63</sup>
CMCs would provide timely information on the progress of customers' claims and the outcomes.	Some customers complain of delays by CMCs to progress claims. <sup>64</sup> This is not always due to CMC inactivity, but because the organisation against which the claim has been made is not dealing with the claim promptly. Nevertheless, if customers were regularly updated on the progress of the claim and the cause of any delay they would be less likely to raise a complaint.
CMCs would be acting in the interests of customers and in a trustworthy way.	Some CMCs have encouraged customers to make spurious or fraudulent claims, such as 'cash for crash' schemes or fraudulent or exaggerated holiday sickness claims. <sup>65</sup>  The disorderly wind-down of CMCs may leave customers uninformed about the progress of their claims, and, in the case where a claim had been successful, the loss of money that had been claimed.

**25.** These problems are caused by a number of market failures, namely asymmetric information, externalities, regulatory issues, and behavioural biases.<sup>66</sup> Below, we discuss how these market failures result in each of the identified harms to customers in Table 2.

61 The MoJ consultation finds variations from 10% to 40% of the amount recovered for the customer even for relatively standardised claims for PPI mis-selling, with customers paying charges of around 25%-30% on average. In 2016/17, Excessive costs accounted for 12% of total complaints made to the Legal Ombudsman (LeO), the third highest cause of complaint.

62 Financial Lives survey 2017 showed 35% of UK adults did not know they could make a compensation claim for mis-sold financial products and services themselves, without using a claims management company. The Brady Review noted Citizen's Advice research which found that 39% of people who had used a CMC did not know that they could have made the claim themselves. Half of them said they would have done so, if they had known they could.

63 The Financial Lives survey 2017 data indicate that CMCs had made or sent 2.7bn calls/texts in the previous 12 months. This works out as approximately 50 calls/texts each year to each UK adult.

64 In 2016/17, Delays/Failure to progress was the most common cause of complaint to the LeO and accounted for 16% of total complaints.

65 Over 450 of the Insurance Fraud Bureau's (IFB) intelligence reports were linked to at least one CMC between 2014 and 16. Nearly 50% of IFB live operations in 2015 involved a CMC.

66 See FCA Occasional Paper Economics for Effective Regulation for a description of these market failures.

### Customers may buy unsuitable services or pay too much for the services they receive

26. Customers have very limited information about the quality of a CMC's services both in advance of and once the contract is arranged, and cannot monitor how well the CMC is working. Moreover, information on charges, direct claims, and alternative services such as the ombudsman scheme is often unclear. **Information asymmetry** is, therefore, prevalent in this market.
27. Furthermore, **behavioural biases** such as reference dependence, regret aversion, limited attention, and persuasion and social influence can prevent customers from choosing the best course of action.<sup>67</sup>
28. Information asymmetry and behavioural biases can therefore reduce customers' ability to assess the value of CMC services, to consider submitting claims independently, and to compare the different services and charges from different CMCs.
29. These factors hinder effective competition in the market for CMC services, which results in some customers paying high charges or buying services which they would not consider good value if they had better information (eg about their ability to pursue claims directly).

### Aggressive or misleading marketing or sales tactics cause social nuisance (eg unsolicited calls and texts)

30. Persistent conduct issues identified in this sector include aggressive or misleading marketing and sales tactics. The Brady Review found examples of misleading or aggressive marketing, including misrepresentation of the service offered to customers, such as advertising focused on enhancements to the value of compensation claims rather than benefits in terms of convenience or saved time. Research commissioned by the FCA found *'Those who made their complaint via a CMC were often prompted to do so by heavy and persuasive marketing tactics'*.<sup>68</sup>
31. Some CMCs' choices of how to approach customers do not take into account the harm caused by the nuisance from marketing activities, in particular through cold calling (ie negative **externalities**). They also do not always carry out due diligence on lead generators' activities.
32. Furthermore, unsolicited contacts can deter some customers from submitting claims. In these cases, customers might then lose potential redress.

### Poor standards of service (poor communication on claim status)

33. Since customers cannot know what standard of service they will receive at the time of engaging with a CMC, CMCs may not have a strong incentive to provide a good standard of service, such as timely communication of claim status or expected delays. Such **information asymmetry** prevents customers from choosing a CMC according to its service level and results in a lack of competitive pressure on CMCs to deliver good standards of service.

67 The most relevant examples relate to the definition of types of bias in [www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf](http://www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf)

68 [www.fca.org.uk/your-fca/documents/consultation-papers/understanding-ppi-redress](http://www.fca.org.uk/your-fca/documents/consultation-papers/understanding-ppi-redress)



### Customers face higher prices due to spurious and fraudulent claims

34. The Brady Review indicated the need for a stronger regulatory regime for consistency of rules as well as closer supervision and more effective enforcement to reduce spurious and fraudulent claims in the sector. **Externalities** can lead to quick submissions of spurious claims without checking facts, since these submissions do not reflect the potential costs and time wasted by lenders, customers and authorities. Spurious claims are relatively severe examples of these factors, as they impose costs on customers, the Ombudsman Service and lenders, and threaten public confidence in the CMC sector. As well as potentially involving claimants in criminality these can drive up costs faced by customers in other markets (such as insurance).

### Disorderly wind-down

35. **Externalities** may also limit some CMCs' incentives to invest in the stability of their operations. The cost of disorderly failure would be borne by customers, whose claims may be left unattended and who may not receive adequate information, even facing the risk of losing money following successful claims. For example, the CMC might hold some customers' compensation payments when it exits the market.

## Our intervention

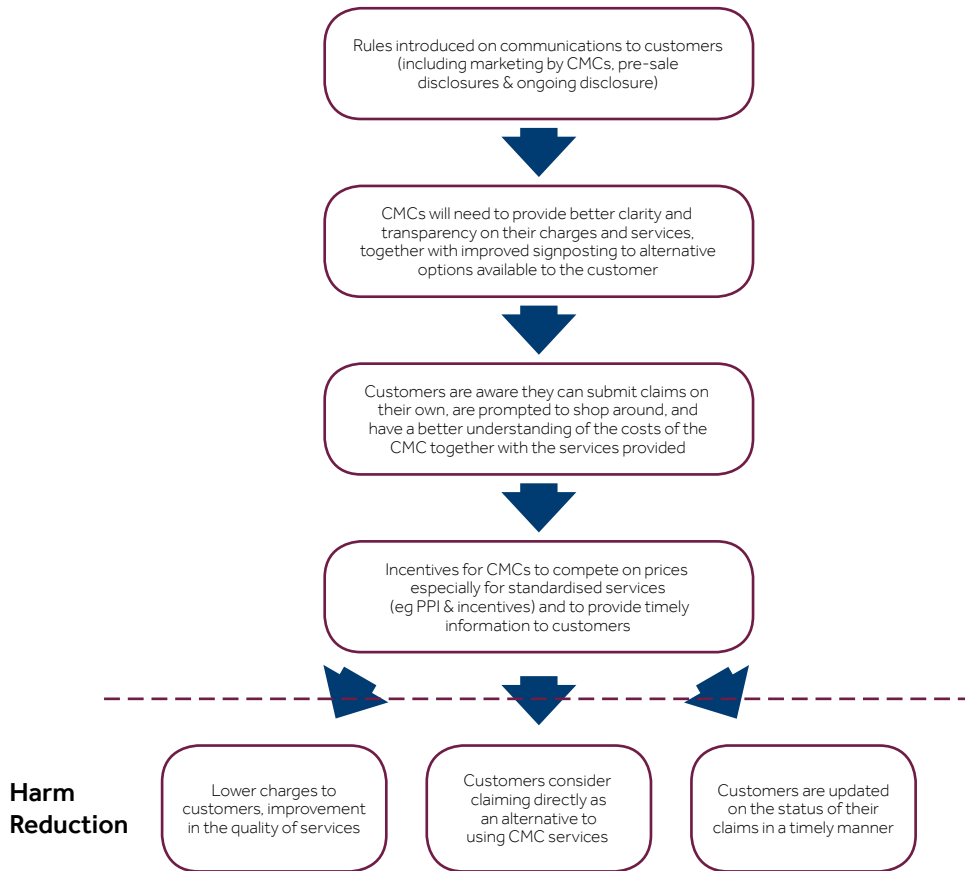
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36. Our future regulation of claims management activity, and the proposals in this CP, aim to make markets for claims management services work well and address the harms we have identified.
37. Conduct standards, high-level standards, supervision and reporting obligations, enforcement and dispute resolution rules are key components of a robust regulatory approach aimed at providing incentives to CMCs to improve their conduct and avoid harm to customers.
38. These conduct standards and high-level standards will require CMCs to act with integrity and in the best interest of customers, and identify and protect vulnerable customers. Appropriate control systems in CMCs, together with requirements to enable us to supervise and enforce, ensure that CMCs meet the required standards.
39. Figures 1 to 3 below illustrate our main categories of interventions and how we expect them to lead to our desired outcomes. These are to reduce the harm we have identified in this market, and to exhibit the characteristics of a well-functioning market as described in Table 2.

### How we intend to address high charges and poor communication

40. Rules on marketing and financial promotions, as well as those aiming to improve communications to customers, will help provide a more transparent picture of services and charges. This will empower customers to decide whether they need support from a CMC in submitting a claim, and which CMC to select.
41. This, in turn, should boost incentives to CMCs to improve quality and reduce charges to attract potential customers.
42. These factors should help to reduce harm from excessive charges and poor quality services, as well as ensure that customers use CMC services only when this is suited to their needs.

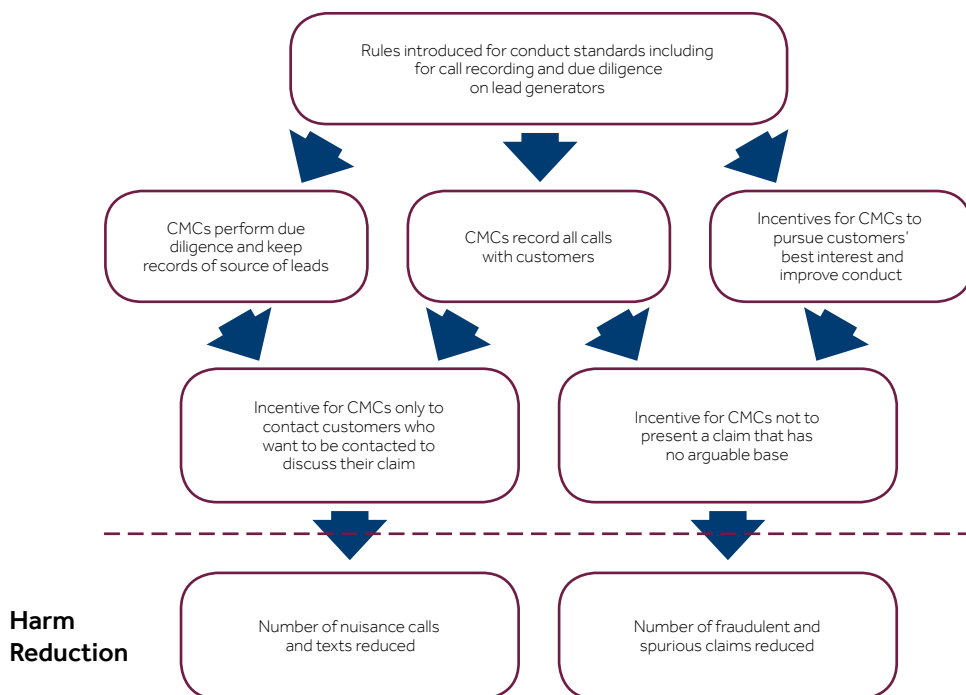
**Figure 1: How we intend to address high charges and poor communication**



**How we intend to address spurious and fraudulent claims, and nuisance calls and texts**

- 43. Requirements for CMCs to carry out due diligence, keep records of leads, and report to us unauthorised lead generators should reduce activity by unauthorised lead generators. These often result in many nuisance calls to customers, wasting their time and causing distress. These calls also harm the reputation of the sector to the point that it may reduce the number of customers willing to use CMCs.
- 44. Requirements for CMCs to record calls will provide incentives to CMCs to improve their communications to customers and service quality. They should also reduce nuisance calls by helping CMCs ensure they are compliant with the new ban on cold calling introduced through the FGCA. With the other requirements, they should also prevent CMCs from submitting false and fraudulent claims. These records also help facilitate FCA supervision, helping us to identify non-compliance.

**Figure 2: How we intend to address spurious and fraudulent claims, and nuisance calls and texts**



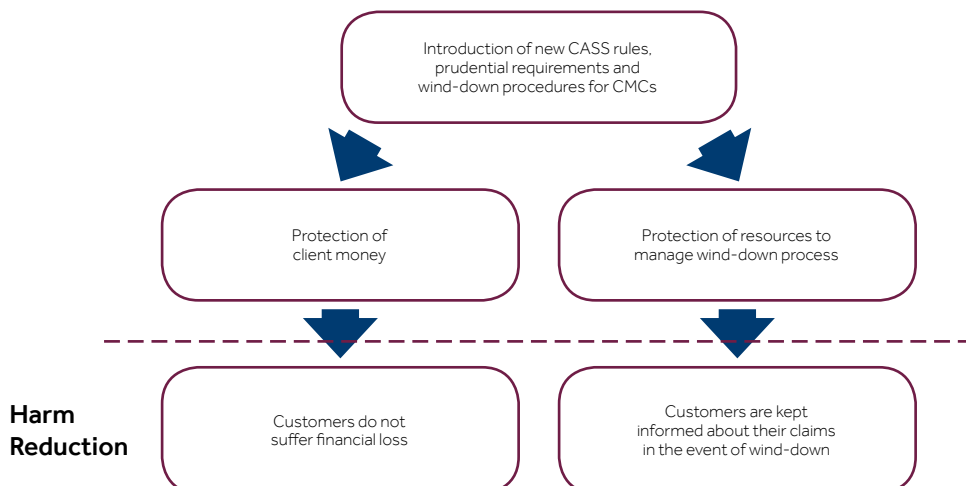
**How we intend to address disorderly wind down**

45. CASS (Client Assets sourcebook) prudential standards and wind-down procedures aim to protect consumers' money. They also aim to ensure that resources are available for CMCs to manage their wind-down processes in an orderly way.

46. So these rules should help ensure that customers:

- receive the proceeds from successful claims
- are informed that the CMC is ceasing claims management activity and how they may continue their claim, and
- can meet deadlines for (re)submitting claims

**Figure 3: How we intend to address disorderly wind-down**





## Summary of costs and benefits

### Costs

47. Some of our proposed rules go beyond the existing CMR framework. This will result in one-off costs for CMCs of complying with these extra rules to adjust their systems, train staff and other changes.
48. We have also estimated increments in ongoing annual costs, for changes that will affect how CMCs operate as long as they remain in the market.

**Table 3: Total compliance costs to sector**

Proposal	Industry one-off costs	Industry ongoing costs
High-level standards – SYSC	£0.3-0.6m	£0.7-1.0m
Conduct standards – Use of lead generators	N/A	£0.1m
Amending marketing materials	£0.8m-0.9m	N/A
Communication – Pre-sale disclosure	£0.1m	N/A
Communication – Ongoing disclosure	N/A	£0.6-1.4m
Call recording	£0.9-1.0m	£1.5-1.6m
Prudential	N/A	£2.4-4.8m
Wind-down procedures	N/A	£0.4-1.1m
Client money	£0.1m	£0.7-1.3m
Supervision and reporting (SUP)	N/A	£0.3m
Familiarisation costs	£0.6m	N/A
Legal review	£0.8m	N/A
<b>Total</b>	<b>£3.5m-£4.0m</b>	<b>£6.6m-11.7m</b>

Note: Figures in each column may not sum to the total due to rounding.

49. In terms of the estimated effect on different CMCs, the proportion of the **one-off costs** to all CMCs borne by **89 Class 1 CMCs is between £1.4m and £1.6m**, and **between £3.7m and £7.5m per year for ongoing costs**.
50. The **647 Class 2 CMCs** are estimated to bear **between £2.1m and £2.5m of the one-off costs to all CMCs**, and **between £2.9m and £4.2m per year** of the ongoing costs.<sup>69</sup> We give more detail of the costs from the different measures in the rest of this CBA.
51. In addition to the compliance costs set out above, improved competition will be likely to reduce CMCs' profits. The extent of this reduction depends on a large number of factors that are difficult to observe (such as the customer's willingness to pay for CMC services when provided with better information, and the supply decisions by CMCs in light of our interventions) interacting with one another in a complex and dynamic way. As such, the potential loss of profits faced by CMCs cannot reasonably be estimated.

69 As detailed in the remainder of the section, costs will vary among individual CMCs not only according to size, but also depending on their activities (eg CMCs not contracting with customers are not affected by some requirements) and other factors (eg call recording requirements do not impose costs on CMCs that already record calls).



52. We note that improved competition will also be likely to result in benefits to customers, such as lower prices and better quality of service. We discuss those benefits below.

### Benefits

53. Our rules will address market failures and make the claims management sector work better for customers. In doing so they will create economic benefits. Overall, customers will gain from CMCs having incentives to compete on quality and price, as well as to improve conduct standards and to treat customers fairly.

54. More specifically, we expect there will be benefits from these strengthened rules where there are:

- improvements in services (because of improved and timely information requirements)
- reductions in charges paid by customers, as customers will find it easier to compare different CMCs' services and choose in line with their needs
- measures in place to protect customers from disorderly wind-down of CMCs in default
- reductions in nuisance calls, because of our proposals (such as due diligence and call recording) which strengthen incentives to prevent unsolicited contact with customers

55. Some elements of harm indicate potential impacts well above the costs of compliance estimated in this CBA. For example, customers' ability to consider free alternatives and to shop around across different offerings by CMCs could lead them to save around £18m per year in charges related to financial claims.<sup>70</sup>

56. Due to the practical challenges associated with monetising and quantifying these benefits, we consider it not reasonably practicable to produce monetary estimates for the benefits of a number of our proposals.

57. Below we set out more detailed analyses of these costs and benefits for each area of our proposals as set out in Table 3.

### High-level standards

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58. In effecting the transfer of regulation we are proposing to apply our high-level standards. For example, the Principles for Businesses (PRIN), the Systems and Control requirements (SYSC), and the General Provisions (GEN) will apply to CMCs.

59. We expect these high-level standards to provide CMCs with a clear statement of the standards of behaviour we expect of FCA-regulated CMCs.

60. These high-level standards do not have exact counterparts in the current regulatory regime. However, there are elements of existing CMR rules and guidance which are similar to them. As CMCs are already required to comply with similar rules and

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<sup>70</sup> See paragraph 120.

guidance, we would generally expect limited additional cost or benefits associated with complying with our high-level standards.

61. In this CP, we have also described:

- the Threshold Conditions (COND) that will apply to CMCs, and
- our approach to whistle-blowers

62. We are not consulting on the application of the Threshold Conditions (which are being introduced by the Government through amendments to FSMA). As the application of the Threshold Conditions arises from a Government decision, we do not include these impacts in our CBA.

63. Similarly, where there are further requirements under separate whistleblowing legislation (the Public Interest Disclosure Act 1998), we have not included these impacts in the CBA.

### **Principles for Businesses**

64. Our Principles for Businesses (known as PRIN) are a general statement of the fundamental obligations that FCA-regulated CMCs must comply with at all times.

### **Costs**

65. We consider that the difference in costs for CMCs to comply with PRIN, rather than the current rules, will be minimal. Many of the existing CMR rules are similar which should mean that CMCs are already meeting these standards. For example, the existing CMR rules require all information given to customers to be clear, transparent, fair and not misleading. This is similar to our Principle 7 (Communications with clients: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading).

### **Benefits**

66. As the existing CMR standards are similar to our Principles for Businesses, we expect the additional benefits from requiring CMCs to comply with PRIN will be minimal.

### **Systems and Controls**

67. Our high-level rules on systems and controls (known as SYSC) set out how CMCs should organise and manage their affairs. The requirements set out how we expect a CMC's senior management to take responsibility for (i) the running and oversight of the CMC, as well as (ii) the systems, controls and compliance arrangements that should be in place.

68. This includes the requirement that CMCs should have policies and procedures to counter the risk that the CMC might be used to further financial crime.

### **Costs**

69. We consider that the difference in costs for CMCs to comply with SYSC rather than the current rules will be minimal. The existing CMR rules suggest that CMCs should already have these systems and controls in place to ensure they conduct their business responsibly. The CMR also gives examples of those systems and controls, such as maintaining appropriate records and acting with professional diligence.<sup>71</sup>

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71 2d) General Rules, Conduct of Authorised Persons Rules 2014.



- 70.** CMCs are already required to comply with record keeping requirements so will have storage facilities in place. Because records of electronic communication will be held digitally, we do not expect CMCs to incur an additional cost from our proposals in SYSC.
- 71.** However, our requirements mean that all CMCs will have to actively implement processes to prevent crime such as fraud, the exploitation of customer data and bribery. Some CMCs might already have systems in place to manage financial crime risk. However, CMCs that need to introduce systems to prevent the risk they can be used to further financial crime will incur additional costs. We have taken the conservative assumption that all CMCs not currently regulated by the FCA would incur such costs.
- 72.** According to recent CMR data, approximately 11% of active CMCs Class 1 are already authorised by us and so already have to meet these rules. For the purposes of this CBA, it is assumed that these CMCs fall into Class 1 and Class 2 in line with the split seen in the population of active CMCs. Therefore, we estimate that 79 out of 89 Class 1 CMCs and 574 out of 647 Class 2 CMCs face the incremental costs estimated below.
- 73.** Based on our prior experience and knowledge, we consider that the average time CMCs would need to set up these procedures, for a single person in charge of compliance, would be around 1 day for Class 2 CMCs, and around 5 days for Class 1 CMCs (accounting for a one-off gap analysis). The ongoing cost to maintain these procedures is estimated to be around 2 days per year for Class 2 CMCs, and around 10 days per year for Class 1 CMCs (which accounts for expanding internal audit functions). The actual time required by individual CMCs may differ from these industry averages.<sup>72</sup>
- 74.** We have estimated the cost of this time based on what CMCs reported to us about who was responsible for compliance and their average wages. In response to our CMC survey, 15% of CMCs told us that a compliance officer was in charge of compliance. The remaining 85% of CMCs responded that a director, the CEO, or a person in a similar role was in charge of compliance. Using £48 an hour as the cost of compliance officer time and £68 an hour as the cost of director-level time, the weighted-average hourly cost would be £65, corresponding to daily costs of around £450.<sup>73</sup>
- 75.** Based on these estimates, we calculate that:
- for Class 2 CMCs, the average one-off cost would be between £225 and £680, and the average ongoing annual costs would be between £680 and £1,130
  - for Class 1 CMCs, the average one-off cost would be between £2,030 and £2,480, and the average ongoing annual costs would be between £4,290 and £4,740
- 76.** As a result, the total impact is **between £0.3m and £0.6m of one-off costs, and between £0.7m and £1.0m of ongoing costs.**

### **Benefits**

- 77.** Given the existing CMR standards are similar to our SYSC rules, we expect there will be minimal additional benefits from requiring CMCs to comply with SYSC.

<sup>72</sup> We use a range estimate of +/- half a day around each of these central estimates to provide more robust estimates of costs.

<sup>73</sup> The hourly cost of compliance officer time and director-level time is based on FCA analysis of Willis Towers Watson's 2016 UK Financial Services Report. Estimates are computed by assuming 260 working days per year, 7 hours per working day and 30% overheads.

78. However, we expect that putting effective financial crime control measures in place will improve the reputation of CMCs, which will benefit the market. Customers will be less likely to become victims of fraud, exploitation, or their personal data being used illegally.

### **General Provisions**

79. Our General Provisions (known as GEN) contain rules that mainly cover the administrative duties that apply to all the firms we regulate. These rules aim to make sure customers are not misled, that all CMCs operate on a level playing field, and that CMCs are transparent about their regulatory status. They also ban CMCs from getting indemnity insurance to cover any financial penalties they pay for not complying with our rules.

### **Costs**

80. These rules are broadly similar to existing CMR rules and will not generally create extra costs for CMCs. However, the proposed ban on getting indemnity insurance against financial penalties will be a new requirement for CMCs.
81. This change could only generate costs for CMCs if they purchase insurance against this risk, contrary to our proposed rule, or if they incur regulatory penalties that would have been covered by insurance in the past. However, it is generally not our approach to include in CBAs the cost of not complying with our rules. Since both these possible costs stem from non-compliance with the new requirement, or other requirements we are proposing, we have not included these in this CBA.
82. We also propose that CMCs provide a base rate telephone line for customers in relation to contracts entered into with the CMC. This is a general requirement for all other FCA-authorized firms. Our CMC survey showed that CMCs do not use premium rate telephone lines, so we do not think it will create additional costs to CMCs.

### **Benefits**

83. Preventing CMCs from getting indemnity insurance against financial penalties should improve their incentives to comply with our rules, which should mean customers are better protected.
84. As the results of our survey suggest that CMCs do not charge customers for calls, the financial benefit to customers will be minimal.

## **Conduct standards**

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85. In some areas we propose to reflect the current CMR conduct standards and guidance in our rules. These changes compared to the current standards are not significant so we do not expect them to create material costs or benefits. In other areas where we are introducing extra requirements, we discuss the costs and benefits from our interventions below.

### **General conduct of business requirements**

86. Our proposals on investigating the existence and merits of a claim, and proposed requirements for CMCs to have appropriate policies and procedures for treating vulnerable customers fairly, and cancellation and termination rights are largely the same as existing CMR requirements.



87. We do not believe that these requirements will result in extra costs to CMCs beyond those they already have under the current regulatory regime. Equally, there will be no significant additional benefits from these requirements.

#### Use of third-party lead generators

88. We propose to require that CMCs that get leads from third parties must:

- Identify and keep a record of the organisation which supplied each lead.
- Conduct due diligence on the lead generator to check whether they are authorised, and whether they have appropriate systems and processes in place to comply with relevant legislation including data protection legislation, which is broadly similar to the requirement set out by General Rule 2(e) of the CMR rules.
- CMCs should also report to the FCA any lead generators which they suspect should be authorised by the FCA but are not.

89. The CMR's latest annual report points out that all CMCs are responsible for carrying out due diligence on claim leads. But the report also highlights evidence of CMCs not complying with this responsibility, where CMCs receive leads from unauthorised introducers or lead generators. This can encourage nuisance calls by unauthorised CMCs.

90. Our proposed rules aim to reinforce existing principles and requirements on due diligence, with which CMCs should already be complying.

#### Costs

91. Our due diligence requirements which CMCs are expected to carry out on third-party lead generators are similar to the current CMR rules, although they are more targeted at the harms we have identified. We therefore do not expect CMCs to face significant additional costs.

92. For the requirement to keep a record of the organisation which supplied each lead, we asked CMCs in our CMC survey to estimate the additional cost of keeping these records. Taking into account the general margin of error applicable to survey estimates as described in the introduction, we estimate the average annual cost to be between £1,300 and £1,400 for Class 1 CMCs, and between £860 and £950 for Class 2 CMCs. The one-off costs to put in place any necessary record-keeping procedures, along with notifications to the FCA of lead generators who should be authorised but are not, are considered to be minimal.

93. Based on our CMC survey data, 36% of respondents with a turnover over £1m (Class 1) and 10% of respondents with a turnover below £1m (Class 2) indicated that they bought or rented leads from third-party lead generators. Therefore, we estimate that 32 out of 89 Class 1 CMCs and 64 out of 647 Class 2 CMCs face the incremental costs estimated above.

94. Using this methodology, we estimate that the total industry cost of recording the original source of leads acquired from third parties to be around **£0.1m per year**.

### Benefits

95. The main benefit to customers of our requirement to keep records will come from expected reductions in nuisance calls, as there are greater incentives for authorised CMCs to refuse leads which have been obtained in a non-compliant way.
96. CMCs will also benefit. Reduced numbers of nuisance calls should improve the reputation of the industry as a whole and increase confidence in the sector. At the moment all CMCs suffer the reputational damage caused by those that make nuisance calls. Without the current level of nuisance calls from by non-compliant competitors, potentially interested customers should receive contacts and advertising by CMCs more favourably.<sup>74</sup>
97. As we are requiring CMCs to keep a record of where leads come from, they will be better able to assist customers who may feel that their details have been passed on inappropriately, which may lead to a reduction in complaints against the CMC themselves.
98. It will also help CMCs demonstrate compliance, both with our guidelines and those of other bodies such as the Information Commissioner's Office.

### Amending marketing materials

99. Where CMCs advertise a 'no-win, no-fee' service, or similar, the advert should indicate what fees the CMC charges if the claim is successful, any cancellation and termination charges and should indicate whether there are statutory ombudsman or compensation schemes that the customer could use themselves directly and for free.
100. These rules about marketing activities aim to ensure that customers can make an informed decision on whether to use a CMC.

### Costs

101. Many of our proposed rules on financial promotions correspond to existing CMR rules and guidance that CMCs are currently required to comply with. For these rules, we do not estimate any additional costs of complying with those requirements.
102. For our proposed new requirements, we asked respondents to our CMC survey to show which types of marketing they did and how much they spent on it. We then asked those CMCs that spend money on marketing activities about the cost of changing their marketing under our proposals. Taking into account the general margin of error applicable to survey estimates as described in the 'Generating robust estimates' chapter, we estimate the average one-off cost to be between £6,500 and £7,200 for Class 1 CMCs, and between £410 and £450 for Class 2 CMCs.<sup>75</sup>
103. From this, we estimate total one-off costs for the industry to amend marketing to meet the new disclosure requirements to be **between £0.8m and £0.9m**.
104. This is a conservative, upper-limit estimate, as some CMCs could make these changes when they were already reviewing their marketing materials or strategy. 33% of CMCs in our survey said they review marketing materials at least monthly, while a further 17% said they do this quarterly.

74 [www.fca.org.uk/publication/consultation/understanding-ppi-redress-consumer-perspective.pdf](http://www.fca.org.uk/publication/consultation/understanding-ppi-redress-consumer-perspective.pdf)

75 We have removed responses whose reported total cost of changing market materials is greater than 5% of their reported revenue. The majority of firms reported the total cost of changing market material to be less than 1% of their reported revenue. Additionally, many firms reported no cost to changing marketing materials.



**105.** CMCs may also experience a reduction in turnover if a proportion of customers decide to use alternative routes to make a claim prompted by the additional disclosures we propose. Data in our Financial Lives survey indicates that a proportion of customers who used a CMC were unaware that they could claim without using such a service. An estimate for the amount of lost revenue cannot be reasonably estimated, given that transaction-level data are not available. Any cost to CMCs from lost revenue is related to the benefit to customers of making more informed decisions, as described below.

### **Benefits**

**106.** Customers primarily benefit from our proposals on financial promotions by being better informed about both the alternatives to using a CMC, and the likely charge if they use a particular CMC's services. The Brady Review highlights customers struggling to understand the services offered by CMCs and the available alternatives due to a lack of transparency in the manner in which CMCs promote themselves. The Financial Lives survey 2017 reveals limited customer awareness of the existence of free alternatives and a belief that CMCs boost the prospect of winning a claim:

- 35% of customers were not aware they could make a compensation claim for the mis-selling of financial products and services directly, without using a CMC.
- Specifically among the group of customers who made a claim in the last 3 years using a CMC, 23% were unaware they could make a claim without using a CMC.
- 24% of the UK adult population believe they would be more likely to win a claim if they use a CMC. CMCs may also benefit through dealing with better informed customers who have made a conscious decision to use the services of a CMC and who have a good understanding of the charges which they may incur. This may lead to a reduction in the number of complaints about CMC costs, which represent a significant proportion of the complaints received by the Legal Ombudsman in relation to CMCs.<sup>76</sup>

## **Communicating with customers**

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### **Pre-contract disclosure**

**107.** We are proposing similar requirements to the CMR rules and guidance for pre-contract disclosure. For example, we will carry across the requirement for a CMC to ascertain whether the customer has other methods for pursuing the claim and to take reasonable steps to ensure the customer understands the agreement. We do not estimate any additional costs of complying with these requirements. The main change is that we are proposing to require CMCs which contract with customers to provide a short summary document before entering into an agreement with the customer. This summary document would include:

- a) a fee estimate, or illustration on a standardised basis
- b) where relevant, information about the availability of free statutory ombudsman or compensation schemes and (if known) alternative dispute resolution schemes

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<sup>76</sup> The Legal Ombudsman, in its 'Complaints in focus' document about CMCs, indicated that around 40% of the disputes they saw related to costs. [www.legalombudsman.org.uk/wp-content/uploads/2014/09/complaints-in-focus-CMCs-final.pdf](http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/complaints-in-focus-CMCs-final.pdf), p4.



- c) a summary of the services that the CMC will provide and what the customer will be expected to do, so the customer can easily understand what the CMC will be doing at each stage of the claims process
- d) information about rights to cancel the agreement during the 'cooling off period', and to terminate the agreement after that period (and information about termination charges)

108. These measures aim to reduce harm by improving transparency and correcting information asymmetries in the market for CMCs' services.

#### *Specific requirement for lead generators*

109. For CMCs that are lead generators and do not contract directly with customers, they will need to set out whether a customer can act for themselves at no financial cost where a statutory ombudsman or compensation scheme exists. In addition, lead generators must state that they will receive a fee for passing on the customer's details.

#### *Costs*

110. In comparison to existing CMR requirements, the most significant addition relates to the proposed requirement for CMCs to provide customers in advance with a brief summary of essential information, including worked examples of likely charges (point a) above).

111. We estimate that an average CMC would require around 6 hours of administrative work, and around 3 hours of director time to compile the sheet of essential information, including estimates of charges CMCs need to disclose.<sup>77</sup> Using a range of £13.00 to £14.40 an hour<sup>78</sup> as the cost of CMC employee time and £68 an hour as the cost of director-level time<sup>79</sup>, the average one-off costs are estimated to be between £240 and £330.

112. Based on recent CMR data, approximately 74% of active Class 1 CMCs and 51% of active Class 2 CMCs contract directly with customers and will therefore be affected by the new rules.<sup>80</sup> Under this assumption, we estimate that 66 out of 89 Class 1 CMCs, and 332 out of 647 Class 2 CMCs face the incremental costs estimated above.

113. We expect the cost incurred by CMCs who are lead generators to be minimal as they will be able to communicate our proposed disclosures with customers over the phone.

114. From this, we estimate total one-off costs for the industry to be **around £0.1m**.

77 Based on our assessment, the time required by average Class 1 and Class 2 firms will not be materially different. We use a range estimate of +/- half an hour around each of these central estimates to provide more robust estimates of costs.

78 The cost of CMC employee time is based on our CMC survey data. We took an average of self-reported hourly costs of CMC employee time, discarding 4 values above £15,000 per hour as outliers, and replacing values below the National Minimum Wage (NMW) of £7.83 with the NMW. This is because employers are legally obliged to pay the NMW to employees. Adding a 30% mark-up for overhead and taking into account the general margin of error we have applied to survey estimates as described in the introduction, we estimate the average hourly cost of employee time to be between £13.00 and £14.40.

79 The hourly cost of director-level time is based on FCA analysis of Willis Towers Watson's 2016 UK Financial Services Report. Estimates are computed by assuming 260 working days per year, 7 hours per working day and 30% overheads.

80 Firms that provide services to solicitors who go on to deal with claims and do not contract directly with customers will only be required to inform about customers' rights to submit claims themselves and to indicate that they may receive remuneration from CMCs to which customers are referred.



### **Benefits**

- 115.** Rules on pre-sale disclosure aim to reduce the impact of asymmetric information, so that customers can make an informed decision about whether they need the services of a CMC.
- 116.** Problems of transparency and customer understanding (noted above in relation to marketing) persist at the pre-contract stage. For example in our Financial Lives survey 2017, customers who had made a claim for the mis-selling of financial products and services in the last 3 years through a CMC were asked if, before they signed the contract, they were given a worked example of how the commission the CMC charged would translate into the fee to be deducted from any compensation won. Only 54% of these customers can recall being given a worked example of the fees charged, while 27% were not and 19% could not recall.
- 117.** Our proposals should enhance customers' awareness of:
- the actual costs of the services proposed
  - the existence of free alternatives, and
  - the option to choose alternative suppliers
- 118.** Better awareness, in turn, is expected to result in the following effects:
- Some customers will prefer to submit their claims independently. They will, as a result, save on charges paid to the CMCs, though they will incur time costs from handling the claim themselves.
  - Other customers will compare charges and services by different CMCs, to identify the CMC offering better value for money. In practice, for standard services (eg claims for PPI) they are likely to choose the CMCs offering lower charges.
  - CMCs, in turn, will aim to attract customers by improving their offers. They can do so either by upscaling the quality of their services and, eventually, demonstrating higher success rates, or simply by reducing their charges.
- 119.** We cannot quantify these impacts, as they depend on future behavioural reactions by customers and CMCs that we cannot observe at this stage.
- 120.** For illustration purposes, however, we can use data on financial claims presented in the Treasury's IA<sup>81</sup> and the MoJ consultation response<sup>82</sup> to shed light on these potential effects. Evidence from these sources suggests that savings by customers from

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81 [www.parliament.uk/documents/impact-assessments/IA17-005A.pdf](http://www.parliament.uk/documents/impact-assessments/IA17-005A.pdf)

82 <https://consult.justice.gov.uk/digital-communications/cutting-costs-for-consumers-financial-claims/results/moj-claims-management-regulation-consultation-response.pdf-1>

submitting claims on their own and from shopping around among alternative CMCs could amount to around £18m per year.<sup>83</sup>

- 121.** We emphasise that this figure is only meant to illustrate that there could be substantial benefits for consumers from this requirement. The real outcomes in terms of future use of services and the evolution of charges will depend on actual behavioural reactions, as well as on future causes to submit claims in the different areas where CMCs operate.

### Ongoing disclosure

- 122.** CMCs will be required to update customers when there is a material development in the claim, a change in or revision to the estimates of the costs to the customer of the claim, when they have enough information to set out the cost of the claim, where they become aware of the respondent being a member of an alternative dispute resolution scheme and on progress generally at least once every 6 months.

### Costs

- 123.** Most of the rules proposed carry over what is currently expected or required by the CMR. Given that CMCs are expected to give regular updates to their customers, we do not think that sending an update at least once every 6 months is a more stringent requirement.
- 124.** However, the requirements to notify information about fees, and alternative dispute resolution schemes, will increase costs to CMCs. This should not entail one-off costs given that CMCs will already have systems in place to contact and notify customers.
- 125.** Regarding ongoing costs, we estimate that on average between 30-50% of customers can be contacted over email, for which costs will be minimal. The other customers are assumed to be contacted by letter, at an average cost of between £1.00 and £1.50 per notification.<sup>84</sup>
- 126.** From our CMC survey we estimate the average number of claims made by Class 1 and Class 2 CMCs, taking into account the general margin of error applicable to survey estimates as described in the 'Generating robust estimates' chapter. We estimate the average number of claims to be between 14,300 and 15,800 for Class 1 CMCs, and 580 and 640 for Class 2 CMCs. We further assume that in 5% of these claims, CMCs become aware of alternative dispute resolution mechanisms and will incur additional notification costs.<sup>85</sup>

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83 We illustrate this by considering two potential responses from customers that would have chosen to use CMCs: some (assumed to be 2.5% of existing CMC users) would instead claim directly, and some others (assumed to be 10% of existing CMC users) would instead find a cheaper provider. The Treasury's IA found that the CMC income per financial claim (ie claim against financial products and services) is around £500 (we assume no upfront fee in this illustration), while the MoJ consultation found the cost of processing a financial claim to be around £280. For simplicity, we assume that the cost of customers processing the claim themselves to be the same as that of CMCs. The savings customers could make by claiming directly are therefore £220 per financial claim (£500 less £280), or £6m across 24,000 claims (ie 2.5% of the 950,000 upheld financial claims processed by CMCs). For customers that look for a cheaper provider, we assume they would benefit from a reduction of fees by 25%, ie a fee of around £375 per claim. The savings customers that would be accrued to customer from using a cheaper provider are therefore £125 per financial claim (£500 less £375), or £12m across 95,000 claims (ie 10% of the 950,000 upheld financial claims process by CMCs). Altogether, this illustrates a potential saving of £18m by customers, and an equivalent £18m loss of profits for the CMCs through loss of business and reduction of prices. Since PPI claims form the vast majority of financial claims, this figure would likely be significantly reduced after the PPI claims deadline of August 2019.

84 This range is based on costs arising from postage (=£0.40), materials (=£0.10) and the time administrators need to prepare letters (=£0.70, based on the hourly cost of an administrators time of £14 and around 3 minutes to prepare the letter).

85 This assumption is informed by claims volumes reported in our CMC survey. In particular, the majority of reported claims relate to financial services, for most of which the Ombudsman Service would be available as an alternative dispute resolution mechanism. Therefore, we anticipate that no additional notification would be required for most claims.



- 127.** As for pre-contract disclosure, the 74% of Class 1 CMCs and 51% of Class 2 CMCs in the sector that contract directly with customers are assumed to be affected by this rule. Under this assumption, we estimate that 66 out of 89 Class 1 CMCs and 332 out of 647 Class 2 CMCs face the incremental costs estimated above.
- 128.** Under these assumptions, the **annual cost to industry would amount to between £0.6m and £1.4m.**

### **Benefits**

- 129.** Customers will be better aware of the progress of their claim and the fee they will ultimately charge. Consequently, we expect higher customer satisfaction and fewer disputes about fees.

### **Call recording**

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- 130.** We are proposing to introduce call recording requirements for CMCs in order to raise conduct standards. This proposal includes requiring CMCs to record and store all calls and electronic communications, including text messages and emails, with customers, and potential customers, that deal with claims.
- 131.** There is extensive evidence of harm arising from conduct failings in this sector. This indicates that the current framework does not work effectively. We expect that call recording will incentivise compliant conduct behaviours. This benefits not only their customers, but the CMCs themselves.
- 132.** CMCs which do not currently record calls and those that do but retain records for fewer than 12 months will face additional costs as a result of these proposals.

### **Costs**

- 133.** As discussed in paragraph 70, we do not expect CMCs to incur additional costs associated with our record keeping requirements where they are similar to those of the existing regulator. However, as recording and retention of telephone calls is a significant new record keeping requirement we have estimated an additional cost.
- 134.** Using our CMC survey data, we have estimated the percentage of CMCs that record and retain recordings separately for Class 1 and Class 2 CMCs.<sup>86</sup>
- 135.** Of the respondents that intend to obtain FCA authorisation<sup>87</sup>, 25% of Class 1 CMCs and 77% of Class 2 CMCs are not recording customer calls. Moreover, 50% of Class 1 CMCs that intend to become authorised are yet to store recordings for at least 12 months, compared to 90% of Class 2 CMCs.
- 136.** Taking into account the general margin of error applicable to survey estimates as described in the introduction, the responses on *one-off costs of installing recording equipment* indicated that the average one-off cost is between £8,900 and £9,850 for

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<sup>86</sup> When calculating the cost of call recording we considered estimates on a per-firm basis in addition to the CMC survey. This differs from the methodology used in the MiFID CBA, which estimated per-line costs with a different firm population in mind and using a different evidence base.

<sup>87</sup> The survey results are based on the responses of CMCs that intend to become FCA authorised and filled in the relevant fields. The costs of recording and retaining recordings are based on the responses of CMCs that do not already record or retain recordings, respectively. Moreover, CMCs that estimated all costs of recording to be equal to zero were excluded for a conservative estimate.

Class 1 CMCs, and between £1,400 and £1,550 for Class 2 CMCs. Using the percentage of CMCs that do not yet record, we estimate that 22 out of 89 Class 1 CMCs and 497 out of 647 Class 2 CMCs will need to install recording equipment.

- 137.** Based on responses regarding the *ongoing costs of recording*, the average annual cost to Class 1 CMCs is estimated to be between £6,200 and £6,850, and between £1,400 and £1,550 for Class 2 CMCs. Using the percentage of CMCs that do not yet record, we estimate that 22 out of 89 Class 1 CMCs and 497 out of 647 Class 2 CMCs will incur annual recording costs.
- 138.** With regards to *ongoing cost of retaining recordings*, the average annual cost for Class 1 CMCs is estimated to be between £2,550 and £2,850, and between £900 and £1,000 for Class 2 CMCs. Using the percentage of CMCs that do not yet store recordings for at least 12 months, we estimate that 44 out of 89 Class 1 CMCs and 583 out of 647 Class 2 CMCs will incur annual costs to retain recordings.
- 139.** Under these assumptions, the total **one-off costs would amount to between £0.9m and £1.0m**, with **annual costs of recording and retaining of between £1.5 and £1.6m**.

#### **Benefits**

- 140.** Responses to our CMC survey indicated that a significant number of CMCs have already chosen to record their customer calls. Benefits of call recording include helping CMCs:
- to prevent or mitigate risks and corporate liability, and to resolve disputes (fact verification in relation to, for example, complaints or legal challenges, can be used to reduce liability and resolve issues)
  - to demonstrate regulatory legal, industry, and service-level compliance requirements
  - to improve customer service (for example, by tracking how complaints are handled), which leads to increased satisfaction levels and customer retention
  - with staff training and development
- 141.** Customers will benefit from reduction in harm. The types of harm to customers that can be alleviated by requiring CMCs to tape customer calls include:
- CMCs not properly informing customers about, or misrepresenting, their services (exaggerating success rates or misrepresenting higher claims amounts) and their charges
  - pressurising customers into signing documentation during the sales call, or to pay an upfront fee
  - inadequate claims management process (eg unnecessarily slow handling, no feedback to customers, poor complaints handling processes, not properly vetting the customer/claim), and
  - failure to identify vulnerable customers (eg those more likely to be in financial difficulties)



- 142.** The benefits of call recording are widely recognised and accepted as good corporate practice in many sectors where much of the business is transacted over the phone. Due to the nature of these expected benefits, however, quantification would require the processing of a wide range of CMC and customer data, some of which is unlikely to exist. Producing estimates of the additional benefits from our requirements is therefore deemed not reasonably practicable.

### Fee collection

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- 143.** Our proposals in respect of fee collection are that a CMC should provide a clear explanation of their fees and charges whenever it issues a request for payment. It should also have appropriate procedures for dealing with customers in arrears.
- 144.** We have assumed that CMCs are already complying with these standards as part of their compliance with the current CMR principles that state that:
- 1.** A business shall conduct itself with honesty and integrity.
  - 2.** A business shall conduct itself responsibly overall.
  - 3.** A business shall observe all laws and regulations relevant to its business.
- 145.** Therefore, we consider that the additional costs and benefits of these proposals will be minimal for CMCs or their customers.

### Prudential standards

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- 146.** The baseline against which the impacts have been evaluated is CMCs continuing to operate in the absence of capital requirements, with every CMC voluntarily maintaining their current capitalisation level.
- 147.** The proposed rules would require CMCs, except those that are solely lead generators, to maintain a certain level of capital resources (prudential resources requirement).
- For a CMC with turnover exceeding £1m, this requirement is the higher of either £10,000 or 2 months' worth of the CMC's fixed overhead expenses.
  - For a CMC with turnover below £1m, this requirement is the higher of either £5,000 or 2 months' worth of the CMC's fixed overhead expenses.
- 148.** In addition, the requirement is increased by £20,000 for all CMCs (including those that are lead generators) that hold client money.

### Costs

- 149.** CMCs that responded to our CMC survey (November 2017), submitted information on their total revenue and total profit.<sup>88</sup> Using this information to estimate each CMC's total cost, we have estimated the impact of our proposed requirements.

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<sup>88</sup> The survey results are based on the responses of CMCs that intend to become FCA authorised.

- 150.** Based on publicly available information from Companies House, for a sample of CMCs that are obligated to report income statements, we have estimated relevant fixed expenditure to be between 40% and 60% of a CMC's total costs.<sup>89</sup>
- 151.** Using the resulting estimate of the fixed overheads requirement, we have calculated an overall estimate of the capital resources requirement for each survey respondent.
- 152.** The estimated capital resources requirement takes into account the additional £20,000 of capital required for CMCs that hold client money. In our CMC survey, 63% of Class 1 CMCs and 16% of Class 2 CMCs report that they hold client money.<sup>90</sup>
- 153.** The incremental cost of the proposed rules depends on the amount of capital that is already held by CMCs. To estimate the capital shortfall, we collated information on respondent CMCs' capital positions from their filings with Companies House. Using reported shareholders' equity the required capital increase for each respondent can be computed.
- 154.** Since we are proposing that CMCs who are solely lead generators will not have to meet the prudential resources requirement, we have excluded these lead generators when determining the estimated average capital resources requirement and capital shortfall.<sup>91</sup>
- 155.** The table below summarises the estimated average capital resource requirement and capital shortfall arising from these assumptions.<sup>92</sup>

**Table 4: Estimated average capital requirements and average shortfall (rounded to thousands)<sup>93</sup>**

	Estimated average capital resource requirement	Estimated average capital shortfall
Class 1	£493,000 to £813,000	£333,000 to £583,000
Class 2	£30,000 to £41,000	£18,000 to £22,000

- 156.** Using the average shortfall based on shareholders equity and assuming that all CMCs except those that are solely lead generators, 76 Class 1 CMCs and 362 Class 2 CMCs are subject to the prudential resources requirements, we calculated the incremental capital requirement for the whole industry. Based on the estimates in the table, this would amount to between £31.8m and £52.5m.

89 It should be noted that most of CMCs' income statements contain little detail on their cost structure, limiting the precision with which the share of relevant fixed expenditure as a percentage of total cost can be estimated.

90 CMCs that currently hold client money may respond to the proposed rules by changing their operations to avoid holding client money. Were such dynamic effects taken into account, the resulting cost estimate would be lower than the one computed here.

91 We have used data in the CMC survey for those firms whose reported revenues arise solely from personal injury claims as a proxy for firms which are solely lead generators. There are some firms who are solely lead generators which deal with other types of claims, but we are not able to identify those firms from our survey. This approach therefore understates the number of firms that are exempt from the proposed requirement, resulting in a cost estimate that may overstate the actual cost of the proposal.

92 The estimated ranges arise from taking into account the general margin of error applicable to survey estimates as described in the introduction and considering values from 40% to 60% for fixed overhead expenses as a share of total costs.

93 The median cost per CMC may lend itself more to interpreting the cost of a 'typical CMC' than the averages reported in the table, which are affected strongly by larger CMCs. However, to produce an accurate estimate of the market-level costs, the mean values reported in the table are multiplied by the number of affected CMCs.



- 157.** Requiring CMCs to hold additional capital imposes an opportunity cost on CMCs: the required capital could instead be used to generate returns. As a first approximation, we estimate the cost of capital arising from these incremental requirements using the cost of equity of CMCs, obtained through the Capital Asset Pricing Model (CAPM).<sup>94</sup> Under the assumption that the average CAPM beta is between 1.0 and 1.2, that the market risk premium is between 5.5% and 6.0%, and that the risk-free rate is 2%, the cost of equity would be between 7.5% and 9.2%.<sup>95</sup>
- 158.** Based on the range of estimates for the capital shortfall and the cost of equity, **the annual cost is estimated to be between £2.4 and £4.8m.**

### **Benefits**

- 159.** Capital assists a CMC in its loss-absorbing capacity, reduces the probability of financial distress and provides the CMC with resilience to a shock. This helps to ensure that the CMC has adequate financial resources to meet liabilities as they fall due. We expect increased capitalisation to increase the trust that customers and other businesses place in the CMCs in question.
- 160.** Adequate capital resources signal to customers the commitment of the CMC's owners and the financial soundness of the entity, which allows customers to have the confidence to engage with the CMC and to form reasonable expectations that the CMC will fulfil their obligations. More trust on the part of customers may result in additional revenues, while more trust on the part of other businesses may, for example, result in more generous payment schedules to suppliers. As we cannot observe these specific impacts, benefits from this intervention cannot be reasonably estimated.
- 161.** The proposed requirements also help to ensure that CMCs exiting the market wind down in an orderly fashion. If a CMC faces financial difficulties and/or fails in a disorderly manner this could translate into customer claims remaining unresolved for lengthy periods of time and, in some circumstances, these claims could become time-barred.
- 162.** On the failure of a CMC, holding client money is likely to be a complicating factor in any insolvency proceedings, such that an insolvency practitioner (IP) would have to spend additional resources dealing with returning the money or transferring it to another firm. An increased capital buffer for CMCs holding client money does give some comfort that there will be a reasonable amount of additional resources to resolve the client money estate, bearing in mind that there will be other prudential resources held by the firm.

94 The Capital Asset Pricing Model gives the return that investors would require from an equity investment, conditional on that equity's sensitivity to overall market risk, the equity market risk premium, and the risk-free rate. In particular  $r_i = r_f + \beta * MRP$ . Where  $r_i$  is the required return on equity,  $r_f$  is the risk-free rate,  $\beta$  is the sensitivity of the investment to overall market risk, and  $MRP$  is the market risk premium.

95 We use the long-term UK government bond yields as a proxy for the risk-free rate, which has a long-term yield of around 2% per year. Under the assumption that equity in CMCs carries an average amount of market risk,  $\beta$  would be 1. For robustness, higher values of  $\beta$  are considered to account for the possibility that the CMC sector carries an above-average level of market risk. With regards to the market risk premium, *KPMG (2018): 'Equity Market Risk Premium – Research Summary'* estimated the equity market risk premium to be equal to 5.5%. Again, for robustness higher values are considered.



## Wind-down procedures

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**163.** So that customers can continue with their claims with minimal disruption and in a timely manner, we propose requiring CMCs to carry out specific procedures if they propose to cease to carry on claims management activity or are going out of business (whether voluntarily or involuntarily). This will include requiring CMCs to:

- notify the customer that they are ceasing to carry on that activity
- send each customer with open or ongoing claims all information and documents relating to that claim
- tell the customer whether there are statutory ombudsman or compensation schemes or relevant alternative dispute resolution schemes that the customer could use themselves directly and for free, and
- notify the customer if it is passing details of the customer's claim to a third party to progress the claim (such as another CMC)

### Costs

**164.** The cost of notifying relevant third parties regarding the wind down will be minimal. This is because CMCs can notify using e-mail, and there will be a limited number of third parties (because these are often the same third parties for multiple claims, for example, the same bank, ombudsman service or solicitor).

**165.** However, there will be an incremental cost to CMCs to notify the customer of the winding down and return information and documents relating to ongoing claims of the customer. From our CMC survey we estimate the average number of claims made by Class 1 and Class 2 CMCs, taking into account the general margin of error applicable to survey estimates as described in the introduction. We estimate the average number of claims to be between 14,350 and 15,850 for Class 1 CMCs, and 580 and 640 for Class 2 CMCs. We estimate that on average between 30-50% of customers can be notified over email, for which costs will be minimal. The other customers are assumed to be notified by letter, at an average cost of between £1.00 and £1.50 per letter<sup>96</sup>. The average cost to send information and return documents to a customer is between £2.00 and £3.00 per file.<sup>97</sup>

**166.** Given these ranges, the average cost for Class 1 CMCs would be between £35,800 and £64,200 and between £1,400 and £2,600 for Class 2 CMCs.

**167.** Based on historical data on CMR-authorized CMCs, we estimate that between 10% and 15% of active CMCs will wind down every year, and will be subject to this requirement. For the purposes of this CBA, it is assumed that this trend continues under FCA regulation and that the same percentage range applies to both Class 1 and Class 2 CMCs. It follows that between 9 and 13 Class 1 CMCs, and between 65 and 97 Class 2 CMCs are estimated to incur the wind-down costs estimated above each year.<sup>98</sup>

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96 This range is based on costs arising from postage (=£0.40), materials (=£0.10) and the time administrators need to prepare customer files (=£0.70, based on the hourly cost of an administrators time of £14 and around 3 minutes to prepare the letter.

97 This range is based on costs arising from postage (=£0.40), materials (=£0.10) and the time administrators need to prepare customer files (=£2.30, based on the hourly cost of an administrators time of £14 and around 10 minutes to prepare the letter.

98 It is here implicitly assumed that the overall firm population remains constant, with the number of firms exiting being replaced by new entrants.



**168.** Using these assumptions, the increment in the **industry-wide annual ongoing cost of our wind-down proposals would be between £0.5m and £1.2m.**

### **Benefits**

**169.** We expect that customers will be able to continue pursuing a claim in a timely fashion despite the failure of the CMC, and that the potential for missing any claims deadlines will be reduced. Requiring CMCs to inform customers of any alternative options will make this easier for them.

**170.** Notifying third parties will prevent communication break-down between customers and third parties. We expect that this will also benefit CMCs, as they will be less likely to be contacted by third parties and customers during or after wind down, as both will be able to continue pursuing the claim without the CMC.

**171.** We consider that these benefits, for both customers and CMCs, are not quantifiable.

### **Client money**

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**172.** For CMCs that hold client money, we are proposing that they should:

- hold it in one or more client bank accounts (and in accordance with the statutory trust set out in CASS 14)
- pay out client money to clients as soon as reasonably practical
- appoint a person accountable for client money oversight
- maintain accurate records and accounts, which includes undertaking internal and external reconciliations each business day

**173.** For CMCs that do not hold client money, the Client Assets rules will not apply. We are not proposing different rules for CMCs depending on their size, but a CMC's size has been taken into account when estimating the cost of complying with Client Assets rules. For costing purposes we have considered two sizes of CMCs: Class 1 CMCs and Class 2 CMCs.

**174.** In our CMC survey, 63% of Class 1 CMCs and 16% of Class 2 CMCs report that they hold client money.<sup>99</sup> Hence, using the total number of active CMCs estimated above, we estimate that CASS rules will affect 57 Class 1 CMCs and 104 Class 2 CMCs that are currently CMR regulated.

**175.** CMCs holding client money will be required to hold additional capital under the proposed interventions. The cost associated with this requirement is considered under the section 'Prudential standards' and is not included here.

### **Costs**

**176.** Table 5 sets out the cost components associated with the requirements on CMCs holding client money, and the one-off and ongoing impact they have on the industry:

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<sup>99</sup> CMCs that currently hold client money may respond to the proposed rules by changing their operations to avoid holding client money. Were such dynamic effects taken into account, the resulting cost estimate would be lower than the one computed here.

**Table 5: Estimated costs associated with client asset rules**

Cost component	One-off costs	Ongoing costs
Selection of an approved bank at which to hold client money	N/A	£7,000 – £21,000
Acknowledgement letters	£5,000 – £16,000	N/A
Reconciliations and checks	£21,000 – £35,000	£357,000 – £676,000
Restrictions on holding successful claims pay-outs	N/A	£92,000 – £305,000
Auditor's reports	N/A	£214,000 – £307,000
<b>Total costs associated with Client Assets rules</b>	<b>£26,000 – £51,000</b>	<b>£670,000 – £1,309,000</b>

Note: Figures in each column may not sum to the total due to rounding.

- 177.** Based on the estimations we set out below, the industry-wide **one-off costs** would be **under £0.1m**. The ongoing costs for the industry would be **£0.7m – £1.3m per year**.
- 178.** Throughout the following section, we use the following estimates to measure the cost of time for directors and employees of CMCs:
- As in the systems and controls section, the hourly cost of compliance director-level time is based on FCA analysis of Willis Towers Watson's 2016 UK Financial Services Report. Estimates are computed by assuming 260 working days per year, 7 hours per working day and 30% overheads.
  - As in the pre-contract disclosure section, the hourly cost of employee time is taken to be £13.00 – £14.40 based on the CMC survey (including 30% overheads).
- Allocating responsibility for CASS oversight to a director or senior manager**
- 179.** CMCs will be required to allocate to a director or a senior manager responsibility for CASS oversight. We do not anticipate any costs for allocating this responsibility to an existing member of staff.
- Selection of an approved bank at which to hold client money**
- 180.** CMCs will need to conduct due diligence on the banks they select to hold their client money to ensure they are suitable. This typically involves considering a bank's status as an authorised firm, its credit rating, and the amount of client money placed relative to the bank's capital, on a yearly basis. We estimate the incremental costs above additional requirements will cost between £40 and £120 for Class 2 CMCs and between £50 and £140 for Class 1 CMCs. This assumes that a Class 2 CMC will need around 1 hour of CMC employee time and around 1 hour of CMC director time. A Class 1 CMC will need around 2 hours of CMC employee time and around 1 hour of CMC director time.<sup>100</sup>
- 181.** Under these assumptions, the ongoing cost to industry for selecting and monitoring the suitability of the bank at which to hold client money is expected to be between £7,000 and £21,000.

<sup>100</sup> Estimates based on FCA's prior experience and knowledge. We use a range estimate of +/- half an hour around each of these central estimates to provide more robust estimates of costs.



### Acknowledgement letters

- 182.** CMCs will need to have 'Acknowledgement Letters' in place for their client money bank accounts using the template in the rules. We estimate the process takes around 1 hour of director's time,<sup>101</sup> which would cost between £30 and £100. A director will need to complete the acknowledgement letter template, sign it, and send it to the bank to be countersigned. They then need to file the acknowledgement letter when the bank sends it back.
- 183.** Under these assumptions, the one-off cost to industry to process Acknowledgement Letters is expected to be between £5,000 and £16,000.

### Reconciliations and checks

- 184.** CMCs will need to conduct ongoing reconciliations and checks, which will involve ongoing costs and upfront setup costs. A reconciliation involves comparing 2 sets of records. CMCs must maintain records properly, so this process will involve ensuring that the records match and resolving any discrepancies.
- 185.** Setting up reconciliations involves ensuring records are held in an appropriate format and agreeing the process for reconciliations. Based on the FCA's prior experience and knowledge, we assume that a Class 2 CMC will need around 5 hours of CMC employee time, and a Class 1 CMC will need around 7 hours of CMC employee time. Additionally, a Class 2 CMC will also need around 1 hour of director's time to review and sign off this set up, and a Class 1 CMC will need around 2 hours of director's time. These times equate to around £90 to £180 per Class 2 CMC and around £190 to £280 per Class 1 CMC.
- 186.** On an ongoing basis, internal and external reconciliations will take around 15 minutes of CMC employee time per instance for a Class 2 CMC, and around 30 minutes for a Class 1 CMC.<sup>102</sup> Estimates are based on assuming one internal reconciliation and one external reconciliation per working day. A CMC also needs one hour of director time each month to review reconciliations. We estimate that these times equate to ongoing costs of around £2,100 to £3,000 per Class 2 CMC and around £2,400 to £6,300 per Class 1 CMC. Since existing rules already require one external reconciliation per month, these costs represent the incremental costs associated with internal and external reconciliation on a daily basis.
- 187.** Under these assumptions, the one-off setup cost to industry to conduct reconciliation and checks is expected to be between £21,000 and £35,000, and the ongoing cost to industry is expected to be between £357,000 and £676,000 per year.

### Paying out successful claims

- 188.** We estimate that it will take around half an hour of CMC employee time for a Class 2 CMC, and an hour for a Class 1 CMC, to check that it has paid out claims within the timeframe allowed by the rules.<sup>103</sup> CMCs would need to do this every other working day.<sup>104</sup> The incremental costs of FCA rules should only include the additional time required for CMCs to ensure that claims are paid out promptly (within the proposed timeframe), because CMCs have to pay out claims at some point under existing rules. This involves ensuring that whenever a CMC is holding client money, it makes sure that it is taking steps to pay it on.

101 We use a range estimate of +/- half an hour around this central estimate to provide more robust estimates of costs.

102 For the purposes of estimation, we take the range of 12-18 minutes for Class 2 firms and 15-45 minutes for Class 1 firms.

103 For the purposes of our estimations, we use the range of 15-45 minutes for Class 2 firms and 0.5-1.5 hour for Class 1 firms.

104 There are approximately 260 working days in a year.

**189.** Under these assumptions, ongoing cost to industry to comply with claims pay-out restrictions is expected to be between £92,000 and £305,000 per year.

### **Auditors' reports**

**190.** We assume that a CASS Audit will require around 5 hours of auditor time to conduct the audit for a Class 2 CMC, and around 10 hours for a Class 1 CMC, around 3 hours of CMC employee time to aid the audit process, and around 3 hours of CMC director time to review.<sup>105</sup> We then deduct the cost of the 'Accountants Report' which CASS CMCs must have under existing rules. We assume this to be around £1,000. Rules which require the auditor to be independent and cooperate with the regulator will add no incremental cost, as we expect that auditors will have priced these in regardless.

**191.** Under these assumptions, we expect the ongoing cost to industry to prepare and submit CASS Audits to be between £214,000 and £307,000 per year.

### **Benefits**

**192.** Data on disorderly firm failure are unavailable, as is the current level of client money returned to clients on failure. Therefore, we do not consider it reasonably practicable to produce quantitative estimates of the benefits of a client money regime.

**193.** However, based on our CMC survey data, we estimate that there is up to £26m in client money held in the claims management industry.

**194.** We expect that the proposed changes will benefit customers by increasing the amount of money returned to clients in the event of the insolvency, and by reducing other loss (such as accidental loss, fraud and theft).

**195.** We also expect that the following areas of the proposed rules will result in lower shortfalls in client money (in the event of firm insolvency):

- Restrictions on holding successful claims pay-outs: This limits the amount of time that firms can hold client money on behalf of an individual client. We expect this to reduce the probability that a firm is holding the money of a given client on its failure.
- Reconciliations and checks: More frequent reconciliations ensure that firms keep closer track of their (flows of) client money, and can quickly identify and resolve discrepancies and inaccuracies in their books and records. We expect these proposed rules will improve the standard of book-keeping and reduce the probability of accidental loss or theft of client money.
- Auditors' reports: We expect more rigorous external audits will provide greater scrutiny of firms' treatment of client money, more detailed evidence on which to base regulatory action in cases of wrong-doing, and improved information to firms about where they need to improve their practices to provide a high level of protection for client money.
- Capital requirements: the benefits associated with the requirement to hold an additional amount of capital for CMCs that hold client money are considered under the section 'Prudential standards'.

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105 Estimates based on the FCA's prior experience and knowledge. We use a range estimate of +/- half an hour around these central estimates to provide more robust estimates of costs. We estimate the hourly cost of a CASS auditor to be between £350 and £370, based on a previously estimation (CP11/13) adjusted for CPI inflation.



- General record-keeping and administration: More detailed and prescriptive rules regarding record-keeping will reduce the probability of accidental loss, or theft, of client money. Accidental loss in this case includes co-mingling of client money with firm money to such an extent that it is deemed part of the general estate by the Insolvency Practitioner.

## Dispute resolution

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**196.** Our 'Dispute Resolution: Complaint's sourcebook (known as DISP) sets out rules for how CMCs should handle complaints and when complaints must be referred to the Ombudsman Service. We are proposing to:

- bring CMCs within the compulsory jurisdiction of the Ombudsman Service
- apply our DISP complaints-handling standards to CMCs to ensure that complaints are dealt with consistently, fairly and promptly
- grant CMCs outside our regulatory regime access to the Ombudsman Service

### Costs

**197.** The complaints handling process in DISP is similar to the current CMR requirements.

**198.** CMCs are currently subject to the jurisdiction of LeO and are required to inform customers of their right to take a complaint to LeO. CMCs will be subject to similar requirements in respect of customers' rights to bring complaints before the Ombudsman Service. The main difference is that the final response letter must also include the standard Ombudsman Service explanatory leaflet, or a link to the leaflet if the complaint was made by email.

**199.** We consider these industry-wide costs to be around £2,000 per year.<sup>106</sup>

### Benefits

**200.** Customers will benefit from receiving the Ombudsman Service's standard explanatory leaflet in the final response. They will be able to more easily gain an understanding of their rights to complain. CMCs will also be more likely to focus on reducing the number of complaints because of having to report complaints annually to us, and potentially publishing this data if they receive a high volume of complaints. As a result customers should benefit from improved customer service. In turn, this should bring benefits to CMCs through higher customer satisfaction.

### Supervision & reporting

**201.** In order to inform our supervision of CMCs, we are proposing to require that CMCs comply with the relevant sections of our Supervision (SUP) manual. Specifically, we are proposing that CMCs:

- notify us of significant changes in their business

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<sup>106</sup> A pack of 25 leaflets costs £5 (ie 20p per leaflet). Based on our CMC survey, a Class 1 CMC receives, on average, 155 complaints per year, while Class 2 CMCs receive 8. Therefore, assuming that half of complaints are made by letter, so that each complaint entails a cost of 10 pence, we estimate that the on-going cost per CMC would be £15.50 for Class 1 CMCs (of which there are 89) and £0.80 for Class 2 CMCs (of which there are 647).

- notify us if their due diligence on a lead generator makes them aware that the lead generator does not have the necessary permission
- provide core data (postal address, key contacts, email address etc)
- provide an annual report on complaints made by customers against the CMC, and
- report key data about their business to us on an annual basis

**202.** In addition to these regular data, we may also wish to collect data from CMCs on an ad hoc basis. In these circumstances, we will request these data from CMCs and will balance the proportionality of the data request burden on CMCs against the expected benefit.

**203.** We consider that effective supervision is an important tool for changing behaviours, and reducing the harms identified, in the claims management sector. Requiring CMCs to report data to us enables us to check their compliance with our rules and to spot potential and emerging issues in the sector. It also enables us to gain an informed and up-to-date overview of the sector.

### Costs

**204.** The costs of complying with SUP outside of notification and reporting requirements should be of minimal significance, as SUP gives guidance on how CMCs should co-operate with the FCA and what approaches the FCA might take when supervising CMCs which are similar to the requirements to co-operate with the CMR.

**205.** In relation to the notification requirements, we do not believe there will be a material increase in costs for CMCs. Some notifications which the CMR already require or expect, including notification about changes to a CMC's details, such as address and contact number, or events such as civil proceedings and bankruptcy, will need to be submitted using our forms. The cost of familiarisation with the new forms should be minimal. We do not need to cost notifications which are necessary when a CMC has breached our rules<sup>107</sup>, as we are analysing the cost of compliance with our rules. However, there are several notification requirements which are new. These are:

- Notification about matters having a serious regulatory impact, such as failure to satisfy a Threshold Condition.
- Oral or written notification under Principle 11<sup>108</sup>, of any proposed restructuring, product expansion, failure of systems or controls, or action resulting in a material change to capital adequacy or solvency.<sup>109</sup>
- Written notification on becoming aware of a firm undertaking any regulated claims management activity without the appropriate permissions.

**206.** We consider that the notifications list above might be required once a year, taking around 5 hour of compliance officer's time, and around 3 hour of CMC employee time

107 SUP 15.3.11R, SUP 15.3.32R

108 PRIN 11: Relations with regulators: A CMC must deal with its regulators in an open and cooperative way, and must disclose to the FCA appropriately anything relating to the CMC of which the FCA would reasonably expect notice.

109 SUP 15.3.8G



for a Class 2 CMC. For a Class 1 CMC, we consider it would taking around 10 hours of compliance officer's time, and around 4 hours of CMC employee time.<sup>110</sup>

**207.** To estimate the monetary cost of this requirement, we use a weighted-average hourly compliance cost of £65,<sup>111</sup> and an hourly CMC employee wage of between £13.00 and £14.40 an hour.<sup>112</sup>

**208.** Under these assumptions about incremental costs, we estimate the average annual cost for Class 2 CMCs to be between £320 and £410, and the average annual cost for Class 1 CMCs to be between £660 and £740.

**209.** Our cost estimates for our proposals to apply the regular SUP reporting requirements follow:

- The annual requirement to provide us with key data using form CMC001 is largely equivalent to the data required under the CMR. Therefore, there is no significant increase in costs to CMCs.
- The standing data we propose to collect are largely also the same information as required by the CMR. Therefore, there is no increased cost to CMCs.
- Complaints information that CMCs will need to collect will change in only minimal ways from that required by the CMR. The data will need to be submitted to us annually, rather than stored and submitted on request. We consider that this will not amount to any significant cost increase for CMCs.

**210.** Under the assumption that all 89 Class 1 CMCs and 647 Class 2 CMCs face these incremental costs for reporting, the industry-wide annual costs are **estimated to be around £0.3m per year**.

### **Benefits**

**211.** CMC compliance with these rules will enable us to supervise CMCs in an informed manner. We are likely to supervise the majority of CMCs using an event-driven or thematic approach. Notifications and regular data collections will support this approach. We will be able to identify and remedy customer harm and problems in the market quickly and effectively.

**212.** Rule breach notification should lead to a lower incidence of rule breaches. This equates to lower number of penalties that might arise through enforcement action, and a reduction in customer harm arising from improvements in CMC conduct behaviours.

### **Familiarisation costs**

**213.** In order for CMCs to comply, they will have to familiarise themselves with our rules and guidance. This is particularly important in areas where we have strengthened the rules or specified additional requirements.

110 Estimates based on the FCA's prior experience and knowledge. We use a range estimate of +/- half an hour around these central estimates to provide more robust estimates of costs.

111 This weighted-average hourly compliance cost is computed in the SYSC section above.

112 This range is computed in the pre-contract disclosure section above.



- 214.** In our CBA we have taken into account the familiarisation costs of the material additional requirements we are setting out: CMCOB, the CP, CBA, and the PS containing the final rules, which we intend publishing before April 2019.<sup>113</sup>
- 215.** Although we estimate a one-off cost for CMCs to read the documentation, we have not costed any ongoing costs. This is because CMCs currently must familiarise themselves with anything published by the CMR, as this will no longer be required but rather FCA documentation, we therefore estimate any additional ongoing familiarisation costs to be minimal.
- Costs**
- 216.** There are approximately 220 pages of policy documentation CMCs will have to familiarise themselves with. As much of this text is technical, we assume a reading speed of 3.5 minutes per page, meaning it will take approximately 13 hours to read all documentation. It is further assumed the hourly cost of a compliance officer's or director's time is £65.<sup>114</sup>
- 217.** Based on these estimates, we calculate that the average one-off cost would be approximately £840 for both Class 1 and 2 CMCs. Under the assumption that all CMCs incur familiarisation costs, **the industry-wide one-off cost would be £0.6m.**

## Legal review

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- 218.** We also anticipate that firms will also have to conduct a review of approximately 80 pages of legal text.
- 219.** We assume that 2 legal staff at Class 1 CMCs and 1 member of legal staff at Class 2 CMCs will review the legal text, implying a total of around 70 hours at Class 1 CMCs and around 10 hours at Class 2 CMCs for legal staff to conduct the review.<sup>115</sup> The hourly legal staff cost is assumed to be £64 at Class 1 CMCs, and £51 at Class 2 CMCs.<sup>116</sup>
- 220.** Under these assumptions, the **one-off industry cost of legal review is estimated to be around £0.8m.**

## Concluding remarks

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- 221.** The package of interventions entail costs of compliance to the industry estimated to be between £3.5m and £4.0m in one-off costs, and between £6.6m and £11.7m in ongoing costs per year. We are not in a position to assess how ongoing costs will vary across the next years. The PPI deadline (29 August 2019) is likely to cause an increase in claims in the period preceding the date, and then a significant decrease in the number

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113 As the PS is yet to be published, we estimate it to be the same size as our CP.

114 See paragraph 74.

115 The number of legal staff reviewing the documentation by firm size is based on standard FCA assumptions. The estimated time required per legal staff at Class 1 and Class 2 CMCs is based on standard FCA assumptions of 21 hours per 50 pages of legal text at medium-sized firms and 7 hours at small-sized firms. This is based on the expectation that the review is more complex at larger firms.

116 The hourly legal staff cost is based on standard FCA assumptions.



of new claims. We cannot speculate on future reasons for claiming in the financial sectors, in personal injuries and the other areas where CMCs operate.

- 222.** The Brady Review, as well as Government consultation papers and reports by the CMR pointed out the widespread issues in the sector that are causing harm to customers. The package of measures aims to curb this harm and prevent further problems in the market.
- 223.** As is often the case, most benefits cannot be monetised. Some, such as reduction in charges from measures fostering competition, depend on the behavioural reactions among CMCs and customers. Others, like improvements in customers' confidence, are inherently hard to convert into monetary values.
- 224.** Some elements of harm do indicate potential impacts well above the costs of compliance estimated in this CBA. For illustrative purposes, customers' ability to consider free alternatives and to shop around across different offerings by CMCs could lead them to collectively save around £18m per year in charges related to financial claims.<sup>117</sup>

**Q35: Do you have any comments on the costs and benefits as set out in our cost benefit analysis?**

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117 See paragraph 120.

## Annex 3

# Compatibility statement

### Compliance with legal requirements

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1. This annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s.1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives; and (b) its general duty under s.1B(5)(a) FSMA to have regard to the regulatory principles in s.3B FSMA. The FCA is also required by s.138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This annex also sets out our view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s.1B(4)). This duty applies insofar as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this annex explains how we have considered the recommendations made by the Treasury under s.1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.
5. Our assessment of the equality and diversity implications of these proposals are found in Annex 4.
6. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) we are subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This annex sets out how we have complied with requirements under the LRRRA.

### The FCA's objectives and regulatory principles: Compatibility statement

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7. The proposals set out in this consultation are primarily intended to advance our operational objective of consumer protection. They are also relevant to our objective of promoting competition.



8. We consider that our proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. This is because *they increase consumer protection, promote competition within the sector and aim to drive up service standards*. They address failures in the market identified both by our own assessment of the market and by the independent review of claims management regulation (the Brady Review). In particular, we propose to apply greater protections to customers through better disclosure, applying prudential standards, requiring calls to be recorded, and requiring CMCs to protect client money.
9. For the purposes of the FCA's strategic objective, 'relevant markets' are defined by s.1F FSMA.

### Compatibility with the duty to promote effective competition in the interests of consumers

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#### **The FCA has in this consultation had regard to the 5 matters in s.1E(2)(a)-(e) of FSMA.**

10. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. As indicated, the proposals are principally intended to advance the consumer protection objective. We have taken care to design our proposals so that they target regulatory requirements where they are needed to secure an appropriate degree of consumer protection while minimising any adverse effects on competition.
11. As indicated, we believe our proposals should enhance competition by requiring CMCs to set out clearly the scope of the service they provide before a customer signs a contract with them. In addition, we propose that CMCs offering 'no win, no fee' services should clearly provide an indication of cost to the customer in the event of a successful claim.
12. Customers should therefore be better able to make an informed choice about which CMC to use, based on an understanding of the cost of using a CMC and the service it provides. This should increase competition, both on price and standard of service, among CMCs.

### Consumer protection

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13. The mandate of the FCA includes the requirement to secure an appropriate degree of protection for consumers. The FCA has in this consultation had regard to the 8 matters listed in s.1C(2)(a)-(h) FSMA on consumer protection.
14. By increasing the consistency and accuracy of disclosures our proposals will assist customers in making informed decisions about whether to use a CMC, and by requiring CMCs to protect client money and applying minimum prudential standards and specific wind-down requirements we make it less likely that customers will be impacted by the failure of a regulated CMC.

## The FCA's regulatory principles

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15. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B FSMA.

### **The need to use our resources in the most efficient and economic way**

16. Our proposed changes to the existing regulatory regime focus on the highest-risk areas – when customers decide to use a CMC and the service that they receive once they have entered into a contract with a CMC. By focusing our changes in these areas, we allow our resources to be used in the most efficient way.

### **The principle that a burden or restriction should be proportionate to the benefits**

17. We have undertaken a cost-benefit analysis of our proposals, which is included in Annex 2 of this CP. We consider the costs are proportionate to the benefits.

### **The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

18. Our proposals have regard to the desirability of sustainable growth in the medium and long term. Although we expect a reduction in the number of CMCs, those remaining in the market should be more sustainable due to our prudential requirements, and should provide a higher standard of service overall, due to our enhanced conduct regime.

### **The general principle that consumers should take responsibility for their decisions**

19. Our proposals should ensure customers are treated in a fair way by CMCs while still being responsible for their own decisions. CMCs will be required to provide clear information, both in financial promotions and pre-contract disclosure, about alternatives to using their services. We propose that pre-contract disclosure will also contain information about the scope of a CMC's services. This enables customers to make:

- i) an informed decision about whether to use a CMC, and
- ii) an informed decision about which CMC to use.

Customers will therefore remain responsible for their decisions in both aspects, but will be better informed as a result of our proposals.

### **The responsibilities of senior management**

20. We will be consulting on applying the Senior Managers & Certification Regime to CMCs in due course. This regime aims to reduce harm to consumers and strengthen market integrity by creating a system that enables firms and the FCA to hold individuals to account. As part of this, the SM&CR aims to:

- encourage staff to take personal responsibility for their actions
- improve conduct at all levels
- make sure firms and staff clearly understand and can demonstrate who does what



**The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

21. Our regime is tailored to reflect different business models within the CMC sector. For example, we are aware that a substantial proportion of CMCs in the personal injury market do not have an ongoing relationship with customers, as they refer claims to other CMCs or solicitors regulated by the SRA. Such CMCs will only need to comply with the parts of our regulatory regime that apply to the activities they carry out (such as call recording), but will not need to comply with client money requirements or pre-contractual disclosure obligations if they do not contract with the customer or hold money on behalf of customers.

**The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information**

22. Our proposals are not relevant for this principle.

**The principle that we should be accountable and exercise our functions as transparently as possible**

23. We have engaged extensively with the current regulator for the sector throughout the process of designing the proposals in this CP. We also conducted a survey which contacted all authorised CMCs in England and Wales, together with CMCs in Scotland. We will continue to engage with stakeholders throughout this consultation process prior to making any rules.

**Financial Crime**

24. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s.1B(5)(b) FSMA). CMCs authorised by the FCA will be required under our proposals to actively take measures to counter the risk that the CMC might be used to further financial crime (SYSC 6.1.1R).

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**Expected effect on mutual societies**

25. We do not expect the proposals in this paper to have a significantly different impact on mutual societies. We do not have any evidence to indicate that mutual societies are involved in undertaking any claims management activity, but would welcome any comments on this as part of the consultation process.

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**Equality and diversity**

26. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conducted an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
27. The outcome of the assessment in this case is set out in Annex 4.

## Legislative and Regulatory Reform Act 2006 (LRRRA)

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- 28.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals will lead to improved outcomes for consumers and address the issues identified in the market. We also believe the proposals are proportionate and will result in an appropriate level of consumer protection when balanced with impacts on firms and competition.

## Regulators' Code (2014)

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- 29.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals meet the following principles:
- Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
  - Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply.
  - Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views, and should ensure that their approach to their regulatory activities is transparent.
  - Regulators should base their regulatory activities on risk.

## Treasury recommendations about economic policy

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- 30.** In the remit letter published by the Chancellor of the Exchequer on 8th March 2017 the Chancellor affirms the FCA's role in ensuring that effective competition in financial services can create the right conditions for access to finance, which is part of the Government's economic objective to create strong, sustainable and balanced growth. The FCA has regard to this letter and the recommendations within. As set out in the CP, we consider that our proposals are proportionate and will promote effective competition.



## Annex 4

# Equality impact assessment

1. We are required under the Equality Act 2010 to consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation). We are also required to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between persons who share a relevant protected characteristic and persons who do not share it, when carrying out our functions.
2. We have conducted an initial equality impact assessment (EIA) of our proposals to ensure that the equality and diversity implications are considered. This annex sets out the results, explaining the potential impact of our proposals on protected groups where we have identified them and, where relevant, the steps we have taken or will take to minimise them.
3. The main outcomes of our assessment are as follows:
  - Statistics from our Financial Lives Survey 2017 suggest that certain groups with protected characteristics were either more likely to use a CMC to process a claim, or were less likely to know that they could make a claim without using a CMC. For example, 51% of all UK adults who have made a claim in the last three years for mis-selling of financial products used a CMC. However, this figure rose to 54% of those aged 75 and over, and to 60% of those who have a physical and/ or mental illness or condition lasting or expected to last for 12 months or more that affects day-to-day activities a lot.
  - Similarly, 65% of UK adults were aware that they could make a compensation claim for mis-selling of financial products and services without using a CMC. However, this figure reduced to 53% of those aged 75 and over, and to 50% of those with a physical and/ or mental illness or condition lasting or expected to last for 12 months or more that affects day-to-day activities a lot.
  - These customers may benefit from our proposal to require CMCs to indicate where there are statutory ombudsman or compensation schemes that the customer could use as an alternative as they are more likely to be positively impacted by an increase in the information available to them, allowing them to (i) consider whether to use a CMC or not, and (ii) consider which CMC to use.
  - For other groups with protected characteristics, we have not identified any concerns that arise in our proposals, but welcome any comments on the effect of our proposals for these consumers.
  - Although there are no specific negative impacts for consumers in groups with protected characteristics, the research from the Financial Lives Survey shows that certain groups with protected characteristics are more likely to use CMCs. As such, there could be an impact on these groups from a reduction in the number of CMCs post-2019 if a proportion of the market chooses not to continue once this



activity becomes subject to FCA regulation. At the moment, our research suggests that 20% of the market may choose not to continue in business, however, this is consistent with shrinkage in the market which has seen 20% of firms leaving the market in the last couple of years.

4. We welcome any views, evidence or information that respondents might have on the equality and diversity impacts mentioned above and any equality and diversity issues they believe arise from the proposals in the rest of this paper.

**Q36: Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?**



## Annex 5

### Abbreviations in this document

<b>ARD</b>	Accounting reference date
<b>CAPR</b>	Conduct of Authorised Persons Rules
<b>CASS</b>	Client Assets sourcebook
<b>CBA</b>	Cost benefit analysis
<b>CCR005</b>	Consumer credit data guide (Gabriel)
<b>CMC</b>	Claims management company
<b>CMCOB</b>	Claims Management Conduct of Business sourcebook
<b>CMR</b>	Claims Management Regulator
<b>CONC</b>	Consumer Credit sourcebook
<b>COND</b>	Threshold Conditions in the Handbook
<b>CP</b>	Consultation Paper
<b>DEPP</b>	Decision Procedure and Penalties manual
<b>DISP</b>	Dispute Resolution: Complaints sourcebook
<b>EEA</b>	European Economic Area
<b>EG</b>	Enforcement Guide
<b>EIA</b>	Equality impact assessment
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FIN</b>	Financial Crime: a guide to firms
<b>FGCA</b>	Financial Guidance and Claims Bill/Act
<b>FSCS</b>	Financial Services Compensation Scheme
<b>FSMA</b>	Financial Services and Markets Act

<b>GDPR</b>	General Data and Protection Regulation
<b>GEN</b>	General Provisions of the Handbook
<b>ICO</b>	Information Commissioner's Office
<b>IFB</b>	Insurance Fraud Bureau
<b>IPRU-INV</b>	Interim prudential sourcebook for investment businesses
<b>LeO</b>	Legal Ombudsman
<b>LRRA</b>	Legislative and Regulatory Reform Act 2006
<b>MIPRU</b>	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
<b>MoJ</b>	Ministry of Justice
<b>Ombudsman Service</b>	Financial Ombudsman Service
<b>PIDA</b>	Public Interest Disclosure Act 1998
<b>PII</b>	Professional indemnity insurance
<b>PRA</b>	Prudential Regulation Authority
<b>PPI</b>	Payment protection insurance
<b>PRIN</b>	Principles for Businesses
<b>RDC</b>	Regulatory decisions committee
<b>SM&amp;CR</b>	Senior Managers and Certification Regime
<b>SUP</b>	Supervision manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook
<b>The Treasury</b>	Her Majesty's Treasury
<b>UK</b>	United Kingdom
<b>VAT</b>	Value added tax



# Appendix 1

## Draft Handbook text

## CLAIMS MANAGEMENT INSTRUMENT 2018

### Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes and amends the scheme rules, makes and amends the Voluntary Jurisdiction rules, and fixes and varies the standard terms for Voluntary Jurisdiction participants, as set out in Annex A and Annex G to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
  - (2) paragraph 8 (Information, advice and guidance) of Schedule 17;
  - (3) paragraph 14 (Scheme operator’s rules) of Schedule 17;
  - (4) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
  - (5) paragraph 22 (Consultation) of Schedule 17.
- B. The making and variation of the scheme rules in Annex A and Annex G by the Financial Ombudsman Service Limited is subject to the consent of the Financial Conduct Authority, and the making and amendment of the Voluntary Jurisdiction rules and fixing and variation of the standard terms in Annex A and Annex G by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

### Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Act:
- (1) section 137A (The FCA’s general rules);
  - (2) section 137B (FCA general rules: clients’ money, right to rescind etc);
  - (3) section 137R (Financial promotion rules);
  - (4) section 137T (General supplementary powers);
  - (5) section 139A (The FCA’s power to give guidance);
  - (6) section 226 (Compulsory jurisdiction); and
  - (7) paragraph 13 (FCA’s rules) of Schedule 17.
- D. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to the making and variation of the scheme rules in Annex A and Annex G by the Financial Ombudsman Service Limited, and approves the making and amendment of the Voluntary Jurisdiction rules and the fixing and variation of the standard terms in Annex A and Annex G by the Financial Ombudsman Service Limited.

### Commencement

- F. This instrument comes into force on 1 April 2019.

### Amendments to the FCA Handbook

- G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls (SYSC)	Annex C
General Provisions (GEN)	Annex D
Client Assets (CASS)	Annex E
Supervision manual (SUP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G

### Making the Claims Management: Conduct of Business sourcebook (CMCOB)

- H. The Financial Conduct Authority makes the rules, gives the guidance [and makes the directions and requirements] in Annex H to this instrument.

### Amendments to material outside the Handbook

- I. The Financial Crime guide (FC) is amended in accordance with Annex I to this instrument.
- J. The Perimeter Guidance manual (PERG) is amended in accordance with Annex J to this instrument.
- K. The Wind-down Planning Guide (WDPG) is amended in accordance with Annex K to this instrument.

### Notes

- L. In the Annexes, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

### Citation

- M. This instrument may be cited as the Claims Management Instrument 2018.

By order of the Board of the Financial Conduct Authority  
[date]

By order of the Board of the Financial Ombudsman Service Limited  
[date]

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*advice, investigation or representation of a criminal injury claim* the *regulated activity*, specified in article 89L of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a *criminal injury claim*.

*advice, investigation or representation of a financial services or product claim* the *regulated activity*, specified in article 89I of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a financial services or product *claim*.

*advice, investigation or representation of a housing disrepair claim* the *regulated activity*, specified in article 89J of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a *housing disrepair claim*.

*advice, investigation or representation of a personal injury claim* the *regulated activity*, specified in article 89H of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a *personal injury claim*.

*advice, investigation or representation of a specified benefit claim* the *regulated activity*, specified in article 89K of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to a *specified benefit claim*.

*advice, investigation or* the *regulated activity*, specified in article 89M of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a *claim* and representing a *claimant*, in relation to an *employment-related*

<i>representation of an employment-related claim</i>	<i>claim.</i>
<i>CAPR CSR</i>	the Client Specific Rules of the Claims Management Regulation Conduct of Authorised Persons Rules 2018 (effective on 1 April 2018).
<i>CASS 13 claims management firm</i>	a <i>firm</i> that is subject to the <i>rules</i> and <i>guidance</i> in CASS 13.
<i>claimant</i>	(in <i>CMCOB</i> , and elsewhere in the <i>FCA Handbook</i> in relation to <i>regulated claims management activities</i> ) includes, in civil proceedings in Scotland, a pursuer.
<i>claims management client money distribution rules</i>	the <i>rules</i> and <i>guidance</i> in CASS 13.11.
<i>claims management client money rules</i>	the <i>rules</i> and <i>guidance</i> in CASS 13.
<i>claims management fee cap</i>	the provisions in sections 29 and 31 of the Financial Guidance and Claims Act 2018 (see <i>CMCOB</i> 5).
<i>Claims Management Order</i>	the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
<i>claims management services</i>	(in accordance with section 419A of the <i>Act</i> ) advice or other services in relation to the making of a <i>claim</i> .
<i>CMCOB</i>	the Claims Management: Conduct of Business sourcebook.
<i>controlled claims management activity</i>	(in accordance with paragraph 11A of Schedule 1 to the <i>Financial Promotion Order</i> ) one of the following activities, if carried on in <i>Great Britain</i> : <ul style="list-style-type: none"> <li>(a) seeking out <i>persons</i> who may have a <i>claim</i>, referring details of a <i>claim</i> or potential <i>claim</i> or potential <i>claimant</i> to another <i>person</i> (including a <i>person</i> having the right to conduct litigation), or identifying a potential <i>claim</i> or potential <i>claimant</i> in respect of a:</li> </ul>



- (i) *personal injury claim*;
  - (ii) financial services or product *claim*;
  - (iii) *housing disrepair claim*;
  - (iv) *specified benefit claim*;
  - (v) *criminal injury claim*; or
  - (vi) *employment-related claim*.
- (b) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *personal injury claim*;
  - (c) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a financial services or product *claim*;
  - (d) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *housing disrepair claim*;
  - (e) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *specified benefit claim*;
  - (f) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of a *criminal injury claim*; or
  - (g) advising a *claimant* or potential *claimant*, investigating a *claim* or representing a *claimant* in respect of an *employment-related claim*.

<i>criminal injury claim</i>	a claim of the description specified in article 89F(2)(f) of the <i>Regulated Activities Order</i> .
<i>employment-related claim</i>	a claim of the description specified in article 89F(2)(g) of the <i>Regulated Activities Order</i> .
<i>engage in claims management activity</i>	(as defined in section 21(10A) of the <i>Act</i> ) (Restrictions on financial promotion)) enter or offer to enter into an agreement the making or performance of which by either party constitutes a <i>controlled claims management activity</i> .
<i>Great Britain</i>	England and Wales and Scotland (but not Northern Ireland, the Channel Islands or the Isle of Man).
<i>housing disrepair claim</i>	a claim of the description specified in article 89F(2)(d) of the <i>Regulated Activities Order</i> .
<i>Legal Ombudsman</i>	the Legal Ombudsman scheme operated by the Office for Legal Complaints under Part 6 of the Legal Services Act 2007.

<i>personal injury claim</i>	a claim of the description specified in article 89F(2)(c) of the <i>Regulated Activities Order</i> .
<i>regulated claims management activity</i>	each of: <ul style="list-style-type: none"> <li>(a) <i>seeking out, referrals and identification of claims</i>;</li> <li>(b) <i>advice, investigation or representation of a personal injury claim</i>;</li> <li>(c) <i>advice, investigation or representation of a financial services or product claim</i>;</li> <li>(d) <i>advice, investigation or representation of a housing disrepair claim</i>;</li> <li>(e) <i>advice, investigation or representation of a specified benefit claim</i>;</li> <li>(f) <i>advice, investigation or representation of a criminal injury claim</i>; and</li> <li>(g) <i>advice, investigation or representation of an employment-related claim</i>.</li> </ul>
<i>relevant claims management complaint</i>	a <i>relevant existing claims management complaint</i> or a <i>relevant new claims management complaint</i> .
<i>relevant existing claims management complaint</i>	a <i>complaint</i> in respect of which the <i>Financial Ombudsman Service</i> has jurisdiction by operation of article [x] of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
<i>relevant new claims management complaint</i>	a <i>complaint</i> in respect of which the <i>Financial Ombudsman Service</i> has jurisdiction by operation of article [x] of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
<i>seeking out, referrals and identification of claims</i>	the <i>regulated activity</i> , specified in article 89G of the <i>Regulated Activities Order</i> , which is any or all of: <ul style="list-style-type: none"> <li>(a) seeking out <i>persons</i> who may have a <i>claim</i> (unless that activity constitutes <i>controlled claims management activity</i>),</li> <li>(b) referring details of a claim or a potential <i>claim</i> or a potential <i>claimant</i> to another <i>person</i>, and</li> <li>(c) identifying a potential <i>claim</i> or a potential <i>claimant</i>,</li> </ul> <p>when carried on in relation to a <i>personal injury claim</i>, a financial services or product <i>claim</i>, a <i>housing disrepair claim</i>, a <i>specified benefit claim</i>, a <i>criminal injury claim</i> or an <i>employment-related claim</i>.</p>
<i>specified</i>	a <i>claim</i> of the description specified in article 89F(2)(e) of the <i>Regulated</i>

- benefit claim*      *Activities Order* (that is, a *claim* for certain industrial injuries benefits).
- temporary permission*      in accordance with article [x] of the *Claims Management Order*, subject to article [x] of that Order, to be treated as:
- (a)      in relation to a *person* who is a *firm* immediately before 1 April 2019, a variation of *permission*;
  - (b)      in any other case, a *Part 4A permission*.

Amend the following definitions as shown.

- acknowledgement letter*      ...  
*fixed text*      (3) (in CASS 13) the text in the *client bank account acknowledgement letter* that is not in square brackets.
- acknowledgement letter*      ...  
*variable text*      (3) (in CASS 13) the text in the *client bank account acknowledgement letter* that is in square brackets.
- claim*      ...
- (3) (in *CMCOB*, and elsewhere in the *FCA Handbook* where used in relation to *regulated claims management activity* and *ancillary activity*) any demand or request for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made:
- (a)      by way of legal proceedings;
  - (b)      in accordance with a scheme of regulation (whether voluntary or compulsory); or
  - (c)      in pursuance of a voluntary undertaking.
- client*      ...
- (10) (in relation to *regulated claims management activity* and *ancillary activity*) a *customer*.
- client bank account*      ...
- (3) (in CASS 11 and CASS 13):
- (a)      an account at an *approved bank* which:
    - (i)      holds the *money* of one or more *clients*;

- (ii) is held in the name of the *firm* to which CASS 11.9 or CASS 13.6 (segregation and the operation of client money accounts) applies;
- (iii) includes in its title the word “client” (or, if the system constraints of the *approved bank* or the *firm* that holds the account (or both) make this impracticable, an appropriate abbreviation of “client” that has the same meaning); and
- (iv) is a current or a deposit account.

*client bank* ...

*account*

*acknowledgement letter* (3) (in CASS 13) a letter in the form of the template in CASS 13 Annex 1R.

*client money* ...

(2C) (in CASS 13) money which a *firm* receives or holds on behalf of a *customer* in the course of or in connection with providing *claims management services*.

...

*client money rules*

*client’s best interests rule* COBS 2.1.1R or, in relation to *regulated claims management activity* and *ancillary activity*, CMCOB 2.1.1R.

*complaint*

(1) [deleted]

(2) (in *DISP*, except *DISP* 1.1 and (in relation to *collective portfolio management*) in the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*, and in *CREDS* 9) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which:

(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and

(b) relates to an activity of that *respondent*, or of any other *respondent* with whom that *respondent* has some connection in marketing or providing financial services or products or *claims management services*, which comes under the jurisdiction of the *Financial Ombudsman Service*.

(3) (in *DISP* 1.1 and (in relation to *collective portfolio management*) in the *consumer awareness rules*, the *complaints handling rules* and the

*complaints record rule*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

- (4) (in *DISP*) reference to a *complaint* includes:
- (a) under all jurisdictions, part of a *complaint*; and
  - (b) under the *Compulsory Jurisdiction*, all or part of a *relevant complaint*, a *relevant claims management complaint* or a *relevant credit-related complaint*.

*customer* ...

- (B) in the *FCA Handbook*:
- (1) (except in relation to *ICOBS*, a *credit-related regulated activity*, *regulated claims management activity*, *MCOB 3A*, an *MCD credit agreement*, *CASS 5* and *PRIN* in relation to *MiFID* or equivalent third country business) a *client* who is not an *eligible counterparty* for the relevant purposes.

...

- (7) (in relation to regulated claims management activity and ancillary activity) means a *person* who:
- (a) has, has had, or may have a claim; and
  - (b) uses, has used, or may use the services of a person who carries on a regulated claims management activity or an activity which would be a regulated claims management activity but for an exclusion in the Regulated Activities Order.

*external client money reconciliation*

- (1) (in CASS 7) the *client money* reconciliation described in CASS 7.15.20R.
- (2) (in CASS 13) the *client money* reconciliation described in CASS 13.10.17R.

*fair, clear and not misleading rule*

COBS 4.2.1R or, in relation to regulated claims management activity and ancillary activity, CMCOB 3.2.1R.

<i>financial promotion</i>	(1)	an invitation or inducement to engage in investment activity <u>or to engage in claims management activity</u> that is communicated in the course of business;
	...	
<i>financial promotion rules</i>	...	
	(6)	<u>(in relation to CMC OB) any or all of the rules in CMC OB 3, that impose requirements in relation to a financial promotion but only to the extent that they apply to a financial promotion.</u>
<i>firm</i>	...	
	(10)	<u>(in DISP 2 and 3) includes, in accordance with the Claims Management Order, unauthorised persons subject to the Compulsory Jurisdiction in relation to relevant claims management complaints.</u>
<i>former scheme</i>	(1)	(except in relation to a <u>relevant transitional complaint or a relevant claims management complaint</u> ) any of the following:  ...;
	(2)	(in relation to a <u>relevant transitional complaint</u> )  (a) the <i>GISC facility</i> ; or  (b) the <i>MCAS scheme</i> ;
	(3)	<u>(in relation to a relevant claims management complaint) the Legal Ombudsman.</u>
<i>internal client money reconciliation</i>	(1)	<u>(in CASS 7) the client money reconciliation described in CASS 7.15.12R.</u>
	(2)	<u>(in CASS 13) the client money reconciliation described in CASS 13.10.5R to 13.10.14R.</u>
<i>lead generator</i>	(1)	a <i>person</i> that acquires the personal contact details of <i>customers</i> and passes the <i>customers'</i> details to a <i>firm</i> in return for a fee;
	(2)	<u>(in CMC OB, and elsewhere in the FCA Handbook where used in relation to regulated claims management activity) a person who carries on the regulated activity of seeking out, referrals and identification of claims.</u>
<i>primary pooling event</i>	...	

- (5) (in CASS 13) an event that occurs in the circumstances described in CASS 13.11.3R.
- regulated activity (B) in the *FCA Handbook*: (in accordance with section 22 of the Act (Regulated activities)) the activities specified in ~~Part II~~ Parts 2, 3A and 3B of the *Regulated Activities Order* (Specified Activities) which are, in summary:
- ...
- (tn) providing credit references (article 89B);
  - (to) seeking out, referrals and identification of claims (article 89G);
  - (tp) advice, investigation or representation of a personal injury claim (article 89H);
  - (tq) advice, investigation or representation of a financial services or product claim (article 89I);
  - (tr) advice, investigation or representation of a housing disrepair claim (article 89J);
  - (ts) advice, investigation or representation of a specified benefit claim (article 89K);
  - (tt) advice, investigation or representation of a criminal injury claim (article 89L); and
  - (tu) advice, investigation or representation of an employment-related claim (article 89M);

which is carried on by way of business and, except for (ta) and (tb), relates to a *specified investment* applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing or, in the case of (to), (tp), (tq), (tr), (ts), (tt) and (tu), is or relates to claims management services and is carried on in *Great Britain*;

- (u) agreeing to carry on a regulated activity (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (na), (nb), (nd), (ne) and (o), is carried on in relation to property of any kind or, in the case of (tm) and (tn), is carried on in relation to information about a *person's* financial standing or, in the case of (to), (tp), (tq), (tr), (ts), (tt) and (tu), is, or relates to, claims management services and is carried on in *Great Britain*.

- relevant complaint* (1) (in *DISP*) a *relevant existing complaint*, a *relevant new complaint*, ~~or~~ a *relevant transitional complaint*, and (in *DISP* and *FEES 5*) a *relevant claims management complaint*.
- ...
- respondent* ...
- (6) (in *DISP 2* and *3* and *FEES 5*) includes, in accordance with article [x] of the *Claims Management Order*, an *unauthorised person* subject to the *Compulsory Jurisdiction* in relation to *relevant claims management complaints*.
- retail client* ...
- (3) (in relation to *credit-related regulated activity* and *regulated claims management activity*) a *customer*.
- secondary pooling event* ...
- (5) (in *CASS 13*) an event that occurs in the circumstances described in *CASS 13.11.11R*.
- UK financial system* (as defined in section 1I of the *Act* (meaning of “the UK financial system”)) the financial system operating in the *United Kingdom* including:
- (a) financial markets and exchanges;
  - (b) *regulated activities*; and
  - (c) other activities connected with financial markets and exchanges.

Under article [30] of the *Claims Management Order*, *regulated claims management activity* in *Great Britain* is to be treated as part of the *UK financial system*.



## Annex B

### Amendments to the Principles for Businesses (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 1 Introduction

### 1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers. The approach that a firm (other than for credit-related regulated activities and regulated claims management activities in relation to which client categorisation does not apply) needs to take regarding categorisation of clients into customers and eligible counterparties will depend on whether the firm is carrying on designated investment business, insurance risk transformation and activities directly arising from insurance risk transformation, or other activities, as described in PRIN 1.2.3G.*

1.2.3 G ...

(1AB) Client categorisation under COBS 3 or PRIN 1 Annex 1 is not relevant to regulated claims management activities and therefore the guidance on client categorisation does not apply in relation to a regulated claims management activity.

...

...

## 3 Rules about application

...

### 3.2 What?

...

3.2.2A R *PRIN 1 Annex 1, PRIN 3.4.1R and PRIN 3.4.2R do not apply with respect to the carrying on of credit-related regulated activities or regulated claims management activities.*

...

**3.3 Where?**

Territorial application of the Principles

3.3.1

R

Principle	Territorial application
Principles 1, 2 and 3	in a <i>prudential context</i> , apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i> ) in the <i>United Kingdom</i> , <u>or in respect of regulated claims management activities, apply with respect to activity carried on in <i>Great Britain</i>, even if the establishment from which it is carried on is not located in the <i>UK</i> (see <i>PERG 2.4A</i>), unless another applicable rule or <i>EU regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that rule or <i>EU regulation</i>.</u>
...	

...

**3.4 General**

Clients and the Principles

...

3.4.3

G

- ...
- (4) *PRIN 3.4.1R* and *PRIN 3.4.2R* do not apply with respect to the carrying on of regulated claims management activities. Client categorisation does not apply in relation to carrying on a regulated claims management activity. The definitions of *client* and *customer* in relation to those regulated activities reflect the modified meaning of “consumer” in article [31] of the *Claims Management Order*.

...

## Annex C

**Amendments to the Senior Management Arrangements, Systems and Controls  
sourcebook (SYSC)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

**1 Application and purpose**

...

**1 Annex Detailed application of SYSC**

**1**

...

Part 2	Application of the common platform requirements	
	Who?	
...		
2.13A	R	<i>SYSC 6.3 only applies to a firm in relation to carrying on a credit-related regulated activity <u>or regulated claims management activity</u>, or operating an electronic system in relation to lending, to which the Money Laundering Regulations also apply.</i>
...		
	Where?	
2.15	R	The <i>common platform requirements</i> , except the <i>common platform record-keeping requirements</i> , apply to a <i>firm</i> in relation to activities <u>which:</u>
		(1) <u>(except for regulated claims management activities and ancillary activities) are</u> carried on by it from an establishment in the <i>United Kingdom</i> ; <u>or</u>
		(2) <u>are, or are ancillary to, regulated claims management activities.</u>
		...
...		
2.17	R	The <i>common platform record-keeping requirements</i> apply to activities <u>which:</u>
		(1) <u>(except for regulated claims management activities and ancillary activities) are</u> carried on by a <i>firm</i> from an establishment maintained in the <i>United Kingdom</i> ; <u>or</u>

		(2) are, or are ancillary to, <i>regulated claims management activities</i> .
		<del>, unless</del> <u>If, however,</u> another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, <del>in which case</del> the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> .
		[ <b>Note:</b> article 16(11) first paragraph of <i>MiFID</i> ]
2.17A	G	<u>For an activity to amount to a <i>regulated claims management activity</i> it must be carried on in <i>Great Britain</i> (see <i>PERG 2.4A</i>). Subject to the exception for <i>common platform record-keeping requirements</i> in paragraph 2.17R of this Annex, the application of the <i>common platform requirements</i> to <i>firms</i> which carry on <i>regulated claims management activities</i> (and ancillary activities) depends on whether the activity is carried on in <i>Great Britain</i> rather than whether it is carried on from an establishment maintained in the <i>United Kingdom</i>.</u>
...		
Part 3		Tables summarising the application of the common platform requirements to different types of firm
...		

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

...

Provision	COLUMN A	COLUMN A+	COLUMN A++	COLUMN B
SYSC 6	Application to a common platform firm other than to a UCITS investment firm	Application to a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				

<p>SYSC 6.3.1R</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated claims management activity</u>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
<p>SYSC 6.3.2G</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated claims</u></p>

				<p><i>management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p>
SYSC 6.3.3R	Rule	Rule	Rule	<p>Rule</p> <p><i>For firms carrying on a credit-related regulated activity <u>or regulated claims management activity, or operating an electronic system in relation to lending, applies only where the</u></i></p>

				<p><i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.4G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> or <u><i>regulated claims management activity</i></u>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional</p>

				body listed in Schedule 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.5G	Guidance	Guidance	Guidance	Guidance  For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated claims management activity</i> , or <i>operating an electronic system in relation to lending</i> , applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i> . Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i> , and not the <i>FCA</i> , acts as the supervisory



				authority for the purposes of those regulations. (FCA Handbook only)
SYSC 6.3.6G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> or <u><i>regulated claims management activity</i></u>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>

<p>SYSC 6.3.7G</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p>	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated claims management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
<p>SYSC 6.3.8R</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p>	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <i>regulated</i></p>

				<p><i>claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Rule does not apply to a firm with a limited permission for entering into a regulated credit agreement as lender. Rule does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p>
SYSC 6.3.9R	Rule	Rule	Rule	<p>Rule</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated</u></p>

				<p><i>claims management activity</i>, or <i>operating an electronic system in relation to lending</i>, applies only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Rule does not apply to a <i>firm</i> with a <i>limited permission</i> for <i>entering into a regulated credit agreement as lender</i>. Rule does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
SYSC 6.3.10G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For <i>firms</i> carrying on a <i>credit-related regulated activity</i> <u>or</u> <u>regulated</u></p>

				<p><i>claims management activity, or operating an electronic system in relation to lending, applies only where the Money Laundering Regulations apply to the firm. Guidance does not apply to a firm for which a professional body listed in Schedule 1 to the Money Laundering Regulations, and not the FCA, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</i></p>
SYSC 6.3.11G	Guidance	Guidance	Guidance	<p>Guidance</p> <p>For firms carrying on a credit-related regulated activity or regulated claims management activity, or operating an electronic system in relation to lending, applies</p>

				<p>only where the <i>Money Laundering Regulations</i> apply to the <i>firm</i>. Guidance does not apply to a <i>firm</i> for which a professional body listed in Schedule 1 to the <i>Money Laundering Regulations</i>, and not the <i>FCA</i>, acts as the supervisory authority for the purposes of those regulations. (FCA Handbook only)</p>
--	--	--	--	--

...

**4 General organisational requirements**

**4.1 General Requirements**

...

Mechanisms and procedures for a firm

4.1.4 R A *firm* (with the exception of a *common platform firm* and a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the *firm*, and the nature and range of the financial services, claims management services and other activities undertaken in the course of that business:

...

...

**5 Employees, agents and other relevant persons**

**5.1 Skills, knowledge and expertise**

...

## General

- 5.1.13 R The systems, internal control mechanisms and arrangements established by a *firm* (other than a *common platform firm*) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services, *claims management services* and other activities undertaken in the course of that business.

[**Note:** articles 4(1) final paragraph and 5(4) of the *UCITS implementing Directive*]

## Annex D

### Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

#### 4 Statutory status disclosure

##### 4.1 Application

...

##### Where?

...

4.1.2 R *GEN 4.3* (Letter disclosure) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, subject to *GEN 4.3.4R* (Exception: insurers). In relation to regulated claims management activities, *GEN 4.3* applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG 2.4A*).

4.1.4 R *GEN 4.5* (Statements about authorisation and regulation by the *appropriate regulator*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*. In relation to regulated claims management activities, *GEN 4.5* applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG 2.4A*).

##### 4.2 Purpose

...

4.2.2 G There are other pre contract information requirements outside this chapter including:

...

(7) ...; ~~and~~

(8) ... ; and

(9) for regulated claims management activities, the pre-contract



information and other requirements in *CMCOB* 4.2 and *CMCOB* 4.3.

...

#### **4.4 Business for retail clients from non-UK offices**

...

##### Exception

**4.4.2** **R** This section does not apply in relation to *regulated claims management activities* (but *firms* carrying on such activities in *Great Britain* will be subject to *GEN* 4.3: see *GEN* 4.1.2R).

...

## **6 Insurance against financial difficulties**

### **6.1 Payment of financial penalties**

#### Application

...

**6.1.2** **G** For the purposes of *GEN* 2.2.17R (Activities covered by general rules), the chapter applies to *regulated* and *unregulated activities* carried on in the *United Kingdom* or overseas. In relation to *regulated claims management activities* and *ancillary activities*, this chapter applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG* 2.4A).

...

## **7 Charging consumers for telephone calls**

### **7.1 Application**

#### Who? Where?

**7.1.1** **R** This chapter applies to a *firm* carrying on activities from an establishment in the *United Kingdom*. In relation to *regulated claims management activities*, this chapter applies with respect to activity carried on in *Great Britain*, even if the establishment from which it is carried on is not located in the *UK* (see *PERG* 2.4A).

...

## Annex E

### Amendments to the Client Assets sourcebook (CASS)

#### Part 1

In this Part, underlining indicates new text.

#### 1A CASS firm classification and operational oversight

...

#### 1A.2 CASS firm classification

...

- 1A2.2 R (1) ...
- (2) For the purpose of determining its ‘CASS firm type’ in accordance with *CASS 1A.2.7R*, a *firm* must:
- ...
- (c) in either case, exclude from its calculation any *client money* held in accordance with *CASS 5* (Client money: insurance mediation activity) or *CASS 13* (Claims management: client money).

#### Part 2

In this Part, all the text is new.

#### 13 Claims management: client money

##### 13.1 Application

- 13.1.1 R This chapter applies to a *firm* that:
- (1) carries on a *regulated claims management activity*; and
- (2) receives or holds *client money*.

##### 13.2 Organisational requirements and responsibility for CASS operational oversight

- 13.2.1 R A *firm* must, when holding *client money*, make adequate arrangements to safeguard the *customer*’s rights and prevent the use of *client money* for its

own account.

- 13.2.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *client money*, or of rights in connection with *client money*, as a result of misuse of *client money*, fraud, poor administration, inadequate record-keeping or negligence.
- 13.2.3 R A *firm* must allocate to a *director* or *senior manager* responsibility for:
- (1) oversight of the *firm's* operational compliance with CASS 13;
  - (2) reporting to the *firm's governing body* in respect of that oversight; and
  - (3) completing and submitting the *client money* parts of a CMC001 return in accordance with SUP 16.25.3R to SUP 16.25.8R.
- 13.2.4 R (1) A *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with CASS 13.2.3R.
- (2) But a *firm* must make and retain such a record only where:
- (a) there is a *person* in that *firm* who performs the *compliance oversight function*; and
  - (b) it allocates responsibility in accordance with CASS 13.2.3R to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
- (3) A *firm* must ensure that a record made under this *rule* is retained for a period of five years after it is made.

### 13.3 Statutory trust

- 13.3.1 R A *firm* receives and holds *client money* as trustee on the following terms:
- (1) for the purposes and on the terms of the *claims management client money rules* and the *claims management client money distribution rules*;
  - (2) subject to (3), for the *customers* for whom that *money* is held, according to their respective interests in it;
  - (3) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
  - (4) after all valid claims and costs under (2) and (3) have been met, for the *firm* itself.

### 13.4 Selecting an approved bank at which to hold client money

- 13.4.1 G A *firm* owes a duty of care as a trustee to its clients in relation to *client money* and has to exercise that duty of care in deciding where to hold *client money*.
- 13.4.2 R Before a *firm* opens a *client bank account* and as often as is appropriate on a continuing basis (such frequency being no less than once in each financial year) it must take reasonable steps to establish that it is appropriate for the *firm* to hold *client money* at the *approved bank* concerned.
- 13.4.3 R A *firm* must consider the risks associated with holding all *client money* with one *approved bank* and should consider whether it would be appropriate to hold *client money* in *client bank accounts* at a number of different *approved banks*.
- 13.4.4 G In complying with CASS 13.4.3R, a *firm* should consider as appropriate, together with any other relevant matters:
- (1) the amount of *client money* held by the *firm*;
  - (2) the amount of *client money* the *firm* anticipates holding at the *approved bank*; and
  - (3) the creditworthiness of the *approved bank*.
- 13.4.5 G A *firm* can demonstrate compliance with CASS 13.4.2R by checking that the *person* it proposes to hold *client money* with is an *approved bank* and that nothing has come to the *firm*'s attention to cause it to believe that such *person* is not an appropriate place at which to hold *client money*.

### 13.5 Client bank account acknowledgement letters

- 13.5.1 G The main purposes of a *client bank account acknowledgement letter* are:
- (1) to put the *approved bank* on notice of a *firm*'s *clients*' interests in *client money* that has been deposited with such *person*;
  - (2) to ensure that the *client bank account* has been opened in accordance with CASS 13.6.3R, and is distinguished from any account containing money that belongs to the *firm*; and
  - (3) to ensure that the *approved bank* understands and agrees that it will not have any recourse or right against *money* standing to the credit of the *client bank account*, in respect of any liability of the *firm* to such *person* (or *person* connected to such *person*).

Requirement for and content of client bank account acknowledgement letters

- 13.5.2 R (1) For each *client bank account*, a *firm* must, in accordance with CASS 13.5.4R, complete and sign a *client bank account acknowledgement letter* clearly identifying the *client bank account*, and send it to the *approved bank* with whom the *client bank account* is, or will be, opened, requesting the bank to acknowledge and agree to the terms of the letter by countersigning it and returning it to the *firm*.
- (2) Subject to CASS 13.5.6R, a *firm* must not hold or receive any *client money* in or into a *client bank account* unless it has received a duly countersigned *client bank account acknowledgement letter* from the *approved bank*. The letter must not have been inappropriately redrafted and should clearly identify the *client bank account*.
- 13.5.3 R In drafting *client bank account acknowledgement letters* under CASS 13.5.2R a *firm* is required to use the relevant template in CASS 13 Annex 1R.
- 13.5.4 R When completing a *client bank account acknowledgement letter* under CASS 13.5.2R(1) a *firm*:
- (1) must not amend any of the *acknowledgement letter fixed text*;
- (2) subject to (3), must ensure the *acknowledgement letter variable text* is removed, included or amended as appropriate; and
- (3) must not amend any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*.
- 13.5.5 G CASS 13 Annex 2G contains *guidance* on using the template *client bank account acknowledgement letters*, including on when and how *firms* should amend the *acknowledgement letter variable text* that is in square brackets.

#### Countersignature by the bank

- 13.5.6 R (1) If, on countersigning and returning the *client bank account acknowledgement letter* to a *firm*, the relevant *approved bank* has also:
- (a) made amendments to any of the *acknowledgement letter fixed text*; or
- (b) made amendments to any of the *acknowledgement letter variable text* in a way that would alter or otherwise change the meaning of the *acknowledgement letter fixed text*;
- the *client bank account acknowledgement letter* will have been inappropriately redrafted for the purposes of CASS 13.5.2R(2).
- (2) Amendments made to the *acknowledgement letter variable text*, in the *client bank account acknowledgement letter* returned to a *firm* by

the relevant *approved bank*, will not have the result that the letter has been inappropriately redrafted if those amendments:

- (a) do not affect the meaning of the *acknowledgement letter fixed text*;
- (b) have been specifically agreed with the *firm*; and
- (c) do not cause the *client bank account acknowledgement letter* to be inaccurate.

- 13.5.7 R A *firm* must use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.

#### Retention of client bank account acknowledgement letters

- 13.5.8 R A *firm* must retain each countersigned *client bank account acknowledgement letter* it receives from the date of receipt until the expiry of a period of five years starting on the date on which the last *client bank account* to which the acknowledgment letter relates is closed.

- 13.5.9 R A *firm* must also retain any other documentation or evidence it believes is necessary to demonstrate that it has complied with each of the applicable requirements in this section (such as any evidence it has obtained to ensure that the individual that has countersigned a *client bank account acknowledgement letter* that has been returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*).

#### Review and replacement of client bank account acknowledgement letters

- 13.5.10 R A *firm* must, periodically (at least annually, and whenever it becomes aware that something referred to in a *client bank account acknowledgement letter* has changed) review each of its countersigned *client bank account acknowledgement letters* to ensure that they remain accurate.

- 13.5.11 R Whenever a *firm* finds a countersigned *client bank account acknowledgement letter* to contain an inaccuracy, the *firm* must promptly draw up a new replacement *client bank account acknowledgement letter* under CASS 13.5.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank*.

- 13.5.12 G Under CASS 13.5.10R, a *firm* should obtain a replacement *client bank account acknowledgement letter* whenever:
- (1) there has been a change in any of the parties' names or addresses or a change in any of the details of the relevant account(s) as set out in the letter; or

(2) it becomes aware of an error or misspelling in the letter.

- 13.5.13 R If a *firm's client bank account* is transferred to another *approved bank*, the *firm* must promptly draw up a new *client bank account acknowledgement letter* under CASS 13.5.2R and ensure that the new *client bank account acknowledgement letter* is duly countersigned and returned by the relevant *approved bank* within 20 *business days* of the *firm* sending it to that *person*.

## 13.6 Segregation and the operation of client money accounts

### Requirement to segregate

- 13.6.1 R A *firm* must take all reasonable steps to ensure that all *client money* it receives is paid directly into a *client bank account* at an *approved bank*, rather than being first received into the *firm's* own account and then segregated.
- 13.6.2 G A *firm* should arrange for clients and third parties to make transfers and payments of any *money* which will be *client money* directly into the *firm's client bank accounts*.
- 13.6.3 R A *firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.
- 13.6.4 R Cheques received by a *firm*, made out to the *firm*, representing *client money* or a *mixed remittance* must be treated as *client money* from receipt by the *firm*.
- 13.6.5 R Where a *firm* receives *client money* in the form of cash, a cheque or other payable order, it must:
- (1) pay the *money* into a *client bank account* in accordance with CASS 13.6.1R promptly and no later than the *business day* after the day on which it receives the *money*;
  - (2) if the *firm* holds the *money* overnight, hold it in a secure location in line with *Principle 10*; and
  - (3) record the receipt of the *money* in the *firm's* books and records under the applicable requirements of CASS 13.10 (Records, accounts and reconciliations).
- 13.6.6 R If a *firm* receives *money* (either in a *client bank account* or an account of its own) which it is unable immediately to identify as *client money* or its own *money*, it must:
- (1) take all necessary steps to identify the *money* as either *client money* or its own *money*; and

- (2) if it considers it reasonably prudent to do so, given the risk that *client money* may not be adequately protected if it is not treated as such, treat the entire balance of *money* as *client money* and record the *money* in its books and records as “unidentified client money” while it performs the necessary steps under (1).

13.6.7 G If a *firm* is unable to identify *money* that it has received as either *client money* or its own *money* under CASS 13.6.6R(1), it should consider whether it would be appropriate to return the *money* to the person who sent it (or, if that is not possible, to the source from where it was received, for example, the bank). A *firm* should have regard to its fiduciary duties when considering such matters.

13.6.8 G A *firm* must ensure that *client money* received by its agents is:

- (1) received directly into a *client bank account* of the *firm*; or
- (2) if it is received in the form of a cheque or other payable order:
- (a) paid into a *client bank account* of the *firm* promptly and, in any event, no later than the next *business day* after receipt; or
- (b) forwarded to the *firm* promptly and, in any event, so that it is received by the *firm* no later than the close of the third *business day* following the receipt of the *money* from the *customer*; or
- (3) if it is received in the form of cash, paid into a *client bank account* of the *firm* promptly and, in any event, no later than the next *business day* after receipt.

#### Mixed remittance

13.6.9 R If a *firm* receives a *mixed remittance* it must:

- (1) pay the full sum into a *client bank account* promptly and in accordance with CASS 13.6.1R to 13.6.5R; and
- (2) no later than one *business day* after the payment of the *mixed remittance* into the *client bank account* has cleared, pay the money that is not *client money* out of the *client bank account*.

#### Interest

13.6.10 R A *firm* must pay a *client* any interest earned on *client money* held for that *client*.

## 13.7 Money due and payable to the firm



- 13.7.1 R *Money* is not *client money* when it is or becomes properly due and payable to the *firm* for its own account.
- 13.7.2 G (1) The circumstances in which *money* may be or become due and payable to the *firm* for its own account could include:
- (a) when fees and/or third party disbursements have become due and payable to the *firm* for its own account under the agreement between the *customer* and the *firm*; and
  - (b) when *money* recovered for a *customer* or a sum in respect of damages, compensation or settlement of a *claim* is paid into a *client bank account* and the *firm* has agreed with the *client* that a proportion of the sum is to be paid to the *firm* for fees or in respect of liabilities the *firm* has incurred on behalf of the *customer*.
- (2) The circumstances in which *money* is due and payable will depend on the contractual arrangement between the *firm* and the *client*.
- 13.7.3 G *Firms* are reminded that when entering into or varying contractual arrangements with *customers* regarding circumstances in which *money* becomes properly due and payable to the *firm* for its own account, *firms* should comply with any relevant obligations to *customers* including the *client's best interests rule* and requirements under the *Unfair Terms Regulations* and the Consumer Rights Act 2015.

### 13.8 Money due to a client or third party.

- 13.8.1 R *Client money* in respect of *money* recovered for a *customer* or *money* in respect of damages, compensation or settlement of a *claim* received into a *client bank account* must be paid to the *customer*, or a duly authorised representative of the *customer*, as soon as reasonably practicable after receipt and, in any event, a *firm* must take steps within two *business days* of receipt to make such a payment.
- 13.8.2 R *Money* received from a *customer* in respect of third party disbursements which is due and payable to the third party in accordance with the terms of the contractual arrangements between the parties should be paid to the third party as soon as reasonably practicable after receipt.

### 13.9 Discharge of fiduciary duty

- 13.9.1 G CASS 13 provides important safeguards for the protection of *client money* held by *firms* that sit alongside the fiduciary duty owed by *firms* in relation to *client money*. CASS 13.9.2R to 13.9.3R provide for when *money* ceases to be *client money* for the purposes of CASS 13 and the fiduciary duty which

*firms* owe to *clients* in relation to *client money*.

- 13.9.2 R *Money* ceases to be *client money* if:
- (1) it is paid to the *customer*, or a duly authorised representative of the *customer*; or
  - (2) it is:
    - (a) paid to a third party on the instruction of the *customer*, or with the specific consent of the *customer*; or
    - (b) paid to a third party further to an obligation on the *firm* under any applicable law; or
  - (3) it is paid into an account of the *customer* (not being an account which is also in the name of the *firm*) on the instruction, or with the specific consent, of the *customer*; or
  - (4) it is due and payable to the *firm* for its own account (see CASS 13.7.1R to 13.7.2G); or
  - (5) it is paid to the *firm* as an excess in the *client bank account* (see CASS 13.10.15R(3)).
- 13.9.3 R When a *firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid.

## 13.10 Records, accounts and reconciliations

### Records and accounts

- 13.10.1 R
- (1) A *firm* must keep such records and accounts as are necessary to enable it, at any time and without delay, to distinguish *client money* held for one *customer* from *client money* held for any other *customer*, and from its own *money*.
  - (2) A *firm* must allocate in its books and records any *client money* it receives to an individual *customer* promptly and, in any case, no later than two *business days* following the receipt.
  - (3) Pending a *firm*'s allocation of a receipt of *client money* to an individual *customer* under (2), it must record the received *client money* in its books and records as "unallocated client money".
- 13.10.2 G In accordance with CASS 13.10.1R, a *firm* must maintain internal records and accounts of the *client money* it holds (for example, a cash book and client ledger accounts). These internal records are separate to any external records it has obtained from *approved banks* with whom it has deposited

*client money* (for example, bank statements).

- 13.10.3 R A *firm* must maintain its records and accounts in a way that ensures their accuracy and, in particular, their correspondence to the *client money* held for individual *customers*.
- 13.10.4 R A *firm* must maintain up-to-date records that detail all payments received for, or on behalf of, *customers* and all payments to, from, or made on behalf of, *customers*.

#### Internal client money reconciliation

- 13.10.5 R A *firm* must carry out an *internal client money reconciliation* each *business day*.
- 13.10.6 R An *internal client money reconciliation* requires a *firm* to check whether its *client money* resource, as determined by CASS 13.10.8R, on the previous *business day*, was at least equal to the *client money* requirement, as determined by CASS 13.10.9R, as at the close of business on that day.
- 13.10.7 R In carrying out an *internal client money reconciliation*, a *firm* must use the values contained in its internal records and ledgers (for example, its cash book or other internal accounting records), rather than the values contained in the records it has obtained from *approved banks* with whom it has deposited *client money* (for example, bank statements).

#### Calculating the client money resource

- 13.10.8 R The *client money* resource for *client money* held in accordance with CASS 13.10.6R is the aggregate of the balances on the *firm's client bank accounts*, as at the close of business on the previous *business day*.

#### Calculating the client money requirement

- 13.10.9 R (1) The *client money* requirement is the sum of:
- (a) the aggregate of all individual *customer* balances calculated in accordance with CASS 13.10.13R and CASS 13.10.14R;
  - (b) the amount of any unallocated *client money* under CASS 13.10.1R(3);
  - (c) the amount of any unidentified *client money* under CASS 13.6.6R(2)R; and
  - (d) any other amounts of *client money* included in the calculation under (2).
- (2) For the purposes of (1)(d), the *firm* must consider whether there are amounts of *client money*, other than those in (1)(a) to (c), to which the requirement to segregate applies and that it is appropriate to include in the calculation of its *client money* requirement and, if so,

adjust the calculation accordingly.

- 13.10.10 G The *client money* requirement calculated in accordance with CASS 13.10.9R should represent the total amount of *client money* a *firm* is required to have segregated in *client bank accounts* under CASS 13.
- 13.10.11 G *Firms* are reminded that, under CASS 13.9.3R, if a *firm* has drawn any cheques, or other payable orders, to discharge its fiduciary duty to its *clients* (for example, to return *client money* to the *client*), the sum concerned must be included in the *firm's* calculation of its *client money* requirement until the cheque or order is presented and paid.
- 13.10.12 G
- (1) The following *guidance* applies where a *firm* receives *client money* in the form of cash, a cheque or other payable order.
  - (2) In carrying out the calculation of the *client money* requirement, a *firm* may initially include the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with CASS 13.6.5R. If it does so, the *firm* should ensure, before finalising the calculation, that it deducts these amounts to avoid them giving rise to a difference between the *firm's* *client money* requirement and *client money* resource.
  - (3) In carrying out the calculation of the *client money* requirement, a *firm* may alternatively exclude the amount of *client money* received as cash, cheques or payment orders that has not yet been deposited in a *client bank account* in line with CASS 13.6.5R. If it does so, the *firm* is reminded that it must separately record the receipt of the *money* in the *firm's* books and records under CASS 13.6.5R(3).
  - (4) A *firm* that receives *client money* in the form of cash, a cheque or other payable order is reminded that it must pay that *money* into a *client bank account* promptly and no later than on the *business day* after it receives the *money* (see CASS 13.6.5R).
- 13.10.13 R The individual *customer* balance for each *client* must be calculated as follows:
- (1) the amount received for or on behalf of the *customer* by the *firm*;  
plus
  - (2) the amount of any interest, and any other sums, due from the *firm* to the *customer*; less:
  - (3) the aggregate of the amount of *money*:
    - (a) paid to that *customer* by the *firm*; and
    - (b) due and payable by the *customer* to the *firm*; and
    - (c) due by the *customer* to a third party in accordance with the contractual arrangements in place between the *firm* and the

*customer.*

- 13.10.14 R Where the individual *customer* balance calculated in respect of an individual *client* under CASS 13.10.13R is a negative figure (because the amounts received for or on behalf of, or due, to a *client* under CASS 13.10.13R(1) and CASS 13.10.13R(2) are less than the amounts paid by, or due and payable by, that *customer* under CASS 13.10.13R(3), that individual *customer* balance should be treated as zero for the purposes of the calculation of the *firm's client money* requirement in CASS 13.10.9R.

#### Reconciliation differences and discrepancies

- 13.10.15 R When an *internal client money reconciliation* reveals a difference between the *client money* resource and its *client money* requirement a *firm* must:
- (1) identify the reason for the difference;
  - (2) ensure that any shortfall in the amount of the *client money* resource as compared to the amount of the *client money* requirement is made up by a payment into the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered; and
  - (3) ensure that any excess in the amount of the *client money* resource as compared to the amount of the *client money* requirement is withdrawn from the *firm's client bank accounts* by the end of the *business day* following the day on which the difference was discovered.

#### External client money reconciliation

- 13.10.16 G The purpose of the reconciliation process required by CASS 13.10.17R is to ensure the accuracy of a *firm's* internal accounts and records against those of any third parties by whom *client money* is held.
- 13.10.17 R A *firm* must perform an *external client money reconciliation*:
- (1) each *business day*; and
  - (2) as soon as reasonably practicable after the relevant *internal client money reconciliation*;
- to ensure the accuracy of its internal accounts and records by comparing its internal accounts records against those of *approved banks* with whom *client money* is deposited.
- 13.10.18 G An *external client money reconciliation* requires a *firm* to conduct a reconciliation between its internal accounts and records and those of any *approved banks* by whom *client money* is held.
- 13.10.19 R When any discrepancy is revealed by an *external client money reconciliation*, a *firm* must identify the reason for the discrepancy and

correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting system of the party providing the statement or confirmation and that of the *firm*.

- 13.10.20 R While a *firm* is unable to resolve a discrepancy arising from an *external client money reconciliation*, and one record or a set of records examined by the *firm* during the reconciliation process indicates that there is a need to have greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant *client bank account*.

#### Notification requirements

- 13.10.21 R A *firm* must inform the *FCA* in writing without delay if:
- (1) its internal records and accounts of client money are materially out of date or materially inaccurate so that the firm is no longer able to comply with the requirements in CASS 13.10.1R to CASS 13.10.4R; or
  - (2) it will be unable to or materially fails to conduct an *internal client money reconciliation* in compliance with CASS 13.10.5R; or
  - (3) after having carried out an *internal client money reconciliation* in accordance with CASS 13.10.5R it will be unable to, or materially fails to, pay any shortfall into (or withdraw any excess from) a *client bank account* so that the *firm* is unable to comply with CASS 13.10.15R; or
  - (4) it will be unable to or materially fails to conduct an *external client money reconciliation* in compliance with CASS 13.10.17R; or
  - (5) after having carried out an *external client money reconciliation* in accordance with CASS 13.10.17R it will be unable to, or materially fails to, identify the reason for any discrepancies and correct them in accordance with CASS 13.10.19R; or
  - (6) it becomes aware that, at any time in the preceding 12 months, the amount of *client money* segregated in its *client bank accounts* materially differed from the total aggregate amount of *client money* the *firm* was required to segregate in *client bank accounts* in accordance with the segregation requirements in CASS 13.6.

## 13.11 Client money distribution in the event of a failure of a firm or approved bank

### Application

- 13.11.1 R This section (the *claims management client money distribution rules*) applies to a *firm* that holds *client money* which is subject to the *claims management client money rules* when a *primary pooling event* or a *secondary pooling*

*event* occurs.

Purpose

- 13.11.2 G The *claims management client money distribution rules* seek, in the event of the *failure* of a *firm* or of an *approved bank* at which the *firm* holds *client money*, to protect *client money* and to facilitate the timely return of *client money* to clients.

Failure of the authorised firm: primary pooling event

- 13.11.3 R A *primary pooling event* occurs:
- (1) on the *failure* of the *firm*;
  - (2) on the vesting of assets in a *trustee* in accordance with an ‘assets requirement’ imposed under section 55P(1)(b) or (c) (as the case may be) of the *Act*; or
  - (3) on the coming into force of a *requirement* or *requirements* which, either separately or in combination:
    - (a) is or are for all *client money* held by the *firm*; and
    - (b) require the *firm* to take steps to cease holding *all client money*.

Pooling and distribution after a primary pooling event

- 13.11.4 R If a *primary pooling event* occurs, then:
- (1) all *client money*:
    - (a) held in the *firm*’s *client bank accounts*; and
    - (b) any *client money* identifiable in any other account held by the *firm* into which *client money* has been received;
 is treated as pooled together to form a notional pool; and
  - (2) a *firm* must calculate the amount it should be holding on behalf of each individual *customer* as at the time of the *primary pooling event* using the method of calculating individual *customer* balance provided for by CASS 13.10.13R.

Distribution if client money not transferred to another firm

- 13.11.5 R Where a *primary pooling event* occurs and the *client money* pool is not transferred to another *firm* in accordance with CASS 13.11.6R, a *firm* must distribute *client money* comprising the notional pool so that each *client* receives a sum that is rateable to its entitlement to the notional pool calculated in accordance with CASS 13.11.4R(2).

## Transfer of client money to another firm

- 13.11.6 R If, in the event of a *primary pooling event* occurring, the *regulated claims management activity* business undertaken by a *firm* (“the transferor”) is to be transferred to another *firm* (“the transferee”), then the transferor may move the *client money* pool to the transferee.
- 13.11.7 R If the transferor decides to move the *client money* pool to the transferee, the transferor must immediately on making the decision, and before the move takes place, notify the *FCA* in writing of:
- (1) the proposed move, including the date of the proposed move if known at the time of the notification; and
  - (2) the proposed transferee.
- 13.11.8 R The *client money* pool may be transferred under CASS 13.11.6R only if it will be held by the transferee in accordance with CASS 13, including the statutory trust in CASS 13.3.1R.
- 13.11.9 R If there is a *shortfall* in the *client money* transferred under CASS 13.11.6R then the *client money* must be allocated to each of the *customers* for whom the *client money* was held so that each client is allocated a sum which is rateable to that *customer’s client money* entitlement in accordance with CASS 13.11.4R(2). This calculation may be done by either transferor or transferee in accordance with the terms of any transfer.
- 13.11.10 R The transferee must, within seven *days* after the transfer of *client money* under CASS 13.11.6R notify *customers* that:
- (1) their *money* has been transferred to the transferee; and
  - (2) they have the option of having *client money* returned to them or to their order by the transferee, otherwise the transferee will hold the *client money* for the *customers* and conduct *regulated claims management activities* for those *customers*.

## Failure of an approved bank: secondary pooling event

- 13.11.11 R A *secondary pooling event* occurs on the *failure* of an *approved bank* at which a *firm* holds *client money* in a *client bank account*.
- 13.11.12 R
- (1) Subject to (2), if a *secondary pooling event* occurs as a result of the *failure* of an *approved bank* where one or more *client bank accounts* are held then in relation to every *client bank account* of the *firm*, the provisions of CASS 13.11.13R(1), CASS 13.11.13R(2) and CASS 13.11.13R(3) will apply.
  - (2) CASS 13.11.13R does not apply if, on the *failure* of the *approved bank*, the *firm* pays to its *clients*, or pays into a *client bank account* at an unaffected *approved bank*, an amount equal to the amount of



*client money* that would have been held if a shortfall had not occurred as a result of the *failure*.

- 13.11.13 R *Money* held in each *client bank account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *client bank accounts*, that has arisen as a result of the *failure* of the *approved bank*, must be borne by all *customers* whose *client money* is held in a *client bank account* of the *firm*, rateably in accordance with their entitlements to the pool;
  - (2) a new *client money* entitlement must be calculated for each *customer* by the *firm*, to reflect the requirements in (1), and the *firm*'s records must be amended to reflect the reduced *client money* entitlement;
  - (3) the *firm* must make and retain a record of each *client*'s share of the *client money* shortfall at the *failed approved bank* until the *client* is repaid; and
  - (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in CASS 13.10.9R.
- 13.11.14 R The term “which should have been held” is a reference to the failed *approved bank*'s failure to hold the *client money* at the time of the pooling event.
- 13.11.15 R Any interest earned on *client money* following a *primary* or *secondary pooling event* will be due to *clients* in accordance with CASS 13.6.10R (Interest).

**13  
Annex  
1R**      **CASS client bank account acknowledgement letter template**

[Letterhead of *firm* subject to CASS 13.5.3R, including full name and address of *firm*]

[Name and address of *approved bank*]

[Date]

**Client Money Acknowledgment Letter (pursuant to the rules of the Financial Conduct Authority)**

We refer to the following [current/deposit account[s]] which [name of *firm*], regulated by the Financial Conduct Authority (Firm Reference Number [xx]), (“us”, “we” or “our”) has opened or will open with [name of *approved bank*]

(“you” or “your”):

[Insert the account title[s], the account unique identifier[s] (for example, as relevant, sort code and account number) and (if applicable) any abbreviated name of the account[s] as reflected in the *approved bank’s* systems]

([collectively,] the “Client Bank Account[s]”).

In relation to [each of] the Client Bank Account[s] identified above you acknowledge that we have notified you that:

- (a) we are under an obligation to keep money we hold belonging to our clients separate from our own money;
- (b) we have opened or will open the Client Bank Account for the purpose of depositing money with you on behalf of our clients; and
- (c) we hold all money standing to the credit of the Client Bank Account in our capacity as trustee under the laws applicable to us.

In relation to [each of] the Client Bank Account[s] identified above you agree that:

- (d) you do not have any recourse or right against money in the Client Bank Account in respect of any sum owed to you, or owed to any third party, on any other account (including any account we use for our own money), and this means for example that you do not have any right to combine the Client Bank Account with any other account and any right of set-off or counterclaim against money in the Client Bank Account;
- (e) you will title, or have titled, the Client Bank Account as stated above and that such title is different to the title of any other account containing money that belongs to us or to any third party; and
- (f) you are required to release on demand all money standing to the credit of the Client Bank Account, upon proper notice and instruction from us or a liquidator, receiver, administrator, or trustee (or similar person) appointed for us in bankruptcy, (or similar procedure) in any relevant jurisdiction, except for any properly incurred charges or liabilities owed to you on, and arising from the operation of, the Client Bank Account, provided that you have a contractual right to retain such money and that this right is notwithstanding (a) to (c) above and without breach of your agreement to (d) above.

We acknowledge that:

- (g) you are not responsible for ensuring compliance by us with our own obligations, including as trustee, in respect of the Client Bank Account[s].

You and we agree that:

- (h) the terms of this letter will remain binding upon the parties, their

successors and assigns, and, for the avoidance of doubt, regardless of any change in name of any party;

- (i) this letter supersedes and replaces any previous agreement between the parties in connection with the Client Bank Account[s], to the extent that such previous agreement is inconsistent with this letter;
- (j) in the event of any conflict between this letter and any other agreement between the parties in connection with the Client Bank Account[s], this letter agreement will prevail;
- (k) no variation to the terms of this letter will be effective unless it is in writing, signed by the parties and permitted under the rules of the Financial Conduct Authority;
- (l) this letter will be governed by the laws of [*insert appropriate jurisdiction*]; and
- (m) the courts of [*insert same jurisdiction as previous*] will have jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter as soon as possible. We remind you that, pursuant to the rules of the Financial Conduct Authority, we are not allowed to use the Client Bank Account[s] to deposit any money belonging to our clients with you until you have acknowledged and agreed to the terms of this letter.

For and on behalf of [name of *firm*]

x\_\_\_\_\_

Authorised Signatory

Print Name:

Title:

**ACKNOWLEDGED AND AGREED:**

For and on behalf of [name of *approved bank*]

x\_\_\_\_\_

Authorised Signatory

Print Name:

Title:

Contact Information: [insert signatory's phone number and email address]

Date:

**13  
Annex  
2G**      **Guidance notes for client bank account acknowledgement letters (CASS  
13.5.5G)**

Introduction

1. This annex contains *guidance* on the use of the template *client bank account acknowledgement letters* in CASS 13 Annex 1R.

General

2. Under CASS 13.5.2R(2), *firms* are required to have in place a duly signed and countersigned *client bank account acknowledgement letter* for a *client bank account* before they are allowed to hold or receive *client money* in or into the account.
3. For each *client bank account* a *firm* is required to complete, sign and send to the *approved bank* a *client bank account acknowledgement letter* identifying that account and in the form set out in CASS 13 Annex 1R (CASS claims management firm client bank account acknowledgment letter template).
4. When completing a *client bank account acknowledgement letter* using the appropriate template, a *firm* is reminded that it must not amend any of the text which is not in square brackets (acknowledgment letter fixed text). A *firm* should also not amend the non-italicised text that is in square brackets. It may remove or include square bracketed text from the letter, or replace bracketed and italicised text with the required information, in either case as appropriate. The notes below give further guidance on this.

Clear identification of relevant accounts

5. A *firm* is reminded that for each *client bank account* it needs to have in place a *client bank account acknowledgement letter*. As a result, it is important that it is clear to which account or accounts each *client bank account acknowledgement letter* relates. As a result, the template in CASS 13 Annex 1R requires that the *client bank account acknowledgement letter* includes the full title and at least one unique identifier, such as a sort code and account number, deposit number or reference code, for each *client bank account*.
6. The title and unique identifiers included in a *client bank account*

*acknowledgement letter* for a *client bank account* should be the same as those reflected in both the records of the *firm* and the relevant *approved bank*, as appropriate, for that account. Where an *approved bank's* systems are not able to reflect the full title of an account, that title may be abbreviated to accommodate that system, provided that:

- (a) the account may continue to be appropriately identified in line with the requirements of CASS 13 (for example, 'segregated' may be shortened to 'seg', 'account' may be shortened to 'acct' etc); and
- (b) when completing a *client bank account acknowledgement letter*, such letter must include both the long and short versions of the account title.

7. A *firm* should ensure that all relevant account information is contained in the space provided in the body of the *client bank account acknowledgement letter*. Nothing should be appended to a *client bank account acknowledgement letter*.
8. In the space provided in the template letter for setting out the account title and unique identifiers for each relevant account/deposit, a *firm* may include the required information in the format of the following table:

Full account title	Unique identifier	Title reflected in [ <i>name of approved bank</i> ] systems
[ <i>Claims Management Firm Client Bank Account</i> ]	[00-00-00 12345678]	[ <i>CM FIRM CLIENT A/C</i> ]

9. Where a *client bank account acknowledgement letter* is intended to cover a range of *client bank accounts*, some of which may not exist as at the date the *client bank account acknowledgement letter* is countersigned by the *approved bank*, a *firm* should set out in the space provided in the body of the *client bank account acknowledgement letter* that it is intended to apply to all present and future accounts which: (a) are titled in a specified way (e.g. with the word 'client' in their title); and (b) which possess a common unique identifier or which may be clearly identified by a range of unique identifiers (e.g. all accounts numbered between XXXX1111 and ZZZZ9999). For example, in the space provided in the template letter in CASS 13 Annex 1R which allows a *firm* to include the account title and a unique identifier for each relevant account, a *firm* should include a statement to the following effect:

**Any account open at present or to be opened in the future which contains the term ['client'] [insert appropriate abbreviation of the term 'client' as agreed and to be reflected in the Approved Bank's systems] in its title and which may be identified with [the following [insert common unique identifier]] [an account number from and including [XXXX1111] to and including [ZZZZ9999]] [clearly identify**

**range of unique identifiers].**

## Signatures and countersignatures

10. A *firm* should ensure that each *client bank account acknowledgement letter* is signed and countersigned by all relevant parties and individuals (including where a *firm* or the *approved bank* may require more than one signatory).
11. A *client bank account acknowledgement letter* that is signed or countersigned electronically should not, for that reason alone, result in a breach of the rules in CASS 13.5. However, where electronic signatures are used, a *firm* should consider whether, taking into account the governing law and choice of competent jurisdiction, it needs to ensure that the electronic signature and the certification by any person of such signature would be admissible as evidence in any legal proceedings in the relevant jurisdiction in relation to any question as to the authenticity or integrity of the signature or any associated communication.

## Completing a client bank account acknowledgment letter

12. A *firm* should use at least the same level of care and diligence when completing a *client bank account acknowledgement letter* as it would in managing its own commercial agreements.
13. A *firm* should ensure that each *client bank account acknowledgement letter* is legible (e.g. any handwritten details should be easy to read), produced on the *firm*'s own letter-headed paper, dated and addressed to the correct legal entity (e.g. where the *approved bank* belongs to a group of companies).
14. A *firm* should also ensure each *client bank account acknowledgement letter* includes all the required information (such as account names and numbers, the parties' full names, addresses and contact information, and each signatory's printed name and title).
15. A *firm* should similarly ensure that no square brackets remain in the text of each *client bank account acknowledgement letter* (e.g. after having removed or included square bracketed text, as appropriate, or having replaced square bracketed and italicised text with the required information as indicated in the template in CASS 13 Annex 1R) and that each page of the letter is numbered.
16. A *firm* should complete a *client bank account acknowledgement letter* so that no part of the letter can be easily altered (e.g. the letter should be signed in ink rather than pencil).
17. In respect of the *client bank account acknowledgement letter*'s governing law and choice of competent jurisdiction (see paragraphs (11) and (12) of the template *client bank account acknowledgement letters*), a *firm* should agree with the approved bank and reflect in the letter that the laws of a

particular jurisdiction will govern the *client bank account acknowledgement letter* and that the courts of that same jurisdiction will have jurisdiction to settle any disputes arising out of, or in connection with, the *client bank account acknowledgement letter*, its subject matter or formation.

18. If a *firm* does not, in any *client bank account acknowledgement letter*, utilise the governing law and choice of competent jurisdiction that is the same as either or both:
- (a) the laws of the jurisdiction under which either the *firm* or the relevant *approved bank* are organised; or
  - (b) as is found in the underlying agreement/s (e.g. banking services agreement) with the relevant *approved bank*;

then the *firm* should consider whether it is at risk of breaching CASS 13.5.4R(3) or CASS 13.4.2R.

#### Authorised signatories

19. A *firm* is required under CASS 13.5.7R to use reasonable endeavours to ensure that any individual that has countersigned a *client bank account acknowledgement letter* returned to the *firm* was authorised to countersign the letter on behalf of the relevant *approved bank*.
20. If an individual that has countersigned a *client bank account acknowledgement letter* does not provide the *firm* with sufficient evidence of their authority to do so then the *firm* is expected to make appropriate enquiries to satisfy itself of that individual's authority.
21. Evidence of an individual's authority to countersign a *client bank account acknowledgement letter* may include a copy of the *approved bank's* list of authorised signatories, a duly executed power of attorney, use of a company seal or bank stamp, and/or material verifying the title or position of the individual countersigning the *client bank account acknowledgement letter*.
22. A *firm* should ensure it obtains at least the same level of assurance over the authority of an individual to countersign the *client bank account acknowledgement letter* as the *firm* would seek when managing its own commercial arrangements.

#### Third party administrators

23. If a *firm* uses a third party administrator (TPA) to carry out the administrative tasks of drafting, sending and processing a *client bank account acknowledgement letter*, the text “[Signed by [**Name of Third Party Administrator**] on behalf of [*firm*]]” should be inserted to confirm that the *client bank account acknowledgement letter* was signed by the TPA on behalf of the *firm*.

24. In these circumstances, the *firm* should first provide the TPA with the requisite authority (such as a power of attorney) before the TPA will be able to sign the *client bank account acknowledgement letter* on the *firm*'s behalf. A *firm* should also ensure that the *client bank account acknowledgement letter* continues to be drafted on letter-headed paper belonging to the *firm*.

#### Client bank accounts

25. A *firm* must ensure that each of its *client bank accounts* follows the naming conventions prescribed in the *Glossary*. This includes ensuring that all *client bank accounts* include the term 'client' in their title or an appropriate abbreviation in circumstances where this is permitted by the *Glossary* definition.
26. All references to the term "Client Bank Account[s]" in a *client bank account acknowledgement letter* should also be made consistently in either the singular or plural, as appropriate.

### Schedule 1G Record keeping requirements

...

1.3

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
...				
<u>CASS 13.2.3R</u>	<u>Allocation of oversight function in CASS 13.2.3R</u>	<u>The person to whom the oversight function is allocated</u>	<u>Upon allocation</u>	<u>5 years (from the date the record was made)</u>
<u>CASS 13.5.8R</u>	<u>Client bank account acknowledgement letters sent in accordance with CASS 13.5.2R</u>	<u>Each countersigned client bank account acknowledgement letter received</u>	<u>On receipt of each letter</u>	<u>5 years (following closure of the last client bank account to which the letter relates)</u>
<u>CASS 13.5.9R</u>	<u>Demonstration that the firm has complied with the</u>	<u>Evidence of such compliance</u>	<u>On compliance with the relevant</u>	<u>None specified</u>



	<u>requirements of CASS 13.5</u>		<u>provision</u>	
<u>CASS 13.6.5R</u>	<u>Money received from customers in the form of cash, cheques or other payable orders</u>	<u>Details of money received</u>	<u>On receipt</u>	<u>None specified</u>
<u>CASS 13.6.6R(2)</u>	<u>Unidentified client money under CASS 13.6.6R(2)</u>	<u>Details of unidentified client money held</u>	<u>Being unable to identify money as client money or its own money, and deciding it is reasonably prudent to so record</u>	<u>Until it performs the necessary steps to identify the money under CASS 13.6.6R(1)</u>
<u>CASS 13.10.1R(1)</u>	<u>Client money held for each customer and the firm's own money</u>	<u>All that is necessary to enable the firm to distinguish client money held for one customer from client money held for any other customer and from the firm's own money</u>	<u>Maintain up-to-date records</u>	<u>None specified</u>
<u>CASS 13.10.3R</u>	<u>Client money held for each customer</u>	<u>Accurate records to ensure the correspondence between the records and accounts of the entitlement of each customer for whom the firm holds</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>

		<u>client money with the records and accounts of the client money the firm holds in client bank accounts</u>		
<u>CASS 13.10.4R</u>	<u>Payments made to, for or on behalf of customers by the firm</u>	<u>Details of payments made</u>	<u>Maintain up-to-date records</u>	<u>None is specified</u>
<u>CASS 13.11.13R</u>	<u>A record of each customer's shortfall in the event of a secondary pooling event</u>	<u>Details of the shortfall</u>	<u>On the secondary pooling event occurring</u>	<u>None is specified</u>

## Schedule 2G Notification and reporting requirements

2.1

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger Event</b>	<b>Time allowed</b>
...				
<u>CASS 13.10.21R(1) to (5)</u>	<u>The firm's inability or failure to comply with CASS 13.10.1R to 13.10.4R, CASS 13.10.5R, CASS 13.10.15R, CASS 13.10.17R, or CASS</u>	<u>The inability or failure to comply</u>	<u>Awareness of the inability or failure</u>	<u>Without delay</u>

	<u>13.10.19R.</u>			
<u>CASS</u> <u>13.10.21R(6)</u>	<u>Amount of money segregated in client bank accounts is materially different from total aggregate of client money required to be segregated</u>	<u>The fact that there is a material difference</u>	<u>Awareness of the difference</u>	<u>Without delay</u>

[*Editor's note:* this Annex reflects the FCA Handbook as at 5 June 2018. It does not take account of the changes that were consulted on in CP17/25, CP17/26, CP17/40 and CP17/41.]

## Annex F

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### 1A The FCA's approach to supervision

##### 1A.1 Application and purpose

...

Purpose

...

- 1A.1.3 G The design of these arrangements is shaped by the *FCA's statutory objectives* in relation to the conduct supervision of ~~financial services firms~~ *firms* as well as the prudential supervision of *firms* not supervised by the *PRA*. These objectives are set out in Chapter 1 of the *Act*. The *FCA* has one *strategic objective*: ensuring that the relevant markets function well. In discharging its general functions, the *FCA* must, so far as is reasonably possible, act in a way which is compatible with its *strategic objective* and which advances one or more of its three operational objectives:

...

- 1A.1.3A G (1) The meaning of the term "regulated financial services" when used in Chapter 1 of the Act includes services provided by an authorised person in carrying on any regulated activity. Accordingly, for the purposes of Chapter 1 of the Act: a regulated claims management activity is a "regulated financial service" and a customer of a firm carrying on a regulated claims management activity is a "consumer" for the purposes of the FCA's consumer protection and competition statutory objectives.

- (2) Article [30] of the Claims Management Order provides that for the purposes of the FCA's objective of protecting and enhancing the integrity of the UK financial system, regulated claims management activity is to be treated as part of the UK financial system.

...

##### 1A.4 Tools of supervision

...

- 1A.4.4 G Some of these tools, for example the use of public statements to deliver messages to *firms* or *consumers* of ~~financial services~~, do not involve the *FCA* in direct oversight of the business of *firms*. In contrast, other tools do involve a direct relationship with *firms*. The *FCA* also has powers to act on its own initiative to impose or vary individual *requirements* on a *firm* (see *SUP 7*) and to ban or impose requirements in relation to specific ~~financial promotions~~ *financial promotions*. The *FCA* may also use its general rule-making powers to ban or impose requirements in relation to specific products, types of products or practices associated with a particular product or type of product. The use of the *FCA*'s tools in its oversight of market practices, in ensuring the protection of client assets and for prudential supervision of *FCA*-only *firms*, will also contribute to the integrity and orderly operation of the financial markets.

...

## 2 Information gathering by the *FCA* or *PRA* on its own initiative

### 2.1 Application and purpose

...

#### Purpose

...

- 2.1.9 G The purpose of *SUP 2.4* is to explain a particular method of information gathering used by the *FCA*, known as “mystery shopping”. Information about how a *firm* sells ~~financial products~~ and services can be very difficult to obtain, and the purpose of this method is to obtain such information from individuals who approach a *firm* in the role of potential retail *consumers* on the *FCA*'s initiative. The *FCA* may seek information about particular issues or the activities of individual *firms* by means of mystery shopping.

...

### 2.4 ‘Mystery shopping’

...

- 2.4.2 G The *FCA* uses mystery shopping to help it protect *consumers*. This may be by seeking information about a particular practice across a range of *firms* (*SUP 2.4.3G(1)*) or the practices of a particular *firm* (*SUP 2.4.3G(2)*). One of the risks *consumers* face is that they may be sold ~~financial products~~ or services which are inappropriate to them. A problem in protecting *consumers* from this risk is that it is very difficult to establish after the event what a *firm* has said to a ‘genuine’ *consumer* in discussions. By recording what a *firm* says in discussions with a ‘mystery shopper’, the *FCA* can establish a *firm*'s normal practices in a way which would not be possible by other means.

...

**3 Auditors**

**3.1 Application**

...

3.1.2 R Applicable sections (see SUP 3.1.1R)

...

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...	...	...	...
(5D)	<u>A CASS 13 claims management firm</u>	<u>SUP 3.1-3.7</u>	<u>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</u>
...	...	...	...

...

**3.10 Duties of auditors: notification and report on client assets**

...

3.10.5 R **Client assets report**

Whether in the auditor's opinion		
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> throughout the period;	
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> (except CASS 6.7), the <i>collateral rules</i> , the <i>client money rules</i> (except CASS 5.2), the <i>debt management client money rules</i> , the <i>claims management client money rules</i> and the <i>mandate rules</i> , at the date as at which the report has been made;	
...	...	...

(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the rules in CASS 5.6 and CASS 7A (Client money distribution)- <del>and</del> , CASS 11.13 (debt management client money distribution rules) <u>and CASS 13.11 (claims management client money distribution rules)</u> in relation to that pooling event.
-----	---

...

## 6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

...

### 6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

...

How long will an application take?

...

6.3.38A G If the relevant regulator fails to determine an application within the time period specified in section 55V of the Act, this does not mean that the application is deemed to be granted.

...

## 6 Annex 5D Variation of permission application form

This annex consists only of one or more forms.

*Variation of Permission Application - Insurance Business, Banking (accepting deposits), Electronic Money, Lloyd's Market and Funeral Plan Providers*

*Variation of Permission Application - Investment Business*

*Variation of Permission Application - Home Finance & General Insurance Mediation Activities*

*Variation of Permission (VOP) Application Consumer Credit Activities*

*Variation of Permission Application – Regulated Claims Management Activities*

[*Editor's note: these forms will be made by direction, not by rule, and are therefore not included in this draft instrument for consultation.*]

...

**10A FCA Approved Persons****10A.1 Application**

General

...

10A.1.1 R This chapter applies to every:

- (1) *firm* that is not a *relevant authorised person*; and
- (2) *relevant authorised person*, but only to the extent required by SUP 10A.1.16BR (Appointed representatives)

other than a *firm* which has *permission* to carry on only *regulated claims management activities*.

...

**15 Notifications to the FCA**

...

**15.5 Core information requirements**

Change in name

15.5.1 R A *firm* must give the *FCA* reasonable advance notice of a change in:

- (1) the *firm's* name (which is the registered name if the *firm* is a *body corporate*);
- (2) any business name under which the *firm* carries on a *regulated activity* (other than a *regulated claims management activity*) or *ancillary activity* either from an establishment in the *United Kingdom* or with or for clients in the *United Kingdom*; and
- (3) any business name under which the *firm* carries on a *regulated claims management activity* or *ancillary activity*.

...

**16 Reporting requirements****16.1 Application**

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17 and SUP 16.22)



(1) Section(s)	(2) Categories of firm to which section applies		(3) Applicable rules and guidance
...			
<i>SUP</i> 16.4 and <i>SUP</i> 16.5	All categories of <i>firm</i> except:		Entire sections
...	(j)	<u>a firm with permission to carry on only regulated claims management activities;</u>	
	(k)	a firm falling within a combination of (i), (ia), (j), <del>and</del> (ja) <u>and</u> (jb).	
...			
<u><i>SUP</i> 16.25</u>	<u>A firm with permission to carry on regulated claims management activities.</u>		<u>Entire section</u>
...			

...

### 16.3 General provisions on reporting

Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

- (18) annual financial crime reporting (*SUP* 16.23); ~~and~~
- (19) retirement income data reporting (*SUP* 16.24); and
- (20) claims management reporting (*SUP* 16.25).

...

After *SUP* 16.24 (Retirement income data reporting) insert the following new section, *SUP* 16.25. The text is not underlined.

**16.25 Claims management reporting**

## Application

- 16.25.1 G The effect of *SUP* 16.1.3R is that this section applies to a *firm* with *permission* to carry on *regulated claims management activities*.

## Purpose

- 16.25.2 G (1) The purpose of this section is to ensure that the *FCA* receives, on a regular basis, comprehensive information about the activities of *firms* which carry on *regulated claims management activities*.
- (2) The purpose of collecting this data is to monitor *firms*’ compliance with applicable *rules* and to assess and identify any emerging risks within the claims management industry.

## Requirement to submit Annual Claims Management Report

- 16.25.3 R A *firm* must submit an Annual Claims Management Report to the *FCA* annually in respect of the period of 12 *months* ending on the *firm*’s *accounting reference date*.
- 16.25.4 G *Firms* are only required to disclose in Annual Claims Management Reports information relating to the part of their business which is involved in carrying on *regulated claims management activities* and *ancillary activities*, except for questions 13 to 15, 19 to 27 and 30 to 34, which relate to the *firm* as a whole.

## Method for submitting Annual Claims Management Report

- 16.25.5 R A *firm* must submit an Annual Claims Management Report in the format as set out in *SUP* 16 Annex 44R, using the appropriate online systems specified on the *FCA*’s website.
- 16.25.6 G A *firm* submitting an Annual Claims Management Report should read the guidance notes available in *SUP* 16 Annex 45G.

## Time period for submitting Annual Claims Management Report

- 16.25.7 R A *firm* must submit the Annual Claims Management Report within 30 *business days* of the *firm*’s *accounting reference date*.

## Group reporting

- 16.25.8 R If a *group* includes more than one *firm*, a single Annual Claims Management Report may be submitted, and so satisfy the requirements of all *firms* in the *group*. Such a report should contain the information required from all of the *firms* in the *group*, meet all relevant due dates, indicate all the *firms* on whose behalf it is submitted and give their firm reference numbers. Nevertheless, the requirement to provide a report and the responsibility for the report remain with each *firm* in the *group*.

...

After SUP 16 Annex 43BG (Guidance notes for the completion of the Retirement income flow data return ('REP015') ...) insert the following new Annexes, SUP 16 Annex 44R and SUP 16 Annex 45G. The text is not underlined.

**16**            **Annual Claims Management Report form**  
**Annex**  
**44R**

CMC001: Key data for Claims Management

Currency: Sterling only

Units: integers

		A
Group reporting		
1	Does the data reported in this return relate to more than one <i>firm</i> ? (NB: You should always answer "No" if your <i>firm</i> is not part of a <i>group</i> )	
2	If "Yes" then list the firm reference numbers (FRNs) of all of the additional <i>firms</i> included in this return.	
Nil return		
3	Do you wish to report a nil return?	
	All <i>firms</i> answering 'no' to question 3, must complete the following:	
4	Over the reporting period, how many <i>employees</i> did the <i>firm</i> have on average?	
5	How many <i>employees</i> left the <i>firm</i> (for any reason) during the reporting period?	
6	What was the <i>firm's</i> annual <i>employee</i> turnover rate during the reporting period?	
7	What was the total remuneration paid to the <i>firm's employees</i> over the reporting period?	
8	What was the total amount of variable remuneration paid to the <i>firm's employees</i> over the reporting period?	

9	How does the <i>firm</i> charge fees to its <i>customers</i> ?	
10	What was the total annual income for all <i>regulated claims management activities</i> , as defined in <i>FEES 4 Annex [x]</i> for the purposes of <i>FCA</i> fees reporting (see <i>guidance</i> in <i>FEES 4 Annex [x]</i> )?	
Profit and loss account (over reporting period)		
11	What was the <i>firm's</i> income from <i>seeking out, referrals and identification of claims</i> ?	
12	What was the <i>firm's</i> income from all <i>regulated claims management activities</i> ?	
13	What was the <i>firm's</i> income from all <i>regulated activities</i> ?	
14	What was the <i>firm's</i> income from activities which are not <i>regulated activities</i> ?	
15	What was the <i>firm's</i> total income, including from activities which are not <i>regulated activities</i> ?	
16	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> ?	
17	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> (excluding expenditure of the sort listed in <i>CMCOB 7.2.8R(1)(b)</i> )?	
18	What was the <i>firm's</i> operating profit from <i>regulated claims management activities</i> ?	
Balance sheet (as at end of reporting period)		
19	What was the value of the <i>firm's</i> total assets (fixed and current)?	
20	How much <i>cash</i> did the <i>firm</i> hold?	
21	What was the value of the <i>firm's</i> other current assets?	
22	How much did the <i>firm</i> owe in overdrafts and bank loans due within one year?	
23	What was the value of the <i>firm's</i> current liabilities (other than overdrafts and bank loans)?	
24	What was the value of the <i>firm's</i> total (current and non-current) liabilities?	

25	What was value of the <i>firm's</i> current assets less the value of its current liabilities?	
26	What was the value of the <i>firm's</i> total assets less the value of its current liabilities?	
Prudential resources		
27	What level of prudential resources did the <i>firm</i> hold at the end of the reporting period (as calculated in <i>CMCOB</i> 7.3)?	
28	Was the <i>firm</i> a Class 1 firm or a Class 2 firm (as defined in <i>CMCOB</i> 7.2.5R) at the end of the reporting period?	
29	What was the <i>firm's</i> overheads requirement (as calculated in <i>CMCOB</i> 7.2.8R) as at the end of the reporting period?	
30	As at the end of the reporting period, was the <i>firm's</i> overheads requirement (as calculated in <i>CMCOB</i> 7.2.8R) greater than the amount set out in whichever of <i>CMCOB</i> 7.2.6R(1)(a) or 7.2.7R(1)(b) was applicable to the <i>firm</i> ?	
31	Did the <i>firm</i> hold <i>client money</i> at any point during the reporting period?	
32	What was the <i>firm's</i> prudential resources requirement (as calculated in <i>CMCOB</i> 7.2.6R and 7.2.7R) as at the end of the reporting period?	
33	Did the <i>firm</i> have a prudential surplus or deficit at the end of the reporting period?	
34	What was the amount of the prudential surplus or deficit at the end of the reporting period?	
<p>The rest of the questions are only for <i>firms</i> that have permission for one or more of:</p> <ul style="list-style-type: none"> <li>• <i>advice, investigation or representation of a personal injury claim;</i></li> <li>• <i>advice, investigation or representation of a financial services or product claim;</i></li> <li>• <i>advice, investigation or representation of a housing disrepair claim;</i></li> <li>• <i>advice, investigation or representation of a specified benefit claim; advice, investigation or representation of a criminal injury claim; and</i></li> <li>• <i>advice, investigation or representation of an employment-related claim.</i></li> </ul>		
Professional Indemnity Insurance		

35	Does the <i>firm</i> have permission for <i>advice, investigation or representation of a personal injury claim</i> ?	
36	Did the <i>firm</i> have a professional indemnity insurance policy in place for <i>advice, investigation or representation of a personal injury claim</i> as at the end of the reporting period?	
	If yes:	
(a)	Who is the underwriter of the insurance?	
(b)	What is the policy renewal date?	
(c)	Have the minimum terms of the policy been reviewed in the last five years?	
(d)	What is the amount of the limit of indemnity (liability) for any single claim?	
(e)	What is the amount of the limit of indemnity (liability) for claims in the aggregate over the policy period?	
(f)	What is the amount of the excess (or deductible) that would be applicable for any one claim?	
(g)	Has the identity of the insurance provider or the terms and conditions of the insurance policy changed from the content of the last Annual Claims Management Report form submitted to the <i>FCA</i> ?	
Client Money		
37	What was the highest balance of <i>client money</i> held by the <i>firm</i> at any point during the reporting period?	
38	In relation to the balance reported for question 37, for how many different <i>customers</i> did the <i>firm</i> hold client money?	
39	For how many different <i>customers</i> did the <i>firm</i> hold client money for a period longer than two <i>business days</i> ?	
40	What was the longest period of time for which the <i>firm</i> held <i>client money</i> for a customer?	
Product Data		
41	What was the average fee charged by the <i>firm</i> , during the reporting period in respect of a claim?	

Third-party Lead Generators							
42	How many leads did the <i>firm</i> purchase from <i>lead generators</i> during the reporting period?						
43	If you have provided a figure in response to the previous question, provide the following details in respect of the three <i>lead generators</i> from which the <i>firm</i> purchased the most leads during this reporting period:						
		Name	Postal address	Email address	Does supplier use overseas facilities (e.g. a call centre)?	Number of leads purchased from supplier over reporting period	Average cost per lead purchased from supplier over reporting period
	1						
	2						
	3						
44	How many leads did the <i>firm</i> supply to a third party? (include all the occasions on which the <i>firm</i> passed a customer, or details of a customer or claim, to a third party)						
Product data							
	How was the <i>firm's regulated claims management activity</i> divided among the following areas of work?						
		Revenue	Number of claims where lead obtained from <i>lead generator</i>	Number of claims pursued	Number of successful claims	Number of claims halted or not taken forward because: no good arguable base (left hand column), suspected fraud (middle column), or being	





	(b)	Road traffic accidents (excluding whiplash)						
	(c)	Slips, trips and falls (excluding accidents at work)						
	(d)	Accidents at work						
	(e)	Clinical negligence						
	(f)	Whiplash						
	(g)	Other (please specify)						
47	<i>housing disrepair claims</i>							
48	<i>specified benefit claims</i>							
49	<i>criminal injury claims</i>							
50	<i>employment-related claims</i>							
51	Of the above types of claim, which three saw the largest percentage change in number of successful claims?							
		Type of claim			Percentage change			
	(a)							

	(b)		
	(c)		

**16**  
**Annex**  
**45G**

**Guidance notes for completion of the Annual Claims Management Report form**

Guidance for CMC001

General notes

This *data item* collects key information annually from *firms* with permission to undertake *regulated claims management activity*.

Except for rows 13 to 15, 19 to 27 and 30 to 34, the data provided in this form should relate only to *regulated claims management activity*, even if the *firm* undertakes regulated or unregulated activities in other areas. Except where a single Annual Claims Management Report is submitted in respect of a *group* in accordance with SUP 16.25.8R, the data should not include the assets, liabilities, income or costs of any consolidated subsidiaries of the *firm*.

If you have undertaken no *regulated claims management activity* during the reporting period, answer “yes” to question 3 “do you wish to report a nil return?” to attest that there is no activity to report to us.

All questions requiring a monetary answer must be answered in sterling only. Figures should be reported in integers (that is, single units, to the nearest whole number), except where otherwise specified in the form: for example, income figures should be given to the nearest pound, not to the nearest thousand pounds.

In the form there are two sections. The first section must be answered by all *firms* (including those that only have permission for *seeking out claims, referring details of a claim, identifying a claim or claimant* or *agreeing to carry on a regulated activity* in respect of one of these activities). The second section however (from question 35 onwards) is only required from those *firms* that have permission for *advising on a claim, investigating a claim* or *representing a claimant*.

Data elements

Question		Notes
3	Do you wish to report a nil return?	If the <i>firm</i> has undertaken no <i>regulated claims management activity</i> during this reporting period then answer “yes” and submit the form.

4	Over of the reporting period, how many employees did the <i>firm</i> have on average?	State how many employees the <i>firm</i> had on average during the reporting period.  Include part time workers in this figure as 0.5.
5	How many employees left the <i>firm</i> (for any reason) during the reporting period?	State the figure for the number of employees who left the <i>firm</i> .  Include part time workers in this figure as 0.5.
6	What was the <i>firm</i> 's annual employee turnover rate during the reporting period?	This should be the number of employees who left the <i>firm</i> during the reporting period (row 5) divided by the average number of employees the <i>firm</i> had during the reporting period (row 4), multiplied by 100.
7	What was the total remuneration paid to the <i>firm</i> 's employees over the reporting period?	Include all remuneration received by employees, including any variable remuneration such as bonuses, commissions or performance-based pay. Include share-based remuneration, options and the monetary value of benefits in kind.
8	What was the total amount of variable remuneration paid to the <i>firm</i> 's employees over the reporting period?	Include only variable remuneration such as bonuses, commissions or performance-based pay. Include share-based remuneration, options and the monetary value of benefits in kind to the extent that these are variable.
9	How does the <i>firm</i> charge fees to its clients?	Please describe all the ways in which the <i>firm</i> charges fees: for example, whether calculated by reference to the amount recovered for the <i>customer</i> or on an hourly rate, and whether fees are charged up front or on account, or are invoiced periodically or at the end of the <i>claim</i> .
10	What was the total annual income for all <i>regulated claims management</i>	Refer to the <i>guidance</i> contained in FEES 4 Annex [x] before

	<i>activities</i> , as defined in <i>FEES 4 Annex [x]</i> for the purposes of <i>FCA</i> fees reporting (see <i>guidance</i> in <i>FEES 4 Annex [x]</i> )?	completing this question. If you undertake other activities this will be a subset of your total income.
11	What was the <i>firm's</i> income from <i>seeking out, referral and identification of claims</i> ?	State the revenue from generating leads for, or selling leads to, third parties. If you do not have this permission enter "0".
12	What was the <i>firm's</i> income from all <i>regulated claims management activities</i> ?	
13	What was the <i>firm's</i> income from all <i>regulated activities</i> ?	
14	What was the <i>firm's</i> income from activities which are not <i>regulated activities</i> ?	
15	What was the <i>firm's</i> total income, including from activities which are not <i>regulated activities</i> ?	This should be the sum of items 13 and 14.
16	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> ?	Include any share of overheads which is allocated to income from <i>regulated claims management activities</i> .
17	What was the <i>firm's</i> expenditure in respect of all <i>regulated claims management activities</i> (excluding expenditure of the sort listed in <i>CMCOB 7.2.8R(1)(b)</i> )?	
18	What was the <i>firm's</i> operating profit from <i>regulated claims management activities</i> ?	Operating profit is equal to income (item 12) less expenditure (item 16).
	Balance sheet	Questions 19 to 27 are to be answered as at the end of the relevant reporting period
19	What was the value of the <i>firm's</i> total assets?	Include all fixed and current assets.
20	How much <i>cash</i> did the <i>firm</i> hold?	This should relate to the whole <i>firm</i> but should not include the cash of any consolidated subsidiaries. This should include cash held in a bank account

		available for instant withdrawal.
21	What was the value of the <i>firm's</i> other current assets?	A current asset is an asset that is expected to be converted to cash within a year of the date of measurement (but does not include cash). This should relate to the whole <i>firm</i> (including investments in or receivables from other group entities) but should not include the assets of any consolidated subsidiaries.
22	How much did the <i>firm</i> owe in overdrafts and bank loans due within one year?	Include only the drawn amount of overdrafts.
23	What was the value of the <i>firm's</i> current liabilities (other than overdrafts and bank loans)?	A current liability is a debt or obligation that falls due within one year of the date of the liability arising. This should relate to the whole firm (including any amounts owed to other group entities) but should not include any consolidated subsidiaries.
24	What was the value of the <i>firm's</i> total (current and non-current) liabilities?	Non-current liabilities are those falling due more than one year after the date of measurement.
25	What was value of the <i>firm's</i> current assets less the value of its current liabilities?	This should equal the sum of items 20 and 21 less the sum of items 22 and 23.
26	What was the value of the <i>firm's</i> total assets less the value of its current liabilities?	This should equal the sum of items 19, less the sum of items 22 and 23.
27	What level of prudential resources did the <i>firm</i> hold at the end of the reporting period (as calculated in <i>CMCOB 7.3</i> )?	<i>CMCOB 7.3</i> sets out how prudential resources are to be calculated and which forms of capital are eligible for inclusion.
28	Was the <i>firm</i> a Class 1 firm or a Class 2 firm (as defined in <i>CMCOB 7.2.5R</i> ) at the end of the reporting period?	
29	What was the <i>firm's</i> Overheads Requirement (as calculated in <i>CMCOB 7.2.8R</i> ) as at the end of the reporting period?	<i>CMCOB 7.2.8R</i> sets out how the Overheads Requirement is to be calculated.
30	As at the end of the reporting period,	The sums applicable under

	was the <i>firm</i> 's overheads requirement (as calculated in <i>CMCOB</i> 7.2.8R) greater than the amount set out in whichever of <i>CMCOB</i> 7.2.6R(1)(a) or 7.2.7R(1)(b) was applicable to the <i>firm</i> ?	<i>CMCOB</i> 7.2.6R and 7.2.7R are £10,000 for a Class 1 firm and £5,000 for a Class 2 firm.
31	Did the <i>firm</i> hold <i>client money</i> at any point during the reporting period?	Answer "yes" or "no".
32	What was the <i>firm</i> 's prudential resources requirement (as calculated in <i>CMCOB</i> 7.2.6R and 7.2.7R) as at the end of the reporting period?	<i>CMCOB</i> 7.2.6R sets out how the Prudential Resources Requirement is to be calculated for Class 1 firms. <i>CMCOB</i> 7.2.7R sets out how the Prudential Resources Requirement is to be calculated for Class 2 firms.
33	Did the <i>firm</i> have a prudential surplus or deficit at the end of the reporting period?	A <i>firm</i> with prudential resources in excess of its Prudential Resources Requirement has a prudential surplus. A <i>firm</i> with prudential resources less than its Prudential Resources Requirement has a prudential deficit.
34	What was the amount of the prudential surplus or deficit at the end of the reporting period?	Enter positive figures only.
	The rest of the questions are only for <i>firms</i> that have permission for <i>advising on a claim, investigating a claim, or representing a claimant</i> .	All the questions below relate to <i>advising on a claim, investigating a claim, and representing a claimant</i> and should not include data for any other <i>regulated claims management activity</i> .
35	Does the <i>firm</i> have permission for <i>advising on a claim, investigating a claim</i> or <i>representing a claimant</i> in respect of <i>personal injury claims</i> ?	Answer "yes" or "no". Having these permissions in respect of <i>personal injury claims</i> triggers a requirement to hold professional indemnity insurance.
36	Did the <i>firm</i> have a Professional Indemnity Insurance policy in place for its claims management business as at the end of the reporting period?	Answer "yes" or "no".
	If yes:	
	(a) Who is the underwriter of the insurance?	State the underwriter's name.

	(b)	What is the policy renewal date?	Provide the end date of the policy in the format dd/mm/yyyy.
	(c)	Have the minimum terms of the policy been reviewed in the last five years?	
	(d)	What is the amount of the limit of indemnity (liability) for any single claim?	If the policy applies different indemnity limits to different insured events, enter the lowest applicable limit.
	(e)	What is the amount of the limit of indemnity (liability) for claims in the aggregate over the policy period?	
	(f)	What is the amount of the excess (or deductible) that would be applicable for any one claim?	
	(g)	Has the identity of the insurance provider or the terms and conditions of the insurance policy changed from the content of the last Annual Claims Management Report form submitted to the <i>FCA</i> ?	Answer “yes” or “no”.
37		What was the highest balance of <i>client money</i> held by the <i>firm</i> at any point during the reporting period?	Report rounded to the nearest pound.
38		In relation to the balance reported for question 37, for how many different <i>customers</i> did the <i>firm</i> hold client money?	Report the number of customers to whom the balance reported for question 37 relates.
39		For how many different <i>customers</i> did the <i>firm</i> hold client money for a period longer than two <i>business days</i> ?	Report the total number of clients for whom the <i>firm</i> held client money for longer than two <i>business days</i> .
40		What was the longest period of time for which the <i>firm</i> held <i>client money</i> for a customer?	Report in days.
41		What was the average fee charged by the <i>firm</i> , during the reporting period in respect of a claim?	Include in the average only claims where a fee was charged.

42	How many leads did the <i>firm</i> purchase from <i>lead generators</i> during the reporting period?	State “None” or provide a positive figure.
43	If you have provided a figure in response to the previous question, provide the following details in respect of the three <i>lead generators</i> from which the <i>firm</i> purchased the most leads during this reporting period:	Provide all the information requested in each column.
(a)	How was the <i>firm’s regulated claims management activity</i> divided among the following areas of work?	Provide the following figures for each area of work.  For <i>financial services claims</i> and <i>personal injury claims</i> show how this work is split between different subcategories.  When reporting “other”, complete the free text box to indicate what the figures relate to.
(b)	Revenue	Enter the total income earned from this type of work during the reporting period.
(c)	Number of <i>claims</i> where lead obtained from <i>lead generator</i>	Enter the number of <i>claims</i> where the <i>customer</i> was obtained from a lead purchased from a <i>lead generator</i> .
(d)	Number of claims pursued	Enter the number of claims in respect of which an agreement was reached with the claimant for the <i>firm</i> to investigate, advise or represent.
(e)	Number of successful claims	Enter the number of claims which resulted in a payment or other remedy for the claimant. Include claims settled on such terms.
(f)	Number of claims halted or not taken forward because: no good arguable base, suspected fraud, or being frivolous or vexatious	Enter the number of claims which the <i>firm</i> declined, or declined to continue to pursue because there was no arguable case in the left hand column; the number of those where there was suspected fraud in the middle column; and the number of those which were



			frivolous or vexatious in the right hand column.
51	Of the above types of claim, which three saw the largest percentage change in number of successful <i>claims</i> ?		Percentage change is the increase or decrease in the number of successful claims concluded during the reporting period compared to the number in the equivalent period ending 12 months earlier. Enter the name of the type of <i>claim</i> and the percentage change. For <i>financial services</i> or product claims and <i>personal injury claims</i> , enter the more detailed <i>claim</i> category (e.g. Whiplash).

...

**TP 1 Transitional provisions**

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...	...	...	...	...	...
<u>3AC</u>	<u>SUP 3.10.4R to SUP 3.10.6R</u>	<u>R</u>	<p>(1) This transitional provision applies in respect of an auditor which was subject to <u>SUP 3.10 immediately before 1 April 2019 in relation to a <i>firm</i> which becomes subject to the <i>claims management client money rules</i> on 1 April 2019.</u></p> <p>(2) For the purposes of <u>SUP 3.10.5R(1) in its application to the <i>claims management client money rules</i>, the first report which the auditor submits under</u></p>	<u>From 1 April 2019</u>	<u>1 April 2019</u>

			<u>SUP 3.10.4R</u> which covers the <u>claims management client money rules</u> must state whether, in the <u>auditor's opinion</u> , the <u>firm</u> was in compliance with those <u>rules</u> from 1 April 2019 to the end of the period covered by the report.		
...	...	...	...	...	...
<u>19</u>	<u>SUP 16.25.7</u>	<u>R</u>	<p>(1) This transitional provision applies in respect of the first <u>Annual Claims Management Report</u> which a <u>firm</u> is required to submit under <u>SUP 16.25.7R</u>.</p> <p>(2) No report is required under <u>SUP 16.25.7R</u> in respect of a period ending on an <u>accounting reference date</u> of the <u>firm</u> earlier than 1 July 2019.</p> <p>(3) If no report is provided under <u>SUP 16.25.7R</u> in respect of a period ending on an <u>accounting reference date</u> of the <u>firm</u> earlier than 1 July 2019, the first report under <u>SUP 16.25.7R</u> must address the period from 1 April 2019 to the <u>firm's first accounting reference date</u> which occurs on or after 1 July 2019.</p>	From 1 April 2019 to 1 July 2020	1 April 2019

## Annex G

### Amendments to the Dispute Resolution: Complaints manual (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

## 1 Treating complainants fairly

### 1.1 Purpose and application

#### Purpose

- 1.1.1 G This chapter contains *rules and guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments in the *United Kingdom*, by certain *branches* of *firms* in the *EEA* or by certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*. In respect of *regulated claims management activities*, this chapter applies to business carried on in *Great Britain* (see *PERG 2.4A*). It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

#### Application to firms

- 1.1.3 R ...

(1A) This chapter also applies to a *firm* in respect of *complaints* from *eligible complainants* concerning activities which are, or which are ancillary to, *regulated claims management activities*.

...

- 1.1.5 R This chapter does not apply to:

...

(3A) a *firm* in respect of *complaints* concerning activities which:

(a) are not carried on in *Great Britain* but which would be *regulated claims management activities* if they were carried on in *Great Britain*; or

(b) are ancillary to activities described in (a);

...

- 1.1.5-B G For an activity to amount to a *regulated claims management activity* it must be carried on in *Great Britain* (see *PERG 2.4A*). The effect of *DISP 1.1.3R(1A)* and *DISP 1.1.5R(3A)* is that the application of this chapter to

regulated claims management activities and activities ancillary to regulated claims management activities depends on whether the activity is carried on in Great Britain rather than whether it is carried on from an establishment maintained in the United Kingdom.

...

- 1.1.10 R In relation to a *firm*'s obligations under this chapter, references to a complaint also include an expression of dissatisfaction which is capable of becoming a *relevant new complaint*, a *relevant transitional complaint*, ~~or~~ a *relevant new credit-related complaint*, or a relevant new claims management complaint.

...

### 1.3 Complaints handling rules

...

Further requirements for all respondents

...

- 1.3.6 G Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service or claims management service, it should (in accordance with *Principle 6* (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

...

...

### 1.10 Complaints reporting rules

- 1.10.1 R (1) Unless (2) applies, twice a year a *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants*.
- (2) If a *firm*:
- (a) has *permission* to carry on only *credit-related regulated activities* or *operating an electronic system in relation to lending* and has revenue arising from those activities that is less than or equal to £5,000,000 a year; or
  - (b) has permission to carry on only regulated claims management activities;

the *firm* must provide the *FCA* with a complete report concerning *complaints* received from *eligible complainants* once a year.

- (3) The report required by (1) and (2) must be set out in the format in:
- (a) *DISP* 1 Annex 1R, in respect of *complaints* which do not relate to *regulated claims management activity* or any activity ancillary to *regulated claims management activity*; and
  - (b) *DISP* 1 Annex 1ABR, in respect of *complaints* relating to *regulated claims management activity* or any activity ancillary to *regulated claims management activity*.

...

#### Information requirements

...

1.10.2B R *DISP* 1 Annex 1ABR requires (for the relevant reporting period) information about:

- (1) in Table 1, the total number of *complaints* received by the *firm* and the main focus of the *complaint*;
- (2) in Table 2:
  - (a) the number of *complaints* that were closed or upheld within different time periods;
  - (b) the total amount of redress paid by the *firm* in relation to *complaints* upheld and not upheld in the relevant reporting period; and
  - (c) redress in relation to the *claims management fee cap*, where this was done at the *firm*'s instigation rather than as the result of a *complaint* about the fee.

1.10.3 G For the purposes of *DISP* 1.10.2R, *DISP* 1.10.2-AR<sub>2</sub> and *DISP* 1.10.2AR<sub>7</sub> and *DISP* 1.10.2BR, when completing the return, the *firm* should take into account the following matters.

...

- (2) Under *DISP* 1.10.2R(1)(b), *DISP* 1.10.2R(2)(b)<sub>2</sub> or *DISP* 1.10.2-AR or *DISP* 1.10.2BR(2), a *firm* should report information relating to all *complaints* which are closed and upheld within the relevant reporting period, including those resolved under *DISP* 1.5 (Complaints resolved by close of the third business day). Where a *complaint* is upheld in part, or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint* as upheld for reporting purposes.

However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as “rejected”.

- (3) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(1)(b)(ii), *DISP* 1.10.2R(2)(b)(ii), *DISP* 1.10.2-AR(4), ~~or~~ *DISP* 1.10.2AR or *DISP* 1.10.2BR(2)(b), redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:

...

- (e) waiver of an excess on an insurance policy; ~~and~~
- (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred; and
- (g) the refund of fees paid in excess of the *claims management fee cap*, and any amount which the *firm* had attempted to charge but which was written off or waived (before the *customer* paid it) on the basis that it would have exceeded the *claims management fee cap*.

...

...

- 1.10.4A R If a *firm* ~~has permission to carry on only credit related regulated activities or operating an electronic system in relation to lending and has revenue arising from those activities that is less than or equal to £5,000,000 a year, is one to which *DISP* 1.10.1R(2) applies,~~ the relevant reporting period is the year immediately following the *firm's* accounting reference date.

...

## 1.10A Complaints data publication rules

Obligation to publish summary of complaints data or total number of complaints

- 1.10A.1 R ...

(1A)

- (a) This paragraph applies to a *firm* which:
  - (i) has *permission* to carry on only *credit-related regulated activities* or to *operate an electronic system in relation to lending*; and
  - (ii) has revenue arising from those activities that is less than or equal to £5,000,000 a year.

- (aa) This paragraph also applies to a firm which has permission to carry on only regulated claims management activities.
- (b) Where a firm to which this paragraph applies submits a report to the FCA in accordance with DISP 1.10.1R reporting 1000 or more *complaints*, it must publish a summary of the *complaints* data contained in that report (the *complaints* data summary).

...

...

After DISP 1 Annex 1AA (Notes on completing electronic money and payment services complaints return form) insert the following new Annex, DISP 1 Annex 1AB. The text is not underlined.

### 1 Annex Claims management complaints and redress return form 1ABR

Currency: Sterling only

Units: Integers

		A
Group reporting		
1	Does the data reported in this return cover <i>complaints</i> relating to more than one <i>firm</i> ?  (NB: You should always answer “No” if your <i>firm</i> is not part of a <i>group</i> .)	
2	If “Yes” then list the firm reference numbers (FRNs) of all of the additional <i>firms</i> included in this return.	
Nil return declaration		
3	We wish to declare a nil return  (If yes, leave all questions on <i>complaints</i> activities, including contextualisation, blank.)	
Return details required		
4	Total <i>complaints</i> outstanding at reporting period start date.	
5	Total number of <i>complaints</i> opened during the reporting	

	period.	
Complaints data publication by FCA		
6	If you are reporting 1000 or more <i>complaints</i> , do you consent to the <i>FCA</i> publishing the <i>complaints</i> data and information on context contained in this report in advance of the <i>firm</i> publishing the data itself?	
7	If “Yes”, do you confirm that the <i>complaints</i> data and information on context contained in this report accurately reflects the information required to be published by the reporting <i>firm</i> under <i>DISP</i> ?	
Contextualisation data		
8	Total number of leads generated or obtained during the reporting period	
9	Total number of <i>claims</i> opened during the reporting period	

Table 1

		A	B	C	D	E	F
		Type of claim					
	Numbers of complaints during reporting period	<i>personal injury claims</i>	financial services or product claims	<i>housing disrepair claims</i>	<i>specified benefit claims</i>	<i>criminal injury claims</i>	<i>employment-related claims</i>
10	Total number of complaints						
	Main focus of complaint						
11	Lead generation, unsolicited marketing and cold calling						
12	Quality of advice / provision of misleading information (including in						



	advertisements)						
13	Customer service issues (including call handling)						
14	General administration						
15	Upfront fees						
16	Fee dispute (at settlement – other than one in 17 below)						
17	Fees in excess of the <i>claims management fee cap</i>						
18	Claim outcome						
19	Process for obtaining and/or sharing of customer data						
20	Delay in processing claim						
21	Other – please provide details						

Table 2

Number of complaints closed during the reporting period (21 to 24) and complaints upheld (25)

Redress paid, in integers (26 to 29): for example, figures for redress paid should be to the nearest pound not to the nearest thousand pounds. Include all amounts in excess of the *claims management fee cap*, whether a refund of fees paid or a waiver of excess fees.

21	Complaints closed within 3 days	
22	Complaints closed within 8 weeks, but after more than 3 days	
23	Complaints closed after more than 8 weeks	

24	Total complaints closed	
25	Complaints upheld	
26	Redress paid for upheld complaints	
27	Redress paid for complaints not upheld	
28	Redress in relation to the <i>claims management fee cap</i> , where this was done at the <i>firm's</i> instigation rather than as the result of a <i>complaint</i> about the fee	
29	Total redress paid	

Amend the following as shown.

### 1 Annex Complaints publication report 1B

...

	Number of complaints opened by volume of business							
Product / service grouping	Provision (at reporting period end date)	Intermediation (within the reporting period)	Number of complaints opened	Number of complaints closed	Percentage closed within 3 days	Percentage closed after 3 days but within 8 weeks	Percentage upheld	Main cause of complaints opened
...								
Credit related	...	...			...	...		...
<u>Claims management</u>	<u>per 1000 claims in progress and/or leads generated</u>	<u>N/A</u>						

	<u>ed</u>							
--	-----------	--	--	--	--	--	--	--

...

## 2 Jurisdiction of the Financial Ombudsman Service

...

### 2.1 Purpose, interpretation and application

- 2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service*'s two jurisdictions:
- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services*, issuance of *electronic money*, and *CBTL business* and covers:
 

...

    - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order*, ~~and~~ the *Mortgage and General Insurance Complaints Transitional Order* and the Claims Management Order;

...
- ...
- 2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise:
- ...
- (4) ... ; ~~and~~
  - (5) ... ;
  - (6) *relevant existing claims management complaints* referred to the *Legal Ombudsman* before 1 April 2019 and inherited by the *Financial Ombudsman Service* under the *Claims Management Order*; and
  - (7) *relevant new claims management complaints* about events which took place before 1 April 2019 but referred to the *Financial Ombudsman Service* on or after 1 April 2019 under the *Claims Management Order*.
- 2.1.3 G The *Ombudsman Transitional Order* and the Claims Management Order requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints* and relevant existing claims management complaints, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

...

## 2.3 To which activities does the Compulsory Jurisdiction apply?

...

Activities by firms and unauthorised persons subject to a former scheme

2.3.2 G The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

(1) ... ; ~~or~~

(2) ... ; or

(2A) as a result of the *Claims Management Order*, a *relevant claims management complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* at the time of the act or omission;

...

...

## 2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities, other than *regulated claims management activities* and activities ancillary to *regulated claims management activities*, which (at ~~3 January 2018~~ 1 April 2019) would be covered by the *Compulsory Jurisdiction*, if they were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

(ca) an activity which would be a *regulated claims management activity* and would be covered by the *Compulsory Jurisdiction* if it were carried on in *Great Britain* (see *PERG 2.4A*);

...

...

2.5.3 G *DISP 2.5.1R (2)(a)* is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by the *Ombudsman Transitional*

*Order, or the Mortgage and General Insurance Complaints Transitional Order, or the Claims Management Order. It enables the Financial Ombudsman Scheme to cover complaints about earlier events relating to those activities before they became regulated activities.*

...

## 2.6 What is the territorial scope of the relevant jurisdiction?

### Compulsory Jurisdiction

2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*), of an *electronic money issuer* (including *agents* of an *electronic money institution*), of a *CBTL firm*, of a *designated credit reference agency* or of a *designated finance platform* which:

(a) (except for regulated claims management activities and activities ancillary to regulated claims management activities ) are carried on from an establishment in the United Kingdom;  
or:

(b) are, or are ancillary to, regulated claims management activities.

...

2.6.2 G This:

...

(2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* other than:

(a) ... ; and

(b) ... ; and

(c) complaints in relation to regulated claims management activity.

2.6.2A G For an activity to amount to a regulated claims management activity it must be carried on in Great Britain (see PERG 2.4A). The application of the Compulsory Jurisdiction to firms which carry on regulated claims management activities (and activities ancillary to regulated claims management activities) depends on whether the activity is carried on in Great Britain rather than whether it is carried on from an establishment maintained in the United Kingdom.

...

## Voluntary Jurisdiction

...

**2.6.4A** **G** Complaints in respect of claims management services which are not regulated claims management activity (for example, services provided by a company incorporated in Northern Ireland to a natural person ordinarily resident in Northern Ireland) would be covered by the Voluntary Jurisdiction under DISP 2.6.4R(1) where the activities are carried on from an establishment in the United Kingdom.

...

**2.7 Is the complainant eligible?**

...

## Eligible complainants

...

**2.7.6** **R** ...

(17) the complainant is a customer of the respondent in relation to regulated claims management activity.

...

**2.7.8** **G** In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order*, ~~and the *Mortgages and General Insurance Complaints Transitional Order* and *Claims Management Order*~~, where a complainant:

- (1) wishes to have a *relevant new complaint*, ~~or a relevant transitional complaint~~ or a relevant new claims management complaint dealt with by the *Ombudsman*; and
- (2) is not otherwise eligible; but
- (3) would have been entitled to refer an equivalent complaint to the *former scheme* in question immediately before the relevant ~~transitional~~ order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

...

**2 Annex 1G** **Regulated Activities for the Voluntary Jurisdiction as at ~~3 January 2018~~ 1 April 2019**

...

The activities which were covered by the *Compulsory Jurisdiction* (at ~~3 January 2018~~ 1 April 2019) were:

...

The activities which (at ~~3 January 2018~~ 1 April 2019) were *regulated activities* were, in accordance with *section 22* of the *Act* (Regulated Activities), any of the following activities specified in ~~*Part H*~~ Parts 2, 3A and 3B of the *Regulated Activities Order*:

...

- (41) *seeking out, referrals and identification of claims* (article 89G);
- (42) *advice, investigation or representation of a personal injury claim* (article 89H);
- (43) *advice, investigation or representation of a financial services or product claim* (article 89I);
- (44) *advice, investigation or representation of a housing disrepair claim* (article 89J);
- (45) *advice, investigation or representation of a specified benefit claim* (article 89K);
- (46) *advice, investigation or representation of a criminal injury claim* (article 89L);
- (47) *advice, investigation or representation of an employment-related claim*(article 89M);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of ~~(22)~~, (22A), (22B), (22C), (22D), (22E) and (23), is carried on in relation to property of any kind or, in the case of (40A) or (40B) relates to information about a *person's* financial standing or, in the case of (41) to (47), is or relates to *claims management services* and is carried on in *Great Britain*.

### **3 Jurisdiction of the Financial Ombudsman Service**

#### **3.1 Purpose, interpretation and application**

...

Interpretation

...

##### **3.1.4 G The *Ombudsman Transitional Order* and the *Claims Management Order***

requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints* and relevant existing claims management complaints, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

...

### 3.3 Dismissal without consideration of the merits and test cases

...

- 3.3.3 G Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* and the Claims Management Order, where the *Ombudsman* is dealing with a *relevant complaint*, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the *former scheme* in question, as it had effect immediately before the relevant ~~transitional~~ order came into effect.

...

### 3.6 Determination by the Ombudsman

Fair and reasonable

...

- 3.6.5 G Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint* or a *relevant transitional complaint* or a relevant new claims management complaint, the *Ombudsman Transitional Order*, ~~and~~ the *Mortgage and General Insurance Complaints Transitional Order* and the Claims Management Order require him to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant ~~transitional~~ order came into effect.

...

### 3.7 Awards by the Ombudsman

...

Money awards

...

- 3.7.3 G Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint*, ~~or~~ a *relevant transitional complaint* or a relevant new claims management complaint, the *Ombudsman Transitional Order* and the *Mortgages and*



*General Insurance Complaints Transitional Order and the Claims Management Order* require him to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant ~~transitional~~ order came into effect.

...

## TP 1 Transitional provisions

### TP1.1 Transitional provisions table

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...	...	...	...	...	...
45	<u>DISP 1.10.1R</u> , <u>DISP 1.10.4AR</u> , <u>DISP 1.10.5R</u> , and <u>DISP 1 Annex 1ABR</u>	R	<p>(1) This transitional provision applies where a <i>firm</i> with <i>permission</i> to carry on <i>only regulated claims management activities</i> is required to provide the <i>FCA</i> with its first report under <u>DISP 1.10.1R</u> in the form of <u>DISP 1 Annex 1ABR</u>.</p> <p>(2) No report is required under <u>DISP 1.10.1R</u> in the form of <u>DISP 1 Annex 1ABR</u> in respect of a period ending on an <i>accounting reference date</i> of the <i>firm</i> earlier than 1 July 2019.</p> <p>(3) If the <i>firm</i> does not provide a report in the form of <u>DISP 1 Annex 1ABR</u> under <u>DISP 1.10.1R</u> in respect of a period ending on an <i>accounting reference</i></p>	From 1 April 2019 to 1 July 2020	1 April 2019

			<u>date of the firm</u> earlier than 1 July 2019, the first report in the form of <u>DISP 1 Annex 1ABR</u> provided under <u>DISP 1.10.1R</u> must cover the period from 1 April 2019 to the <u>firm's first accounting reference date</u> which occurs on or after 1 July 2019.		
<u>46</u>	<u>DISP 2 and DISP 3</u>	<u>R</u>	In <u>DISP 2</u> and <u>DISP 3</u> references to a " <u>firm</u> " or " <u>firms</u> " include <u>unauthorised persons</u> subject to the <u>Compulsory Jurisdiction</u> in relation to <u>relevant claims management complaints</u> in accordance with the <u>Claims Management Order</u> .	<u>From 1 April 2019</u>	<u>From 1 April 2019</u>
<u>47</u>	<u>DISP 2 and DISP 3</u>	<u>G</u>	Under the <u>Claims Management Order</u> , a <u>relevant claims management complaint</u> is subject to the <u>Compulsory Jurisdiction</u> whether or not it is about a <u>firm</u> or an <u>unauthorised person</u> . <u>Unauthorised persons</u> are not subject to <u>DISP 1</u> , but references to " <u>firm</u> " in <u>DISP 2</u> and <u>DISP 3</u> include <u>unauthorised persons</u> subject to the <u>Compulsory Jurisdiction</u> in relation to <u>relevant claims management complaints</u> , where applicable.	<u>From 1 April 2019</u>	<u>From 1 April 2019</u>
<u>48</u>	<u>DISP 1, DISP</u>	<u>R</u>	In relation to <u>relevant</u>	<u>From 1</u>	<u>From 1</u>

	<p><u>2, DISP 3 and DISP 4</u></p>	<p><u>claims management complaints, references in DISP 1, DISP 2, DISP 3 and DISP 4 to an “eligible complainant” include a person who is to be treated as an eligible complainant in accordance with the Claims Management Order and references to a complaint shall be construed accordingly.</u></p>	<p><u>April 2019</u></p>	<p><u>April 2019</u></p>
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## Annex H

### Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, all the text is new.

### Claims Management: Conduct of Business sourcebook (CMCOB)

#### 1 Application and purpose

##### 1.1 Application

Application

- 1.1.1 G (1) The Claims Management: Conduct of Business sourcebook (*CMCOB*) is the specialist sourcebook for *regulated claims management activities*.
- (2) *CMCOB* applies as described in this chapter, unless the application of a chapter, section or a *rule* is described differently in the chapters, sections or *rules* in *CMCOB*.

Purpose

- 1.1.2 G The purpose of *CMCOB* is to set out the detailed obligations that are specific to *regulated claims management activities* and activities connected to those activities carried on by *firms*. These build on and add to the high-level obligations, for example, in *PRIN*, *GEN* and *SYSC*.
- 1.1.3 G Other parts of the *FCA Handbook* also apply to *regulated claims management activities*. For example, the arrangements for supervising *firms*, including applicable reporting obligations, are described in the Supervision manual (*SUP*) and the detailed requirements for handling complaints are set out in the Dispute Resolution: Complaints sourcebook (*DISP*). The Client Assets sourcebook (*CASS*) also contains *rules* about *client money* that apply in certain circumstances.
- 1.1.4 G *Firms* are reminded that they may require permissions to carry on *regulated activities* other than *regulated claims management activities*: for example, *credit broking*, *entering into a regulated credit agreement as lender* or *insurance distribution activity*.

##### 1.2 Who? What? Where?

- 1.2.1 R *CMCOB* applies to a *firm* with respect to carrying on *regulated claims management activities* and *ancillary activities*, unless otherwise stated in, or in relation to, a *rule*.

- 1.2.2 G For an activity to amount to a *regulated claims management activity* it must be carried on in *Great Britain* (see *PERG 2.4A*).
- 1.2.3 R A *firm* must:
- (1) ensure that its *employees* and agents comply with *CMCOB*; and
  - (2) take reasonable steps to ensure that other persons acting on its behalf comply with *CMCOB*.

## 2 Conduct of business

### 2.1 General principles

- 2.1.1 R A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *customer* (the *client's best interests rule*).
- 2.1.2 R A *firm* must establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable *customers*.
- 2.1.3 G *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.
- 2.1.4 R A *firm* must not engage in high pressure selling in relation to *regulated claims management activity*.
- [Note: CAPR CSR 3]
- 2.1.5 R A *firm* must not carry out a *cold call* in person.
- [Note: CAPR CSR 4]
- 2.1.6 G *CMCOB 2.2* sets out further *rules* and *guidance* in relation to lead generation.
- 2.1.7 R A *firm* must not make or pursue a *claim* on behalf of a *customer*, or advise a *customer* to make or pursue a *claim*, if the *firm* knows or has reasonable grounds to suspect that the *claim*:
- (1) does not have a good arguable base; or
  - (2) is fraudulent; or
  - (3) is frivolous or vexatious.
- 2.1.8 G (1) A *firm* should take all reasonable steps to investigate the existence and merits of each element of a potential *claim* before making or pursuing the *claim* or advising the *customer* themselves to make or pursue the *claim*.

- (2) In accordance with *Principle 1* (Integrity) and *Principle 2* (Skill, care and diligence), the *firm's* investigations should be such that it is able, in presenting a *claim*, to make representations which:
- (a) substantiate the basis of the *claim*;
  - (b) relate to the nature of the *claim* and are specific to the *claim*; and
  - (c) are not false or misleading, or an exaggeration.
- 2.1.9 R A *firm* must publish on its website (if it operates a website) the standard terms and conditions of the contracts it enters into with *customers*.
- [Note: CAPR CSR 11]
- 2.1.10 R A *firm* must not take any payment from a *customer* until the *customer* has signed an agreement with the *firm* which provides for such a payment to be made.
- [Note: CAPR CSR 11]
- 2.1.11 G (1) *CMCOB* 2.1.10R prohibits a *firm* from taking a payment from a *customer* before the *customer* has signed an agreement with the *firm*. It is not sufficient for the *firm* to enter into an agreement with the *customer* orally for this purpose: the agreement should be signed.
- (2) The signature should be on a hard copy of the agreement which may be given or posted to the *firm*, else sent by fax, or scanned or photographed and sent electronically. Alternatively, the *customer* could insert a digital image of their handwritten signature into an electronic copy of the agreement before returning the agreement to the *firm* by email.
- (3) The *FCA* would not view an agreement as having been signed for the purposes of *CMCOB* 2.1.10R where the *customer* does no more to indicate their acceptance of the *firm's* terms and conditions than to send a text message or email or to tick a box on a website or web-based form.
- (4) The *firm* will also need to have complied with the requirements of *CMCOB* 4 (Pre-contractual requirements), including the requirement to take reasonable steps to ensure that the *customer* understands the agreement (see *CMCOB* 4.3.1R(3)). Where an agreement is entered into electronically, those steps should include the *firm* satisfying itself that the *customer* has had the opportunity to familiarise themselves with the contract.
- 2.1.12 R (1) This *rule* applies in respect of an agreement entered into between the *customer* and the *firm* under which the *firm* is to provide *claims management services*.

- (2) The *firm* must:
  - (a) allow the *customer* to cancel the agreement during a period of 14 *days* beginning on the day that the agreement is entered into; and
  - (b) permit the *customer* to terminate the agreement at any time after that period.
- (3) Where the *customer* cancels an agreement under (2)(a), the *firm* must provide the *customer* with a refund of any payments made to the *firm*.
- (4) Where the *customer* terminates an agreement as in (2)(b), the *firm* must not charge the *customer* an amount in excess of what is reasonable in the circumstances and reflects the work undertaken by the *firm*.
- (5) This *rule*:
  - (a) does not apply if regulation 8 (Terms and conditions of termination in an employment matter) of the Damages-Based Agreements Regulations 2013 applies; and
  - (b) is subject to:
    - (i) *CMCOB* 2.1.13R and *CMCOB* 2.1.14R; and
    - (ii) the *claims management fee cap* (see *CMCOB* 5).

[**Note:** *CAPR CSR* 17 and 18]

- 2.1.13 R (1) A *firm* must not charge a fee to a *customer* in relation to a financial services or product claim before the provision of a *claims management service* to the *customer* other than *seeking out, referrals and identification of claims*.

[**Note:** *CAPR CSR* 15]

- (2) This *rule* is subject to *CMCOB* 2.1.14R.
- 2.1.14 R (1) A *firm* must not charge a fee to a *customer* in relation to a *claim* in respect of a *payment protection contract* prior to the later of:
- (a) the *customer* withdrawing or deciding not to pursue the *claim*; and
  - (b) the settlement of the *claim*.
- (2) A *firm* must not charge a fee to a *customer* in relation to a *claim* in respect of a *payment protection contract* if there was no such contract between the *customer* and the *person* whom it was alleged was the counterparty to the contract.

[Note: CAPR CSR 15 and 16]

## 2.2 Generating, obtaining and passing on leads

- 2.2.1 G (1) The *Principles* (in particular *Principle 6* and *Principle 7*) apply to actions of a *firm* dealing with a *customer* whose details the *firm* has obtained from a *lead generator*. For example, where there is a possibility that the *lead generator* is using misleading information, advice or actions to obtain a *customer's* personal data, acting on those sales leads could amount to a breach by the *firm* of *Principle 6* and *Principle 7*.
- (2) The definition of “*customer*” in the *Glossary* includes a *person* who may have a claim and may use the services of a *person* who carries on a *regulated claims management activity* or an activity which would be a *regulated claims management activity* but for the exclusion in the *Regulated Activities Order*. An individual who is contacted by a *lead generator*, or whose details are obtained by a *lead generator* and passed on to another *firm*, is, therefore, a *customer* of both the *lead generator* and, where relevant, that other *firm*.

Requirements relating to use of a *lead generator*

- 2.2.2 R (1) A *firm* that accepts or proposes to accept sales leads (including details of *claims* or of potential *claimants*) from a *lead generator* must take all reasonable steps to:
- (a) ascertain whether the *lead generator* is an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims*; and
- (b) satisfy itself as to whether the *lead generator* has appropriate systems and processes in place to ensure compliance with:
- (i) *data protection legislation*; and
- (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (or, if the *lead generator* is established in an *EEA State* but has no establishment in the *United Kingdom*, the equivalent legislation in that *EEA State*).
- (2) The *firm* must take the steps required by (1):
- (a) before accepting sales leads from a particular *lead generator* for the first time; and
- (b) if the *firm* continues to accept leads from that *lead generator*, at appropriate intervals.



- (3) If the *lead generator* is not an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims*, the *firm* must take reasonable steps to satisfy itself that the *lead generator* may carry on that *regulated activity* without breaching the *general prohibition*.
- (4) The *firm* must keep a record of the steps it has taken under (1), and its conclusions in relation to (1)(a) and (1)(b).
- 2.2.3 G (1) A *firm* may ascertain whether a *person* is an *authorised person* by checking the *Financial Services Register* on the *FCA* website.
- (2) In satisfying itself as to whether a *lead generator* has appropriate systems and processes in place to ensure compliance with *data protection legislation*, a *firm* should consider, in particular, the procedures by which the *lead generator* obtains *customers'* personal data and *customers'* consent to the use (including the acquisition, storage and sharing) of that data.
- (3) In satisfying itself as to whether a *lead generator* has appropriate systems and processes in place to ensure compliance with the Privacy and Electronic Communications (EC Directive) Regulations 2003, a *firm* should consider, in particular, the systems and processes the *lead generator* has in place to ensure compliance with the prohibition of cold-calling in relation to *claims management services* (regulation 21A) and the requirements in relation to the use of electronic mail, including text messages, for direct marketing purposes (regulation 22).
- (4) A *firm* should have regard to the frequency with which it accepts leads from a *lead generator* when determining what an appropriate interval is at which it should take the steps required by *CMCOB 2.2.2R*: the more frequently it accepts leads from that *lead generator*, the shorter should be the interval; and where the *firm* accepts leads from the *lead generator* on an ongoing basis, it should take those steps regularly.

#### Recording the source of a sales lead

- 2.2.4 R Where a *firm* accepts a sales lead, or details of a *claim* or of a potential *claimant*, from a *lead generator*, the *firm* must keep a record of the *lead generator* from whom it accepted that lead or those details for at least three years.

#### Using a sales lead

- 2.2.5 G (1) *Firms* are reminded that, under *data protection legislation*, they must have consent from the *customer* to process the *customer's* personal data, for example to contact the *customer* or to pass their details on to a third party, unless one of the other conditions which renders the processing of that data lawful is satisfied. Where the *firm* relies on

consent which has been obtained by a *lead generator*, the *firm* should take reasonable steps to satisfy itself that the consent was properly obtained, and clearly covers both the *firm* and the use that the *firm* intends to make of the *customer's* personal data.

- (2) In relation to consent, article 7(2) of the General Data Protection Regulation (EU) No 2016/679 provides: “If the data subject’s consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of this Regulation shall not be binding”.
- (3) *Firms* are reminded that, in relation to cold calling by telephone, the Privacy and Electronic Communications (EC Directive) Regulations 2003 prohibit unsolicited calls for the purposes of direct marketing in relation to claims management services without the consent of the subscriber of the line being called (regulation 21A). The Regulations also contain restrictions on marketing by fax, email and text message.

- 2.2.6 R If the *firm* is not satisfied as to the matters in *CMCOB 2.2.2R(1)(b)*, it must neither accept leads from that *lead generator* nor use leads obtained from that *lead generator*.

Notifying the FCA if a lead generator is not authorised

- 2.2.7 R (1) If the *lead generator* is not an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims* and the *firm* is not satisfied that the *lead generator* may carry on that *regulated activity* without breaching the *general prohibition*, the *firm* must:
- (a) promptly notify the *FCA* in writing, using the form at *SUP 15 Annex 4R*; and
  - (b) neither accept leads from that *lead generator* nor use leads obtained from that *lead generator*.
- (2) A notification under (1)(a) must include:
- (a) the identity of the *lead generator* and, if known, contact details for the *lead generator*; and
  - (b) the *firm's* reasons for not being satisfied that the *lead generator* may carry on *seeking out, referrals and identification of claims* without breaching the *general prohibition*.

Provision of information by lead generators

- 2.2.8 R (1) This *rule* applies to a *firm* from the time at which it knows or

suspects that it is going to:

- (a) pass the *customer*, or details of a *customer* or of a *claim*, to a third party, or give details about the third party to a *customer*; and
  - (b) receive a payment from the third party in relation to the *firm* doing so.
- (2) The *firm* must, in its *financial promotions* and in any communication with the *customer*, include a prominent statement to the effect that the *firm* receives payments from third parties to whom it passes the detail of *customers*, or whose details it passes to *customers*, in respect of doing so.
- (3) If a communication relates to a *claim* which may be made by a *customer*, without using the services of the *firm* and without incurring a fee, to a statutory ombudsman or statutory compensation scheme the *firm* must ensure that the communication contains a prominent statement to the effect that:
- (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
  - (b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the relevant statutory ombudsman or statutory compensation scheme.
- (4) Where the communication is made by voice telephony, the *firm* must comply:
- (a) with (2) at the start of the call; and
  - (b) with (3) as soon as the *firm* knows the sort of *claim* to which the communication relates.
- (5) The *firm* need not comply with (2) or, as relevant, (3) if it has previously complied with those *rules* in respect of that *customer* within the previous *month*.
- 2.2.9 G (1) *CMCOB 2.2.8R* applies to *lead generators*, and to other *firms* which generate leads, as soon as there is a possibility of the lead being passed to another *person*.
- (2) Examples of a *firm* receiving a payment from a third party in relation to doing any of the things mentioned in *CMCOB 2.2.8R(1)(a)* include (but are not limited to):
- (a) the third party paying the *firm* a fee for each lead it passes on;

and

- (b) the third party making a monthly, occasional or a one-off payment to the *firm* irrespective on how many leads the firm actually passes on and irrespective of how this might be described (for example as a ‘marketing budget’).
- (3) Where that *rule* applies to telephone calls, it applies in respect of both incoming and outgoing calls, including voice telephony over the internet.
- (4) The *guidance* at *CMCOB* 3.2.8G also applies in relation to *CMCOB* 2.2.8R(3).
- (5) *Firms* are reminded that section 56 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 prohibits the payment and receipt of fees for the referral of legal services in cases involving personal injury or death.

## 2.3 Recording and retention of telephone calls and electronic communications

Recording and retention of telephone calls and electronic communications

- 2.3.1 R This section applies to telephone calls and *electronic communications* between the *firm* and a *customer* made for the purposes of, or in connection with, a *regulated claims management activity* carried on by the *firm* (“relevant communications”).
- 2.3.2 R *Firms* must record all telephone calls and retain all other relevant communications.
- 2.3.3 G The requirement to record and retain all relevant communications applies to incoming and outgoing calls, text messages, emails, and other *electronic communications* between the *firm* (or a *person* acting for the *firm*) and a *customer*, including calls and communications relating to complaints about the *firm*.
- 2.3.4 R A *firm* must take all reasonable steps to prevent an *employee* or contractor from making, sending, or receiving relevant communications:
  - (1) on equipment owned by a *person* other than the *firm*; and
  - (2) which the *firm* is unable to record or retain.
- 2.3.5 R A *firm* must notify a *customer* at the start of each telephone call (including a call made by voice telephony via the internet) that the call will be recorded.

Retention period

- 2.3.6 R The *firm* must retain telephone call recordings (including recordings of calls

made by voice telephony via the internet) for a minimum of 12 *months*, from the latest of:

- (1) the *customer* withdrawing or deciding not to pursue the *claim*;
- (2) the settlement of the *claim*;
- (3) the conclusion of any legal proceedings commenced in connection with the *claim*;
- (4) the conclusion of the handling of any complaint made by the *customer* to or about the *firm*, including the handling of the complaint by an alternative dispute resolution scheme (such as the *Financial Ombudsman Service*);
- (5) the termination of the agreement between the *firm* and the *customer*; and
- (6) the date of the *firm*'s last contact (by whatever method) with the *customer*.

- 2.3.7 G (1) For the purposes of *CMCOB* 2.3.6R(2), a *claim* is settled when the *customer* receives compensation, damages or redress in respect of the *claim*.
- (2) The effect of *CMCOB* 2.3.6R is that where, for example, the only contact with the *customer* is a telephone call made with a view to selling the *firm*'s services, but the *customer* does not engage the *firm*, the *firm* is required to keep a record of that call for at least 12 *months*. (*Firms* are reminded that, in relation to cold calling by telephone, the Privacy and Electronic Communications (EC Directive) Regulations 2003 prohibit unsolicited calls for the purposes of direct marketing in relation to *claims management services* without the consent of the subscriber of the line being called (regulation 21A).)
- (3) The effect of *CMCOB* 2.3.6R(4) is as follows. Where the *firm* would otherwise become entitled to cease to keep the record absent that provision but at that time there is a complaint that has been made and not concluded, the *firm* must retain that record for a minimum of twelve *months* from the point at which the complaint has been concluded.

## 2.4 Record keeping

- 2.4.1 G (1) *Firms* are reminded that *SYSC* 9.1.1R requires a *firm* to arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FCA* to monitor the *firm*'s compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect

to *clients*.

- (2) *Firms* are also reminded that SYSC 9.1.5G states that in relation to the retention of records, a *firm* should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the *firm* may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made. For these purposes retaining records would include keeping all text messages, emails, and other *electronic communications* between the *firm* (or a *person* acting for the *firm*) and a *customer*.
- (3) As a minimum, *firms* should retain records in their files of any advice given to, and correspondence with, their *customers*, and of any correspondence with third parties in the course of their providing services to their *customers*.
- (4) *CMCOB* also imposes a number of specific record-keeping requirements: see Schedule 1.

### **3 Financial promotions, and communications with customers**

#### **3.1 Application**

- 3.1.1 G This chapter sets out *rules* and *guidance* on *financial promotions* and communications with *customers* that relate to *regulated claims management activity*.
- 3.1.2 G
  - (1) In accordance with *Principle 7*, a *firm's financial promotions* and communications with its *customers* should be fair, clear and not misleading.
  - (2) The *guidance* in this chapter is relevant to all stages of a *firm's* interaction with its *customers*: from seeking out and obtaining *customers*, whether for itself or for another *firm*; negotiating and entering into contracts with its *customers*; advising its *customers*; investigating *claims*; presenting *claims* and representing *customers*; keeping its *customers* informed of progress; and through to settling a *claim*, being paid and the relationship with the *client* coming to an end.

#### **3.2 Financial promotions and communications – general standards**

The fair, clear and not misleading rule

- 3.2.1 R (1) A *firm* must ensure that each of its communications and *financial*

*promotions* is fair, clear and not misleading.

- (2) This *rule* applies in relation to all communications with *customers*, including:
- (a) communications intended to generate leads either for the *firm* or for another *person*;
  - (b) pre-contract disclosures and other information which *CMCOB* 4 requires a *firm* to give to a *customer*; and
  - (c) post-sales communications with *customers*, including:
    - (i) communications intended to keep the *customer* up to date, in accordance with *CMCOB* 6.1;
    - (ii) communications of or about fees, charges, invoices and payments; and
    - (iii) communications about complaints relating to the *firm*.

3.2.2 G (1) The *fair, clear and not misleading rule* means that *firms* should communicate with their *customers* in a way that is appropriate, taking into account the means of communication, the information the communication is intended to convey and the nature of the *customer* and of the *claim*.

- (2) In complying with that *rule*, *firms* should:
- (a) have regard to the average *customer's* understanding of the services that the *firm* provides;
  - (b) present information in a logical order;
  - (c) use plain and intelligible language and, where the use of jargon or technical terms is unavoidable, explain the meaning of any jargon or technical terms;
  - (d) make key information prominent and easy to identify, including by means of headings and the layout, display and font attributes of text, and by the use of design devices such as tables, bullet points and graphs; and
  - (e) avoid unnecessary disclaimers.

3.2.3 R If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 138D of the *Act*.

3.2.4 R A *firm* must ensure that each of its *financial promotions* and communications with a *customer*:

- (1) identifies the *firm*;
- (2) does not offer a cash payment or any benefit in money or money's worth (for example, a 'free' gift) as an inducement for entering into an agreement with the *firm* or making a *claim*;
- (3) does not promote the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the *claim*;
- (4) does not falsely imply that the business is approved by the Government or is connected with any government agency or any regulator.

[Note: CAPR CSR 6]

- 3.2.5 G (1) The *firm* may identify itself by using a trading name or shortened version of the legal name of the *firm*, provided the *customer* can identify the *firm* communicating the information.
- (2) The *FCA* would view a *financial promotion* or communication as promoting the idea that it is appropriate that compensation be used in a way that is not consistent with the basis of the *claim* if the *financial promotion* or communication states or implies that a *claim* is a means of making money, rather than being for the purpose of compensating the *customer* for damage, injury or loss.
- 3.2.6 R (1) Where a *claim* is one that falls within the province of a statutory ombudsman or statutory compensation scheme such as the *Financial Ombudsman Scheme*, the *compensation scheme*, the Criminal Injuries Compensation Authority, the Housing Ombudsman Service or any other such body, the *firm* must not suggest that a *customer* will have a more favourable outcome if the *customer* uses the services of the *firm*.

[Note: CAPR CSR 12]

- (2) Where (1) does not apply, a *firm* must not state or imply in any *financial promotion* or communication with a *customer* that a *claim* will be resolved more quickly, or with a better prospect of success, or with a better outcome for the *customer*, than if the *customer* were to make the *claim* themselves, unless the statement or implication is true and the *firm* can provide evidence to substantiate the statement or implication.
- 3.2.7 R If a *claim* is of a sort to which a *financial promotion* relates may be made by a *customer*, without using the services of the *firm* and without incurring a fee, to a statutory ombudsman or statutory compensation scheme, the *firm* must ensure that the *financial promotion* contains a prominent statement to the effect that:
- (1) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and



- (2) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the relevant statutory ombudsman or the statutory compensation scheme.

3.2.8

- G (1) Where a *claim* can be made to statutory ombudsman or statutory compensation scheme, *CMCOB 3.2.7R* requires *firms* to name the relevant ombudsman or compensation scheme.
- (2) The relevant statutory ombudsmen or statutory compensation schemes that the *firm* should name should include those specified in the following table. If there are other statutory ombudsmen or compensation schemes relevant to the nature of *claims* to which the *financial promotion* relates, the *firm* should name them in addition.

Claim	Ombudsman or compensation scheme
<i>criminal injury claim</i>	the Criminal Injuries Compensation Authority
<i>employment-related claim</i>	none specified
financial services or product claim	the <i>Financial Ombudsman Service</i> : for any <i>financial promotion</i> which is generic in nature or where the <i>firm</i> would expect those to whom the <i>financial promotion</i> is addressed to be eligible to pursue their <i>claim</i> with the <i>Financial Ombudsman Service</i>
	the <i>compensation scheme</i> : for any <i>financial promotion</i> addressed to <i>persons</i> who may have a <i>claim</i> against a <i>person</i> which is no longer in business, where the <i>firm</i> would expect those to whom the <i>financial promotion</i> is addressed to be eligible to pursue their <i>claim</i> with <i>compensation scheme</i>
	the Pensions Ombudsman: for any <i>financial promotion</i> addressed to <i>persons</i> who may to be eligible to pursue their <i>claim</i> with the Pensions Ombudsman, for example where the <i>financial promotion</i> relates to <i>claims</i> against an occupational pension

	provider
<i>housing disrepair claim</i>	the Housing Ombudsman
<i>personal injury claim</i>	none specified
<i>specified benefit claim</i>	none specified

- (3) *Firms* should also indicate whether *claims* may be made direct to the ombudsman or compensation scheme, or whether it is necessary for the *customer* first to pursue their *claim* directly with the *person* to whom it relates.
- (4) For example, where the *financial promotion* that relates to *claims* in respect of packaged bank accounts, a *firm* could comply with *CMCOB* 3.2.7R by indicating: “You do not need to use a claims management company to make your complaint to your bank, and if your complaint is not successful you can refer it to the Financial Ombudsman Service yourself for free”.

‘No-win, no-fee’

- 3.2.9 R (1) This *rule* applies if a *firm* uses the term “no win, no fee” or a term having a similar meaning in a *financial promotion*.
- (2) The *firm* must include prominently in the *financial promotion*:
- (a) the fees that the *firm* charges in respect of *claims* of the sort to which the *financial promotion* relates; or
- (b) where those fees are not fixed or ascertainable in advance, the method by which the fees would be calculated.
- (3) If, in respect of an agreement with a *customer* for services to which the *financial promotion* relates, the *firm* asserts any fee or charge in the event that the *customer* terminates the agreement (see *CMCOB* 2.1.12R(2)(b)), the *firm* must ensure that the *financial promotion* indicates, no less prominently than the term referred to in (1):
- (a) that the *firm* may assert a fee or charge in the event that the *customer* terminates the agreement other than during the cancellation period (see *CMCOB* 2.1.12R(2)(a)); and
- (b) what that fee or charge is or, where it is not fixed or ascertainable in advance, the method by which it would be calculated.

Restriction on advertising in certain buildings

- 3.2.10 R A *firm* must not make a *financial promotion*, or a communication intended to generate a lead, in a medical facility, a care facility or a public building

without the approval in writing of the management of the facility or building.

[**Note:** in part, *CAPR CSR 5*]

- 3.2.11 G (1) The purpose of *CMCOB 3.2.10R* is to prohibit the marketing of *regulated claims management activity*, and lead generation for *regulated claims management activity*, in medical facilities and public buildings without permission. Permission should be obtained from the management of the organisation which occupies the facility or building, rather than from junior members of staff.
- (2) In *CMCOB 3.2.10R*:
- (a) a “medical facility” should be taken to include hospitals, GP surgeries, walk-in clinics and any other medical establishment in which people who have suffered an accident or other incident that might give rise to a *claim* may go to seek treatment;
  - (b) a “care facility” includes any sort of establishment in which children or adults receive social care, either as residents or as outpatients; and
  - (c) a “public building” should be taken to include any building to which the public has access, such as police stations and court buildings.

## 4 Pre-contractual requirements

### 4.1 Application and purpose

- 4.1.1 R This chapter applies to a *firm* in relation to *regulated claims management activities* other than *seeking out, referrals and identification of claims*.
- 4.1.2 G This chapter sets out *rules and guidance* on the information that *firms* should provide to *customers* before entering into an agreement that relates to *regulated claims management activity*.

### 4.2 Pre-contract information and advice

#### Summary document

- 4.2.1 R A *firm* must provide summary information (see *CMCOB 4.2.2R*) to a *customer* in accordance with this section before entering into an agreement with the *customer* that relates to *regulated claims management activity*.
- 4.2.2 R (1) The *firm* must provide the summary information:

- (a) in a single page document, which contains only the summary information;
  - (b) in a *durable medium*; and
  - (c) in plain and intelligible language.
- (2) The summary information is:
- (a) a brief description of the services that the *firm* will provide under the agreement (see *CMCOB* 4.2.4R);
  - (b) a brief description of the steps that the *customer* will need to take in respect of the *claim*;
  - (c) a fee illustration or estimate, and explanation (see *CMCOB* 4.2.5R);
  - (d) a brief description of the *customer's* right to cancel the agreement (see *CMCOB* 2.1.12R(2)(a)); and
  - (e) a brief description of:
    - (i) the *customer's* right to terminate the agreement; and
    - (ii) any fees that may be payable by the *customer* to the *firm* if the *customer* terminates the agreement (see *CMCOB* 2.1.12R(2)(b));
  - (f) if the *claim* is of a sort which may be made by the *customer* to a statutory ombudsman or a statutory compensation scheme, without using the services of the *firm* and without incurring a fee, a statement to the effect that:
    - (i) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
    - (ii) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the statutory ombudsman or the statutory compensation scheme; and
  - (g) if the *firm* is aware that the *person* against whom the *claim* is to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (f)), a statement to the effect that it is possible for the *customer* to present the claim themselves to that alternative dispute resolution scheme.

4.2.3 G The *guidance* at *CMCOB* 3.2.8G also applies in respect of *CMCOB*

4.2.2R(2)(f).

- 4.2.4 R The *firm* must describe:
- (1) the actions the *firm* will take to ascertain the basis and merits of the *claim*, including (where relevant):
    - (a) the nature of inquiries that the *firm* will make of the *person* about whom the *claim* is to be made and of third parties; and
    - (b) the procurement of legal, specialist or expert advice;
  - (2) the nature of any advice to be provided by the *firm* including:
    - (a) advice on the merits of the *claim*; and
    - (b) advice on any particular steps that the *customer* may need to take;
  - (3) the actions the *firm* will take to present and pursue the *claim*;
  - (4) how the *firm* will keep the *customer* updated on the progress of the *claim*; and
  - (5) the actions the *firm* will take and the advice it will give when the *claim* is completed (that is, when it is either rejected or successful, whether in whole or in part).
- 4.2.5 R
- (1) The *firm* must explain the basis on which it would calculate its fee, and provide an illustration or estimate of that fee.
  - (2) Where the fee would be payable by reference to the amount recovered for the *customer*, the *firm* must provide an illustration of what its fee would be by reference to each of the following amounts recovered for the *customer*:
    - (a) £1,000;
    - (b) £3,000; and
    - (c) £10,000.
  - (3) For the purposes of (2), the “amount recovered for the *customer*” means the amount paid or payable by the *person* against or about whom the *claim* would be made, ignoring any set-off or netting against any sum owed or payable by the *customer* to that *person*.
  - (4) Where the *firm*’s fee is not ascertainable as in (2), but is instead dependent on factors which cannot be known in advance (for example, where the *firm* charges an hourly rate), the *firm* must provide an estimate calculated by reference to:

- (a) the fact and circumstances of the *claim*, to the extent that the *firm* has knowledge of them; and
  - (b) the typical number of hours the *firm* would expect to spend on a *claim* of that type.
- (5) The illustration or estimate must be accompanied:
- (a) where (2) applies, by a statement that the fee illustration is not to be taken as an estimate of the amount likely to be recovered for the *customer*;
  - (b) where (4) applies, an explanation of how the estimate has been calculated; and
  - (c) a statement to the effect that the fee that the *customer* will have to pay may be more than or less than the illustration or estimate.
- (6) Where the fee is a fixed amount, the *firm* may indicate that the fee is a fixed amount and not an estimate.
- 4.2.6 G (1) If the *firm* is unable to provide a precise figure under *CMCOB* 4.2.5R(4), it may provide an estimate in the form of a range. *Firms* should be able to demonstrate the basis for their calculations under *CMCOB* 4.2.5R(4), and should ensure that their estimates are accurate.
- (2) Estimates and illustrations should be shown inclusive of VAT. VAT-exclusive fees should only be shown if the *customer* pays no VAT or can recover VAT, or the *firm* is not subject to VAT.

#### Provision of information and advice

- 4.2.7 R (1) Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must give the *customer* objective information, in a *durable medium*, to assist the *customer* to reach a decision as to whether to pursue the *claim*.
- (2) The information given under (1) must include information on:
- (a) the risks and costs involved in making the *claim*, in particular (where relevant) the possibility of not recovering any money but becoming liable for costs; and
  - (b) the possibility, in the case of legal action, of attending Court and giving evidence.

**[Note: CAPR CSR 11a]**

- 4.2.8 R Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must also give the *customer*

information, in a *durable medium*, on:

- (1) the services that will be provided under the agreement;
- (2) the person who will provide those services;
- (3) the terms under which and the conditions on which those services will be provided;
- (4) the procedures that will be followed in presenting and pursuing the *claim*;
- (5) any charge the *firm* makes;
- (6) any referral fee paid by the *firm* to, or other financial arrangement with, any other *person* in respect of the introduction of the *customer* to the *firm*;
- (7) any steps that the *customer* is likely to have to take in respect of the *claim*;
- (8) any costs that the *customer* may have to pay, including repayments of a loan taken out for any purpose and the purchase of a legal expenses insurance policy;
- (9) whether the *customer* will be liable to pay any shortfall in recoverable costs or premiums from the *person* against whom the *claim* is to be made;
- (10) the documentation likely to be needed to pursue the *claim*;
- (11) any relationship between the *firm* and any solicitor or panel of solicitors to whom the *firm* might refer the *customer* or from whom the *firm* might commission services in relation to the *customer*;
- (12) the procedures to follow if the *customer* wishes to make a complaint about the *firm*;
- (13) how the *customer* may cancel or terminate the contract and what the consequences of cancellation and termination are, including the reimbursement of any costs paid during the cancellation period and any charges for work completed after that cancellation period (see *CMCOB 2.1.12R*);
- (14) the nature and frequency of updates that the *firm* will give the *customer* on the progress of the *claim*; and
- (15) the *Financial Ombudsman Scheme* or any other Ombudsman scheme to which the *firm* is subject.

[**Note:** in part, *CAPR CSR 11(b)–(k)*]

- 4.2.9 R When a *firm* gives information to a *customer* as required by *CMCOB* 4.2.1R, *CMCOB* 4.2.7R and *CMCOB* 4.2.8R, the *firm* must accompany the information with:
- (1) the name, postal address and other contact details of the *firm*;
  - (2) a statement that the *firm* is “regulated by the Financial Conduct Authority in respect of regulated claims management activity”; and
  - (3) the reference number under which the *firm* appears in the *Financial Services Register*.

[**Note:** in part, *CAPR CSR* 11(1)]

- 4.2.10 G A *firm* should have regard to the *fair, clear and not misleading rule* (see *CMCOB* 3.2.1R and *CMCOB* 3.2.2G) when giving a *customer* the information required by *CMCOB* 4.2.7R and *CMCOB* 4.2.8R and, in particular, when deciding whether to provide the information required by those *rules* in a single document or communication or in more than one document or communication. Either way, the information required by *CMCOB* 4.2.7R and *CMCOB* 4.2.8R cannot be given in the same document as the information required by *CMCOB* 4.2.2R; but it would be permissible, for example, for the information required by *CMCOB* 4.2.7R and *CMCOB* 4.2.8R and the information required by *CMCOB* 4.2.2R to be attachments to the same email or enclosures to the same letter.
- 4.2.11 G *Firms* are reminded that *SYSC* 10.1.7R requires them to maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest (as defined in *SYSC* 10.1.3R) from adversely affecting the interests of their *customers*. If those arrangements are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *customer* will be prevented, *SYSC* 10.1.8R requires the *firm* to disclose the general nature or sources of conflicts of interest, or both, and the steps taken to mitigate those risks, before undertaking business for the *customer*. The *FCA* would expect *firms* to do so at the same time as they provide the information required by *CMCOB* 4.2.

### 4.3 Pre-contract requirements

- 4.3.1 R Before entering into an agreement with the *customer* that relates to *regulated claims management activity*, the *firm* must:
- (1) take reasonable steps to:
    - (a) ascertain whether the *customer* has other methods for pursuing the *claim*, and if so:
      - (i) ensure that the *customer* understands that those



methods are available to them;

(ii) seek confirmation in writing from the *customer* that the *customer* does not wish to use those methods, and the *customer's* reasons for not wishing to do so;

(iii) record the *customer's* confirmation and reasons; and

(b) draw the *customer's* attention to the information provided under *CMCOB* 4.2.2R(2)(f) and (g), if that information is relevant to the *claim*;

[**Note:** in part, *CAPR CSR* 10]

(2) make it clear to the *customer* that the *customer* may seek further advice or look for another *person* to assist the *customer* with the *claim*, subject to any time limits within which a *claim* must be made; and

[**Note:** *CAPR CSR* 13]

(3) take reasonable steps to ensure that the *customer* understands the agreement.

[**Note:** in part, *CAPR CSR* 14]

4.3.2 G (1) A *customer* should be treated as having other methods for pursuing a *claim* for the purposes of *CMCOB* 4.3.1R(1) if, for example, the *claim* is for personal injury and the *customer* has legal expenses cover under a *contract of insurance* relating to their car or home or by virtue of their membership of a trade union. In that case, the *firm* should explore whether the *customer* has investigated whether they might pursue the *claim* under that *contract of insurance* or through their trade union membership.

(2) *Firms* are reminded that *DISP* 1.2.1R(4) requires *firms* to provide information to *eligible complainants*, in a clear, comprehensible and easily accessible way, about the *Financial Ombudsman Service* (including the *Financial Ombudsman Service's* website address):

(a) on the *firm's* website, where one exists; and

(b) if applicable, in the general conditions of the *firm's* contract with the *eligible complainant*.

4.3.3 G (1) The *firm* may need to take additional steps under *CMCOB* 4.3.1R(3) to ensure that the *customer* understands the agreement where the *customer* is one whom the *firm* understands or reasonably suspects to be particularly vulnerable.

(2) *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable

*customers.*

## **5 Fee cap for regulated claims management activities**

### **5.1 Fee cap for payment protection insurance claims**

- 5.1.1 G (1) Under section 29(3) of the Financial Guidance and Claims Act 2018, the fee cap applicable to *regulated claims management activity* in connection with a PPI claim is 20% of the amount recovered. The cap applies by reference to a sum comprising all amounts charged for such services in connection with the claim (whether or not charged under a single agreement), exclusive of VAT.
- (2) Section 31 of that Act (PPI claims: interim restriction on charges imposed by authorised persons after transfer of regulation to FCA) prohibits a *firm* from:
- (a) charging an amount which exceeds the *claims management fee cap* in connection with a PPI claim; and
  - (b) entering into an agreement which provides for the payment by a *customer* of charges which would breach or are capable of breaching the *claims management fee cap* in connection with a PPI claim.
- (3) Any payment in excess of the *claims management fee cap* is recoverable by the *customer*. The *FCA* would expect the *firm* to reimburse the *customer* promptly, irrespective of whether the *customer* has asserted that the *firm* has breached the fee cap.
- (4) Any agreement which provides for the payment by a *customer* of charges which would breach or are capable of breaching the *claims management fee cap* are not enforceable to the extent that they provide for such a payment.
- (5) A *firm* that breaches the *claims management fee cap* is subject to the *FCA*'s disciplinary powers in the same way as if the *firm* had breached a *rule*.

## **6 Post-contractual requirements**

### **6.1 Keeping the customer and others informed**

Application

- 6.1.1 R This section applies to a *firm* in relation to it carrying on *regulated claims management activities* other than *seeking out, referrals and identification of claims*.

## Passing on information and requests for information

- 6.1.2 R (1) The *firm* must pass on to the *customer*:
- (a) any information received from a third party which is addressed to or meant for the attention of that *customer*; and
  - (b) any request received by the *firm* from a third party for the supply of information by the *customer* that the *firm* does not already hold.
- (2) The *firm* must pass on the information or request:
- (a) promptly, and in any event within ten *business days* of receiving the information or request; and
  - (b) in a *durable medium*.
- 6.1.3 R (1) A *firm* must notify the *customer* of:
- (a) the *firm* becoming aware of:
    - (i) any costs (other than the *firm*'s fee) that the *customer* may have to meet which the *firm* has not previously notified to the *customer*; or
    - (ii) where the *firm* has notified the *customer* of the amount of any costs, any change to those costs; and
  - (b) any material development in the progress of the *customer*'s *claim*; and
  - (c) if the *firm* becomes aware that the *person* against whom the *claim* is being or to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in *CMCOB* 4.2.2R(2)(f)), the fact that it is possible for the *customer* to present the claim themselves to that alternative dispute resolution scheme.
- (2) The *firm* must make a notification in (1):
- (a) promptly, and in any event within ten *business days* of an event listed in (1) occurring; and
  - (b) in a *durable medium*.
- 6.1.4 G Examples of developments in the progress of the *claim* which should be treated as material for the purposes of *CMCOB* 6.1.3R(1)(b) include:
- (1) the *firm* becoming aware of the timetable for any court proceedings or alternative dispute resolution schemes (such as the *Financial*

*Ombudsman Scheme*), or of any changes to that timetable;

- (2) the *firm* receiving any information relating to the *claim* which is likely to have an effect on the amount of time within which the *firm* expects the *claim* to be determined; and
- (3) the *firm* becoming aware of any information relating to the *claim* which is likely to have an effect on the prospects of the *claim* succeeding.

#### Revised fee estimates

- 6.1.5 R When the *firm* has sufficient information from which it may reasonably estimate what its fee will be, or that the fee payable by the *customer* will differ from the illustration or estimate provided under *CMCOB* 4.2.5R or a previous estimate provided under this *rule*, the *firm* must promptly provide the *customer*, in a *durable medium*, with:
- (1) an estimate of the fee; and
  - (2) an explanation of why that estimate differs from the illustration or the estimate (if any) which the *firm* has most recently provided.
- 6.1.6 G (1) *CMCOB* 6.1.5R requires a *firm* to give a *customer* updated fee estimates. For example, a *firm* is likely to have sufficient information to produce a revised estimate once:
- (a) it knows how much compensation the *customer* is claiming (including interest, where relevant) in relation to a misold financial product, where the fee is a percentage of that sum; or
  - (b) it realises that its fee, if charged by reference to an hourly rate, is likely to differ from its original estimate.
- (2) If the *firm* realises that a revised estimate is incorrect, it should provide a further revised estimate.

#### Keeping the customer informed

- 6.1.7 R (1) A *firm* must provide each *customer* with an update on the progress of the *claim* at least once every six *months*, in a *durable medium*.
- (2) But the *firm* need not provide an update under (1) if, in the previous six *months*, the *firm* has notified the *customer* of a material development in the progress of the *customer's claim* in compliance with *CMCOB* 6.1.3R(1)(b) and the notification contains sufficient information as to constitute an update for the purposes of (1).
- (3) An update under (1) must:
- (a) summarise the progress of the *claim* since the last report (or,

in the case of the first report, since the *firm* entered into an agreement with the *customer* in relation to the *claim*); and

- (b) indicate the current state of affairs in relation to the *claim*; for example, whether the *firm* is awaiting an expert's report, whether solicitors have issued a letter before action, or whether the *claim* has been submitted to the *Financial Ombudsman Service* but it is yet to make a determination.

- 6.1.8 G (1) If, during the period to which the report relates, the *firm* has not sent any notifications to the *customer* under *CMCOB* 6.1.3R, the update should indicate why, to the best of the *firm*'s knowledge, there have been no material developments.
- (2) The *firm* should give updates under *CMCOB* 6.1.7R until such time as the *claim* is finally determined or settled, or is withdrawn or discontinued.
- (3) If, for the purposes of notifications under *CMCOB* 6.1.3R(1)(b) and updates under *CMCOB* 6.1.7R, the *firm* has made available an online portal through which *customers* may receive such notifications and updates, the *firm* should ensure that it alerts the *customer* to the notification or update being available via the portal, for example by sending a text message or email (and provided that the *customer* is content to, and is able to, receive such communications).
- 6.1.9 R *CMCOB* 6.1.3R and 6.1.7R do not apply if the *customer* expressly requests not to receive notifications or, as the case may be, updates.

#### Providing information to persons other than the customer

- 6.1.10 R (1) A *firm* must pass on to a third party any information received from a *customer* and intended for that third party:
- (a) promptly, and in any event within ten *business days*; and
  - (b) in a *durable medium*.
- (2) Where the information received from the *customer* is incomplete for the third party's purposes, the *firm* need not comply with (1) until such time as the *customer* has supplied the outstanding information, provided that the delay caused by waiting for the outstanding information does not, and could reasonably be expected not to, harm, prejudice or invalidate the *claim*.

#### Advising the customer where the claim is not successful

- 6.1.11 R (1) If a *customer*'s *claim* is not successful, the *firm* must advise the *customer* of the available methods by which the *customer* may continue to pursue their *claim*.

- (2) If the *claim* is of a sort which may be made by the *customer* to a statutory ombudsman or a statutory compensation scheme, without using the services of the *firm* and without incurring a fee, the advice must include a statement to the effect that:
- (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
  - (b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the statutory ombudsman or the statutory compensation scheme.
- (3) If the *firm* is aware that the *person* against whom the *claim* was made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (2)), the advice must also include a statement to the effect that it is possible for the *customer* to present the claim themselves to that alternative dispute resolution scheme.
- (4) For the purposes of this *rule*, a *claim* is not successful if it produces an outcome with which the *customer* is not satisfied.

- 6.1.12 G (1) A *claim* may progress through several stages. For example, it may start as a complaint made against a company, then proceed to an Ombudsman scheme or to the courts. The *firm* must advise the *customer*, after each stage at which the *claim* is not successful, about how they might continue with their *claim*.
- (2) The *guidance* at *CMCOB* 3.2.8G also applies in relation to *CMCOB* 6.1.11R.

## 6.2 Fees and fee collection

### Explanation of fees and charges

- 6.2.1 R (1) A *firm* must provide the *customer* with an itemised bill, in a *durable medium*:
- (a) if the agreement is terminated under *CMCOB* 2.1.12R(2)(b), before the *firm* takes any payment (for example, using payment details provided by the *customer*); or
  - (b) before the *firm* takes or deducts its fees and charges from money received from a third party for onward transmission to the *customer*; or
  - (c) when the *firm* presents an invoice or request for payment to

the *customer*.

- (2) The itemised bill must explain:
  - (a) what *claims management services* the *firm* has provided; and
  - (b) how the fees and charges have been calculated.
- (3) A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* without the *customer's* consent.

6.2.2 G *Firms* are reminded that they may be carrying on a *credit-related regulated activity* if they permit *customers* to enter into instalment plans or give them an extended period of time to pay fees and charges later than the date on which they are payable (see *PERG* 2.7.19AG and 2.7.19GG).

#### Fee collection

6.2.3 R A *firm* must establish and implement clear, effective and appropriate policies and procedures for:

- (1) dealing with *customers* who are unable to pay fees and charges to the *firm* when they fall due; and
- (2) the fair and appropriate treatment of *customers* in (1) whom the *firm* understands or reasonably suspects to be particularly vulnerable.

6.2.4 G (1) If a *customer* is unable to pay fees and charges to the *firm* when they fall due, a *firm* should:

- (a) pay due regard to its obligations under *Principle 6* (Customers' interests) to treat its *customers* fairly;
- (b) treat the *customer* with forbearance and due consideration, including by allowing the *customer* a reasonable opportunity to pay the fees and charges; and
- (c) where appropriate, direct the *customer* to sources of free and independent debt advice.

- (2) A *firm* should not impose charges on a *customer* who is unable to pay fees and charges to the *firm* when they fall due unless the charges are no higher than necessary to cover the reasonable costs of the *firm*.

6.2.5 G (1) *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.

- (2) In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* may wish to have regard to the principles outlined in the Money

Advice Liaison Group (MALG) Guidelines “Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt” (March 2015).

[**Note:** see <http://malg.org.uk/resources/malg-mental-health-and-debt-guidelines/>]

- (3) A *firm* should suspend the pursuit of the recovery of fees and charges from a *customer* who is unable to pay those fees and charges when they fall due, when:
- (a) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges; or
  - (b) the *firm* understands or ought reasonably to be aware that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges.

6.2.6 R A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* unless it has written consent from the *customer* to do so, whether given in the *firm*'s agreement with the *customer* or by some other means.

### 6.3 Ceasing regulated claims management activities

Who and when?

- 6.3.1 R (1) *CMCOB* 6.3.3R to 6.3.6R apply to a *firm*:
- (a) which carries on any *regulated claims management activities* other than *seeking out, referrals and identification of claims*; and
  - (b) in respect of which it has been determined that the *firm* is to cease carrying on any of those *regulated claims management activities*.
- (2) *CMCOB* 6.3.7R applies to a *firm*:
- (a) which carries on *seeking out, referrals and identification of claims*; and
  - (b) in respect of which it has been determined that the *firm* is to cease carrying on that *regulated activity*.
- 6.3.2 G Circumstances of it being determined that a *firm* is to cease carrying on a *regulated claims management activity* would include:



- (1) the *governing body* of the *firm* deciding to cease carrying on that activity;
- (2) the *firm* becoming insolvent or insolvency proceedings being commenced in respect of the *firm*; and
- (3) the *FCA* issuing a written notice under the *Act* or *final notice* removing or suspending the relevant *permission*.

#### Notifying customers

- 6.3.3 R (1) Within 20 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must, in a *durable medium*:
- (a) notify each *customer* in relation to whom it carries on those activities that it is to cease carrying on the relevant activities;
  - (b) explain to each *customer* what options are available for the *customer* to continue with their *claim*; and
  - (c) notify each third party to whom the *claim* has been presented and (if different) each third party against which the *claim* has been made:
    - (i) that the *firm* is to cease carrying on those *regulated claims management activities*; and
    - (ii) of the identity of the *person* who will act for the *customer* in place of the *firm* (where the identity of that *person* is known).
- (2) In explaining to the *customer* what options are available to them to continue with their *claim*, the *firm* must include a statement to the effect of:
- (a) the statement in (3), if the *claim* is of a sort which may be made by the *customer* to a statutory ombudsman or a statutory compensation scheme without using the services of the *firm* and without incurring a fee; and
  - (b) the statement in (4), if the *firm* is aware that the *person* against whom the *claim* is being or is to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (a)).
- (3) The statement in this paragraph is that:
- (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to

pursue their *claim*; and

(b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the statutory ombudsman or a statutory compensation scheme.

(4) The statement in this paragraph is that it is possible for the *customer* to present the claim themselves to the alternative dispute resolution mechanism mentioned in (3)(b).

6.3.4 G The *guidance* at *CMCOB* 3.2.8G also applies in respect of *CMCOB* 6.3.3R(2)(a).

#### Sending information and documents to customers

6.3.5 R Within 40 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must send to each *customer* whose *claim* has not been settled, withdrawn or discontinued all information and documentation the *firm* holds relating to their *claim*.

#### Passing customer details to third parties

6.3.6 R If the *firm* passes details of the *customer* or of the *claim* to a third party, with a view to that third party carrying on a *regulated claims management activity* in respect of the *claim* or the *customer* (or activity which would constitute such a *regulated activity* but for an exemption or an exclusion), the *firm* must promptly notify the *customer* in a *durable medium*:

- (1) that it has done so; and
- (2) of the identity and contact details of the third party.

#### Ceasing to carry on seeking out, referrals and identification of claims

6.3.7 R (1) This *rule* applies in respect of a *firm* which has indicated to a *customer* that it will:

- (a) identify a third party to assist the *customer* with their *claim*; and
- (b) pass the *customer's* details or details relating to the *claim* to the third party, or pass details of the third party to the *customer*,

but has not yet done so and will not do so within 20 *business days* of it being determined that the *firm* is to cease carrying on *seeking out, referrals and identification of claims*.

(2) Within the time period referred to in (1), the *firm* must, in respect of each *customer* to whom it has made an indication of the sort

described in (1) in a *durable medium*, notify the *customer* that it has not done so and explain why.

## 7 Prudential requirements and professional indemnity insurance

### 7.1 Purpose

- 7.1.1 G (1) This chapter builds upon the appropriate resources *threshold condition* set out in paragraph 2D of Schedule 6 to the *Act* (see *COND 2.4*), which requires *firms* to have appropriate resources including financial resources.
- (2) This chapter also builds upon *Principle 4*, which requires a *firm* to maintain adequate financial resources, by focusing upon the adequacy of that part of a *firm's* financial resources that consists of *capital resources*.
- (3) The chapter also includes requirements for *firms* to have professional indemnity insurance if they carry on *advice, investigation or representation of a criminal injury claim*.

### 7.2 Prudential requirements

General solvency requirement

- 7.2.1 R A *firm* must ensure that it is able at all times to meet its liabilities as they fall due.

General prudential resources requirement

- 7.2.2 R A *firm* must ensure at all times that its prudential resources are not less than its prudential resources requirement.

Prudential resources: general accounting principles

- 7.2.3 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant accounting principles applicable to it for the purpose of preparing its *annual financial statements* unless a *rule* requires otherwise.

Prudential resources requirement: firms carrying on other regulated activities

- 7.2.4 R The prudential resources requirement for a firm carrying on a *regulated activity* in addition to those covered by this chapter, is the higher of:
- (1) the requirement which is applied by this chapter; and
  - (2) the prudential resources requirement or *capital resources*

*requirement* which is applied by another *rule* or requirement to the *firm*.

#### Classification of firms for prudential resources purposes

- 7.2.5 R (1) For the purposes of this chapter, a *firm* which carries on any *regulated claims management activities* other than *seeking out, referrals and identification of claims* is:
- (a) a “Class 1 firm” if its total income in the year ending on its most recent *accounting reference date* is not less than £1million; and
  - (b) a “Class 2 firm” if its total income in the year ending on its most recent *accounting reference date* is less than £1million.
- (2) A *firm* which carries on no *regulated claims management activities* other than *seeking out, referrals and identification of claims* is neither a Class 1 firm nor a Class 2 firm, and its prudential resources requirement is specified in *CMCOB 7.2.10R*.
- (3) For the purposes of this chapter, total income only includes income relating to the part of the business which is involved in carrying on *regulated claims management activities* and *ancillary activities*.
- (4) Where the *firm* has not yet started to trade, total income is to be calculated based on forecast income included in the budget for the first twelve *months*’ trading, as submitted with the *firm*’s application for *authorisation*.

#### Prudential resources requirement for a Class 1 firm

- 7.2.6 R Subject to *CMCOB 7.2.10R*, the prudential resources requirement for a Class 1 firm is:
- (1) the higher of:
    - (a) £10,000; and
    - (b) the *firm*’s overheads requirement (see *CMCOB 7.2.8R*); plus
  - (2) if the *firm* has held *client money* at any time in the last 12 *months*, the client money requirement (see *CMCOB 7.2.9R*).

#### Prudential resources requirement for a Class 2 firm

- 7.2.7 R Subject to *CMCOB 7.2.10R*, the prudential resources requirement for a Class 2 firm is:
- (1) the higher of:
    - (a) £5,000; and

- (b) the *firm's* overheads requirement (see *CMCOB 7.2.8R*); plus
- (2) if the *firm* has held *client money* at any time in the last 12 *months*, the client money requirement (see *CMCOB 7.2.9R*).

#### The overheads requirement

- 7.2.8 R (1) A *firm's* overheads requirement is an amount that is equal to:
- (a) one sixth of the *firm's* total expenditure in the period of 12 *months* ending on its most recent *accounting reference date*; less
  - (b) the total of the following items (if they are included in such expenditure) in that period:
    - (i) staff bonuses, except to the extent that they are guaranteed;
    - (ii) *employees' and directors' shares* in profits, except to the extent that they are guaranteed;
    - (iii) other appropriations of profits and other variable *remuneration*, except to the extent that they are guaranteed;
    - (iv) shared commission and fees payable which are directly related to commission and fees receivable, which are included within total revenue;
    - (v) interest charges in respect of borrowings made to finance the acquisition of the *firm's readily realisable investments*;
    - (vi) interest paid to *customers on client money*; and
    - (vii) other variable expenditure.
  - (2) Where the *firm's* total expenditure in the year ending on its *accounting reference date* was incurred in a period of less than twelve *months*, the items in (1)(a) and (1)(b) are to be calculated on a pro-rated basis to produce an equivalent annual amount.
  - (3) Where the *firm* has not yet started to trade, the items in (1)(a) and (1)(b) are to be calculated based on forecast expenditure included in the budget for the first twelve *months' trading*, as submitted with the *firm's* application for *authorisation*.

#### The client money requirement

- 7.2.9 R The client money requirement is £20,000.

## Prudential requirement for lead generators

- 7.2.10 R If the *firm* holds *client money*, the prudential requirement for the *firm* is the client money requirement (see *CMCOB 7.2.9*).

### 7.3 Calculation of prudential resources

## Eligible prudential resources

- 7.3.1 R (1) A *firm* must calculate its prudential resources only from the items which are eligible to contribute to a *firm*'s prudential resources (see *CMCOB 7.3.2R*).
- (2) In arriving at its calculation of its prudential resources, a *firm* must deduct certain items (see *CMCOB 7.3.3R*).

- 7.3.2R Table: Items which are eligible to contribute to the prudential resources of a firm

	Item	Additional explanation
1	Share capital	<p>This must be fully paid and may include:</p> <p>(1) ordinary <i>share</i> capital; or</p> <p>(2) preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).</p>
2	Capital other than <i>share</i> capital (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i> )	<p>The capital of a <i>sole trader</i> is the net balance on the <i>firm</i>'s capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners</i>':</p> <p>(1) capital account, that is the account:</p> <p>(a) into which capital contributed by the <i>partners</i> is paid; and</p> <p>(b) from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if:</p> <p>(i) the <i>person</i> ceases to be a <i>partner</i> and an equal amount is transferred to another such account by the <i>person</i>'s former <i>partners</i> or any <i>person</i> replacing that <i>person</i> as their <i>partner</i>; or</p> <p>(ii) the <i>person</i> ceases to be a <i>partner</i> and an equal amount is transferred to another</p>

		<p>such account by the <i>person's</i> former partners or any <i>person</i> replacing that <i>person</i> as their partner; or</p> <p>(iii) the <i>partnership</i> is otherwise dissolved or wound up; and</p> <p>(2) current accounts according to the most recent financial statement.</p> <p>For the purpose of the calculation of capital resources in respect of a <i>defined benefit occupational pension scheme</i>:</p> <p>(1) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(2) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's deficit reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</p>
3	Reserves (Note 1)	<p>These are, subject to Note 1, the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i>.</p> <p>For the purposes of calculating capital resources, a <i>firm</i> must make the following adjustments to its reserves, where appropriate:</p> <p>(1) a <i>firm</i> must deduct any realised gains or, where applicable, add back in any unrealised losses on debt instruments held, or formerly held, in the available-for-sale financial assets category;</p> <p>(2) a <i>firm</i> must deduct any unrealised gains or, where applicable, add back in any unrealised losses on cash flow hedges of financial instruments measured at cost or amortised cost;</p> <p>(3) in respect of a <i>defined benefit occupational scheme</i>:</p> <p>(a) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(b) a <i>firm</i> may substitute for a <i>defined benefit liability</i> the <i>firm's reduction amount</i>, provided that the election is applied consistently in respect of any one financial year.</p>

4	Interim net profits (Note 1)	If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have, subject to Note 1, to be verified by the <i>firm</i> 's external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.
5	Revaluation reserves	Revaluation reserves such as reserves arising from the revaluation of land and buildings, including any net unrealised gains for the fair valuation of equities held in the available-for-sale financial assets category.
6	Subordinated loans/debt	Subordinated loans/debt must be included in capital on the basis of the provisions in this chapter that apply to subordinated loans/debts.
Note:		
1	Reserves must be audited and interim net profits, general and collective provisions must be verified by the firm's external auditor unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemption from audit) or, where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies; Conditions for exemption from audit)) relating to the audit of accounts.	

7.3.2R Table: Items which must be deducted in arriving at prudential resources

1	<i>Investments in own shares</i>
2	<i>Investments in subsidiaries</i> (Note 1)
3	Intangible assets (Note 2)
4	Interim net losses (Note 3)
5	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 3)
Notes:	
1	<i>Investments in subsidiaries</i> are valued at the full balance sheet value.
2	Intangible assets are the full balance sheet value of goodwill, capitalised development costs, brand names, trademarks and similar rights and licences.
3	The interim net losses in row 4, and the excess of drawings in row 5, are in relation to the period following the date as at which the prudential resources are being computed

Subordinated loans/debt

7.3.3 R A subordinated loan/debt must not form part of the prudential resources of the *firm* unless it meets the following conditions:



- (1) it has an original maturity of:
  - (a) at least five years; or
  - (b) it is subject to five years' notice of repayment;
- (2) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (3) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding-up of the *firm*;
- (4) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated loan/debt must be limited to petitioning for the winding-up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (5) the subordinated loan/debt must not become due and payable before its stated final maturity date, except on an event of default complying with (3);
- (6) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (7) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts they owe the *firm* against subordinated amounts owed to them by the *firm*;
- (8) the terms of the subordinated loan/debt must be set out in a written agreement that contains terms which provide for the conditions set out in this *rule*; and
- (9) the loan/debt must be unsecured and fully paid up.

7.3.4 R When calculating its prudential resources, the *firm* must exclude any amount by which the aggregate amount of its subordinated loans/debts exceeds the amount calculated as follows:

a – b

where:

a = the sum of Items 1-5 in the Table of items, which are eligible to contribute to a *firm*'s capital resources (see *CMCOB 7.3.2R*)

b = the sum of Items 1-5 in the Table of items, which must be deducted in arriving at a *firm*'s capital resources (see *CMCOB 7.3.2R*)

7.3.5 G *CMCOB 7.3.5R* can be illustrated by the examples set out below:

(1)	Share capital	£20,000
-----	---------------	---------

	Reserves	£30,000
	Subordinated loans/debts	£10,000
	Intangible assets	£10,000
	As subordinated loans/debts (£10,000) are less than the total of share capital + reserves - intangible assets (£40,000) the <i>firm</i> need not exclude any of its subordinated loans/debts pursuant to <i>CMCOB</i> 7.3.5R when calculating its prudential resources. Therefore the <i>firm's</i> total prudential resources will be £50,000.	
(2)	Share capital	£20,000
	Reserves	£30,000
	Subordinated loans/debts	£60,000
	Intangible assets	£10,000
	As subordinated loans/debts (£60,000) exceed the total of share capital + reserves - intangible assets (£40,000) by £20,000, the <i>firm</i> should exclude £20,000 of its subordinated loans/debts pursuant to <i>CMCOB</i> 7.3.5R when calculating its prudential resources. Therefore the <i>firm's</i> total prudential resources will be £80,000.	

#### 7.4 Professional indemnity insurance: personal injury claims management

##### Application

- 7.4.1 R This section applies only to *firms* who carry on *advice, investigation or representation of a personal injury claim*.

##### Requirement to hold

- 7.4.2 R A *firm* must take out and maintain at all times a *professional indemnity insurance contract* that provides for a level of cover at least equal to the requirements in this section from an *insurer* which is authorised to enter into *professional indemnity insurance contracts* in:
- (1) a *Zone A country*; or
  - (2) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.
- 7.4.3 R The *professional indemnity insurance contract* must make provision for cover in respect of any claim for loss or damage, for which the *firm* may be liable as a result of a negligent act, error or omission by:
- (1) the *firm*; or

- (2) any *person* acting on behalf of the *firm* including *employees*, or its other agents.
- 7.4.4 R The minimum limit of indemnity per year in the *professional indemnity insurance contract* must be no lower than:
- (1) £250,000 for a single claim against the *firm*;
- (2) £500,000 in the aggregate.
- 7.4.5 R (1) Where the *professional indemnity insurance contract* includes an excess, the excess must not be greater than £10,000 per claim.
- (2) The *professional indemnity insurance contract* must contain cover in respect of legal defence costs.
- (3) The *professional indemnity insurance contract* must provide for continuous cover for all claims:
- (a) first made against the *firm* during the period of insurance; or
- (b) made against the *firm* during or after the period of insurance and arising from claims first notified to the insurer during the period of insurance.

## **8 Requirements for firms with temporary permission for regulated claims management activities**

### **8.1 Application and purpose**

- 8.1.1 R This chapter applies to a *firm* with a *temporary permission*.
- 8.1.2 G The purpose of these *rules* is to provide that certain provisions of the *FCA Handbook*:
- (1) that would otherwise apply to *persons* with a *temporary permission* are not to apply; or
- (2) are to apply to those *persons* with the modifications specified in the table in *CMCOB* 8.1.4 R.

#### Disapplication or modification of certain modules or provisions of the Handbook

- 8.1.3 R The modules or parts of the modules of the *FCA Handbook* listed in the table in *CMCOB* 8.1.4 R:
- (1) do not apply, to the extent set out in the table, to a *person* with a *temporary permission* with respect to the carrying on of a *regulated claims management activity*; or

- (2) are to apply to such a *person* with the modifications specified in the table.

Table: Disapplied or modified modules or provisions of the Handbook

8.1.4

R

Module	Disapplication or modification	
Threshold Conditions (COND)	<i>Guidance</i> applies with necessary modifications to reflect the <i>Claims Management Order</i> (see Note 1).	
	Note 1	A <i>firm</i> is treated as having a <i>temporary permission</i> on and after 1 April 2019 to carry on <i>regulated claims management activity</i> under the <i>Claims Management Order</i> if it met the conditions set out in Chapter [x] of Part [x] of that Order. Section 55B(3) of the <i>Act</i> (satisfaction of threshold conditions) does not require the <i>FCA</i> to ensure that the <i>firm</i> will satisfy, and continue to satisfy, in relation to <i>regulated claims management activity</i> for which it has a <i>temporary permission</i> , the threshold conditions for which the <i>FCA</i> is responsible. The <i>FCA</i> can, however, exercise its power under section 55J of the <i>Act</i> (variation or cancellation on initiative of regulator) or under section 55L of the <i>Act</i> (imposition of requirements by the regulator) in relation to a <i>firm</i> if, among other things, it appears to the <i>FCA</i> that the <i>firm</i> is failing, or is likely to fail, to satisfy the threshold conditions in relation to the <i>regulated claims management activity</i> for which it has a <i>temporary permission</i> for which the <i>FCA</i> is responsible. The <i>guidance</i> in <i>COND</i> should be read accordingly.
Supervision Manual (SUP)	<i>SUP</i> 6 (Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements) applies with necessary modifications to reflect Chapter [x] of Part [x] of the <i>Claims Management Order</i> (see Note 2).	
	Note 2	If a <i>firm</i> with <i>temporary permission</i> applies to the <i>FCA</i> under section 55A of the <i>Act</i> for <i>permission</i> to carry on a <i>regulated activity</i> or under section 55H or 55I of the <i>Act</i> to vary a <i>permission</i> that the <i>firm</i> has otherwise than by virtue of the <i>Claims Management Order</i> by adding a <i>regulated activity</i> to those to which the <i>permission</i> relates, the application may be treated by the <i>FCA</i> as relating also to some or

		all of the <i>regulated activities</i> for which the firm has <i>temporary permission</i> .
		For a <i>firm</i> with only <i>temporary permission</i> : SUP 15.5.1R, SUP 15.5.2G, SUP 15.5.4R, SUP 15.5.5R are modified so that the words “reasonable advance”, “and the date on which the <i>firm</i> intends to implement the change of name” and “and the date of the change” are omitted.

## TP 1 Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision coming into force
1	CMCOB 6.1.5R	R	<p>In relation to an agreement entered into before 1 April 2019:</p> <p>(1) the <i>firm</i> need not comply with CMCOB 6.1.5R until 1 July 2019; and;</p> <p>(2) the reference in CMCOB 6.1.5R to an illustration or estimate provided under CMCOB 4.2.5R is to be treated as a reference to the most recent illustration or estimate of fees (if any) provided before 1 April 2019.</p>	From 1 April 2019	1 April 2019
2	CMCOB 6.1.5R	G	The effect of TP 1.1 is that, where a <i>firm</i> has sufficient information from which it may reasonably estimate what its fee under an agreement entered into before 1 April		

			2019 will be, the <i>firm</i> must provide an estimate to the <i>customer</i> no later than 1 July 2019 unless that estimate is unchanged from the most recent estimate given before 1 April 2019.		
3	<i>CMCOB</i> 7.2.4R to 7.2.10R	R	A <i>firm</i> need not comply with <i>CMCOB</i> 7.2.4R to 7.2.10R.	1 April 2019 to 31 July 2019	1 April 2019

### Schedule 1 Record keeping requirements

- 1.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements in *CMCOB*.
- 1.2 G It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Content of record	When record must be made	Retention period
<i>CMCOB</i> 2.2.2R	<i>Lead generators</i>	Steps taken to ascertain whether <i>lead generator</i> authorised and has systems and processes in place to comply with <i>data protection legislation</i> ; and the Privacy and Electronic Communications (EC Directive) Regulations 2003	When the steps are taken	Not specified
<i>CMCOB</i> 2.2.4R	Source of sales leads	<i>Lead generator</i> which	When the lead is accepted	Not specified

		supplied the lead		
<i>CMCOB</i> 2.3.2R and 2.3.6R	Telephone calls and <i>electronic communications</i>	Call recording; and retention of <i>electronic communications</i>	When the call or the <i>electronic communication</i> is made or received	At least 12 <i>months</i> for call recording; according to SYSC 9.1.9R for <i>electronic communications</i>
<i>CMCOB</i> 4.3.1R	Availability of alternative methods for pursuing a claim	The <i>customer's</i> confirmation that they have alternative methods and the reasons for not using them	Before an agreement is entered into with the <i>customer</i>	Not specified

## Schedule 2 Notification and reporting requirements

- 2.1 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements in *CMCOB*.
- 2.2 G It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Matter to be notified	Contents of notification	Trigger Event	Time allowed
<i>CMCOB</i> 2.2.7R	<i>Lead generator</i> not an <i>authorised person</i>	Identity and contact details (if known) of the <i>lead generator</i> , and the <i>firm's</i> reasons for not being satisfied that the <i>lead generator</i> may carry on <i>seeking out, referrals and</i>	The <i>firm</i> not being satisfied that the <i>lead generator</i> may carry on <i>seeking out, referrals and identification of claims</i> without breaching the <i>general prohibition</i>	Promptly

		<i>identification of claims without breaching the general prohibition</i>		
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## Annex I

### Amendments to the Financial Crime Guide (FC)

In this Annex, striking through indicates deleted text.

#### 5 Data Security

...

- 5.1 Customers routinely entrust ~~financial~~-firms with important personal data; if this falls into criminal hands, fraudsters can attempt to undertake ~~financial~~-transactions in the customer's name. Firms must take special care of their customers' personal data, and comply with the data protection principles set out in Schedule 1 to the Data Protection Act 1998. The Information Commissioner's Office provides guidance on the Data Protection Act and the responsibilities it imposes on data controllers and processors.

...

## Annex J

### Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 2 Authorisation and regulated activities

...

### 2.3 The business element

#### 2.3.2 G ...

(3C) No provision in relation to the business element is made in respect of *not-for-profit bodies carrying on regulated claims management activity*; but article 89O of the *Regulated Activities Order* provides an exclusion for such bodies (see *PERG 2.8.14DG(2)*).

...

...

After PERG 2.4 (Link between activities and the United Kingdom) insert the following new section PERG 2.4A. The text is not underlined.

### 2.4A Link between regulated claims management activities and Great Britain

2.4A.1 G Under section 22(1B) of the *Act*, a claims management activity specified in the *Regulated Activities Order* is only a *regulated activity* if it is carried on by way of business in *Great Britain*.

2.4A.2 G (1) Article 2 of the *Claims Management Order* provides that a *person* is to be treated as carrying on a *regulated claims management activity* when either or both of the conditions in (2) and (3) are met.

(2) The condition in this paragraph is that the activity is carried on by a *person* who is:

(a) a natural person who is ordinarily resident in *Great Britain*; or

(b) a *person*, other than a natural person, who is established under the law of a part of *Great Britain*.

(3) The condition in this paragraph is that the activity is carried on in respect of a *claimant* or potential *claimant* who is:

- (a) a natural person who is ordinarily resident in *Great Britain*; or
  - (b) a *person*, other than a natural person, who is established under the law of a part of *Great Britain*.
- 2.4A.3 G Ordinary residence is to be determined for these purposes by reference to the Statutory Residence Test set out in Schedule 45 to the Finance Act 2013:
- (1) at the time of the facts giving rise to the *claim* or potential *claim*; or
  - (2) at the time when the activity is carried out in respect of that *claimant* or potential *claimant*.
- 2.4A.4 G Accordingly, the following list gives examples of activity which would be *regulated claims management activity* if carried on by way of business and where no exemption or exclusion applies:
- (1) a sole trader in England and Wales advising a natural person who is ordinarily resident in Northern Ireland in relation to a financial services or product claim;
  - (2) a company incorporated in Northern Ireland advising a natural person who is ordinarily resident in Scotland in relation to a *personal injury claim*;
  - (3) a company incorporated in France advising a natural person who is ordinarily resident in England in relation to a financial services or product claim;
  - (4) a company incorporated in Scotland investigating a *personal injury claim* for a natural person who is ordinarily resident in Germany; and
  - (5) a company incorporated in India seeking out details of a claimants with *personal injury claims* who are ordinarily resident in Great Britain.

Amend the following as shown.

## 2.7 Activities: a broad outline

...

### Regulated claims management activity

- 2.7.20M G (1) Section 21(10B) of the Act provides that an activity is a *regulated activity* if it is an activity of a specified kind which:

- (a) is, or relates to, *claims management services*; and
- (b) is carried on in *Great Britain*.
- (2) The activities which have been specified are those set out in articles 89G to 89M of the *Regulated Activities Order*; these are listed *Glossary* definition of “*regulated claims management activity*” and set out in *PERG 2.7.20N*. However, these are subject to the exclusions set out in articles 89N to 89X of the *Regulated Activities Order*: an activity which falls within one of the exclusions is not a *regulated activity* (see *PERG 2.8.14D*).
- (3) The activity must be or relate to a *claims management service*. The drafting of the *Regulated Activities Order* has the effect that the *regulated claims management activities* all meet this condition.
- (4) The activity must be carried on in *Great Britain*: see *PERG 2.4A*. A *person* outside *Great Britain* (including a *person* outside the *United Kingdom*) may require *permission* for a *regulated claims management activity* if they deal with *claims* involving *claimants* who are established or ordinarily resident in *Great Britain* or handle details of such *claimants*, even if that *person* has no branch, office or establishment in *Great Britain*.
- 2.7.20N    G    (1) *Seeking out, referrals and identification of claims*, as specified in article 89G of the *Regulated Activities Order*, involves any or all of the following:
- (a) seeking out *persons* who may have a claim (unless that activity constitutes a *controlled claims management activity*: see *PERG 8.7A.5G*);
- (b) referring details of a *claim* or a potential *claim* or a potential *claimant* to another *person*; and
- (c) identifying a potential *claim* or a potential *claimant*;
- when carried on in relation to a *personal injury claim*, a *financial services* or *product claim*, a *housing disrepair claim*, a *specified benefit claim*, a *criminal injury claim* or an *employment-related claim*.
- (2) The other *regulated claims management activities* are:
- (a) *advice, investigation or representation of a personal injury claim*;
- (b) *advice, investigation or representation of a financial services or product claim*;
- (c) *advice, investigation or representation of a housing disrepair claim*;

- (d) advice, investigation or representation of a specified benefit claim;
  - (e) advice, investigation or representation of a criminal injury claim; and
  - (f) advice, investigation or representation of an employment-related claim.
- (2) Advice includes any type of advice in relation to a claim, including advice on the merits of a claim, advice on the procedure for pursuing a claim, advice on how best to present a claim, and advice on possible means of challenging an unsatisfactory outcome to a claim.
  - (3) Investigation of a claim means carrying out an investigation or commissioning the investigation of, the circumstances, merits or foundation of a claim with a view to the use of the results in pursuing the claim (see article 89F(2)(h) of the Regulated Activities Order).
  - (4) Representation of a claimant means representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made (see article 89F(2)(i) of the Regulated Activities Order).

...

## 2.8 Exclusions applicable to particular regulated activities

...

### Regulated claims management activity

- 2.8.14D **G** The Regulated Activities Order excludes a number of activities from regulated claims management activity. The exclusions include:
- (1) activity carried on by or through a legal practitioner, or by a natural person who provides the service at the direction and under the supervision of a legal practitioner (article 89N);
  - (2) activity carried on by a charity or not-for-profit body (article 89O); and
  - (3) exclusion from seeking out, referrals and identification of claims for providers of referrals who meet all the following conditions (article 89V):
    - (a) the person who refers those details (“the introducer”) carries on no other regulated claims management activity;
    - (b) the activity is incidental to the introducer’s main business;

- (c) the details are only referred to *authorised persons*, legal practitioners, or a firm or *organisation* that provides the service through legal practitioners;
- (d) of the claims that the introducer refers to such *persons*, that introducer is paid, in money or money's worth, for no more than 25 claims per calendar quarter; and
- (e) the introducer, in referring those details, has complied with the provisions of the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the *Unfair Trading Regulations* (but this condition does not apply in the case of a referral to a legal practitioner, or to a firm or *organisation* that provides the service through legal practitioners).

...

## 8 Financial promotion and related activities

### 8.1 Application and purpose

...

Purpose of guidance

...

8.1.3 G In particular, this *guidance* covers:

...

(4A) meaning of '*engage in claims management activity*' (see *PERG 8.7A*);

...

...

### 8.2 Introduction

8.2.1 G The effect of section 21 of the *Act* (Restrictions on financial promotion) is that in the course of business, an *unauthorised person* must not *communicate* an invitation or inducement to *engage in investment activity* or to *engage in claims management activity* unless either the content of the communication is *approved* for the purposes of section 21 by an *authorised person* or it is exempt. ...

...

8.2.4 G A *person* who is concerned to know whether his communications will require *approval* or, if he is an *authorised person*, whether the appropriate

*financial promotion rules* will apply to his communications will need to consider the following:

...

(4A) alternatively, is the invitation or inducement to *engage in claims management activity*? (see PERG 8.7A);

...

...

### 8.3 Financial promotion

...

8.3.2 G Section 21 of the *Act* does not itself (other than in its heading and side-note) refer to a '*financial promotion*' but rather to the *communication* of 'an invitation or inducement (a) to *engage in investment activity* or (b) to *engage in claims management activity*'. References in this *guidance* to a *financial promotion* mean an invitation or inducement to *engage in investment activity* or to *engage in claims management activity*.

8.3.3 G Section 21 of the *Act* contains a number of key expressions or phrases which will determine whether or not it will apply. These are:

...

(4) ...; and

(4A) '*engage in claims management activity*' (see PERG 8.7A); and

...

...

### 8.4 Invitation or inducement

Promotional element

...

8.4.4 G The *FCA* considers that it is appropriate to apply an objective test to decide whether a communication is an invitation or an inducement. In the *FCA*'s view, the essential elements of an invitation or an inducement under section 21 are that it must both have the purpose or intent of leading a *person* to *engage in investment activity* or to *engage in claims management activity*, and be promotional in nature. So it must seek, on its face, to persuade or incite the recipient to *engage in investment activity* or to *engage in claims management activity*. The objective test may be summarised as follows. Would a reasonable observer, taking account of all the circumstances at the time the communication was made:

(1) consider that the communicator intended the communication to persuade or incite the recipient to *engage in investment activity* or to *engage in claims management activity*, or that that was its purpose; and

(2) ...

...

#### Invitations

8.4.5 G An invitation is something which directly invites a *person* to take a step which will result in his *engaging in investment activity* or *engaging in claims management activity*. It follows that the invitation must cause the engaging in investment activity. Examples of an invitation include:

...

...

#### Inducements

8.4.7 G An inducement may often be followed by an invitation or vice versa (in which case both communications will be subject to the restriction in section 21 of the Act). An inducement may be described as a link in a chain where the chain is intended to lead ultimately to an agreement to *engage in investment activity* or to *engage in claims management activity*. But this does not mean that all the links in the chain will be an inducement or that every inducement will be one to *engage in investment activity* or to *engage in claims management activity*. Only those that are a significant step in persuading or inciting or seeking to persuade or incite a recipient to *engage in investment activity* or to *engage in claims management activity* will be inducements under section 21. ...

8.4.8 G *PERG 8.4.9G* to *PERG 8.4.34G* apply the principles in *PERG 8.4.4G* to *PERG 8.4.7G* to communications made in certain circumstances. They do not seek to qualify those principles in any way. A common issue in these circumstances arises when contact details are given (for example, of a provider of investments or investment services). In the *FCA*'s view, the inclusion of contact details should not in itself decide whether the item in which they appear is an inducement or, if so, is an inducement to *engage in investment activity* or to *engage in claims management activity*. However, they are a factor which should be taken into account. The examples also refer, where appropriate, to specific exemptions which may be relevant if a communication is an invitation or inducement to *engage in investment activity* or to *engage in claims management activity*.

#### Directory listings

8.4.9 G Ordinary telephone directory entries which merely list names and contact details (for example where they are grouped together under a heading such



as ‘stockbrokers’) will not be inducements. They will be sources of information. Were they to be presented in a promotional manner or accompanied by promotional material they would be capable of being inducements. Even so, they may merely be inducements to make contact with the listed person. Specialist directories such as ones providing details of venture capital providers, unit trust managers, contractual scheme managers or investment trusts will usually carry greater detail about the services or products offered by the listed firms and are often produced by representative bodies. Such directories may also be essentially sources of information. Whether or not this is the case where individual entries are concerned will depend on their contents. If they are not promotional, the entries will not be inducements to *engage in investment activity* or to *engage in claims management activity*. However, it is possible that other parts of such a directory might, for example, seek to persuade recipients that certain *controlled investments* offer the best opportunity for financial gain. They may go on to incite recipients to contact one of the member firms listed in the directory in order to make an investment. In such cases, that part of the directory will be an inducement to *engage in investment activity*. But this does not mean that the individual entries or any other part of the directory will be part of the inducement. *PERG 8.6* provides *guidance* on the meaning of ‘communicate’ and ‘causing a communication’. This is of relevance to this example and those which follow.

Tombstone advertisements (announcements of a firm’s past achievements)

- 8.4.10 G Such advertisements are almost invariably intended to create awareness, hopefully generating future business. So they may or may not be inducements. This depends on the extent to which their contents seek to persuade or incite persons to contact the advertiser for details of its services or to do business with it. Merely stating past achievements with no contact details will not be enough to make such an advertisement an inducement. Providing contact details may give the advertisement enough of a promotional feel for it to be an inducement. But, if this is the case, it will be an inducement to contact the advertiser to find out information or to discuss what he can offer. Only if the advertisement contains other promotional matter will it be capable of being an inducement to *engage in investment activity* or to *engage in claims management activity*. In practice, such advertisements are often aimed at influencing only investment professionals. Where this is the case, the exemption in article 19 of the *Financial Promotion Order* (Investment professionals) may be relevant (see *PERG 8.12.21G*). Tombstone advertisements will not usually carry the indicators required by article 19 to establish conclusive proof. However, article 19 may apply even if none of the indicators are present if the *financial promotion* is in fact directed at investment professionals.

Links to a website

- 8.4.11 G Links on a website may take different forms. Some will be inducements. Some of these will be inducements under section 21 and others not. Links which are activated merely by clicking on a name or logo will not be inducements. The links may be accompanied by or included within a

narrative or, otherwise, referred to elsewhere on the site. Whether or not such narratives or references are inducements will depend upon the extent to which they may seek to persuade or incite persons to use the links. Simple statements such as ‘these are links to stockbrokers’ or ‘click here to find out about stockmarkets – we provide links to all the big exchanges’ will either not amount to inducements or be inducements to access another site to get information. If they are inducements, they will be inducements to *engage in investment activity* or to *engage in claims management activity* only if they specifically seek to persuade or incite persons to use the link for that purpose. Where this is the case, but the inducement does not identify any particular *person* as a provider of a *controlled investment* or as someone who carries on a *controlled activity* or a *controlled claims management activity*, the exemption in article 17 of the *Financial Promotion Order* (Generic promotions) may be relevant (see *PERG* 8.12.14G).

#### Banner advertisements on a website

- 8.4.12 G These are the Internet equivalent to an advertisement in a newspaper and are almost bound to be inducements. So whether they are inducements to *engage in investment activity* or to *engage in claims management activity* will depend upon their contents as with any other form of advertising and the comments in *PERG* 8.4.11G will be relevant.

...

#### Journalism

- 8.4.15 G Journalism can take many forms. But typically a journalist may write an editorial piece on a *listed company* or about the *investments* or investment services that a particular firm provides or the *controlled claims management activity that it carries on*. This may often be in response to a press release. The editorial may or may not contain details of or, on a website, a link to the site of the *company* or firm concerned. Such editorial may specifically recommend that readers should consider *buying or selling investments* (whether or not particular *investments*) or obtaining investment services (whether or not from a particular firm) or obtaining services which constitute a *controlled claims management activity* (whether or not from a particular firm). If so, those recommendations are likely to be inducements to *engage in investment activity* (bearing in mind that a recommendation not to *buy or sell investments* cannot be an inducement to *engage in investment activity*) or to *engage in claims management activity*. In other cases, the editorial may be an objective assessment or account of the investment or its *issuer* or of the ~~investment~~ firm and may not encourage *persons* to make an *investment* or obtain *investment services* or other services which constitute a *controlled claims management activity*. If so, it will not be an inducement to *engage in investment activity* or to *engage in claims management activity*.

...

...

#### Image advertising

- 8.4.20 G Activities which are purely profile raising and which do not identify and promote particular investments or investment services or services which constitute a *controlled claims management activity* may not amount to either an invitation or inducement of any kind. Examples of this include where *listed companies* sponsor sporting events or simply put their name or logo on the side of a bus or on an umbrella. This is usually done with a view, among other things, to putting their names in the minds of potential investors or consumers. In other cases, an image advertisement for a *company* which provides investment services (for example, on a pencil or a diary) may include, along with its name or logo, a reference to its being an investment adviser or fund manager or a telephone or fax number or both. Profile raising activities of this kind may involve an inducement (to contact the advertiser) but will be too far removed from any possible *investment activity* or, where relevant, *controlled claims management activity*, to be considered to be an inducement to *engage in investment activity* or to *engage in claims management activity*.

Advertisements which invite contact with the advertiser

- 8.4.21 G These will be advertisements that contain encouragement to contact the advertiser. They are likely to be inducements to do business with him or to get more information from him. If so, they will be inducements to *engage in investment activity* or to *engage in claims management activity* if they seek to persuade or incite *persons* to buy or sell *investments* or to get investment services or services which constitute a *controlled claims management activity*. See PERG 8.4.7G for more *guidance* on preliminary communications and whether they are a significant step in the chain of events which are intended to lead to the recipient *engaging in investment activity* or *engaging in claims management activity*. Where advertisements invite *persons* to send for a prospectus, article 71 (Material relating to prospectus for public offer of unlisted securities) may provide an exemption. Any *financial promotion* which contains more information than is allowed by article 71 but which is not the prospectus itself is likely to require *approval* by an *authorised person* unless another exemption applies.

Introductions

- 8.4.22 G (1) Introductions may take many forms but typically involve an offer to make an introduction or action taken in response to an unsolicited request. An introduction may be an inducement if the introducer is actively seeking to persuade or incite the *person* he is introducing to do business with the *person* to whom the introduction is made. So it may fall under section 21 if its purpose is to lead to investment activity or *controlled claims management activity*. For example, if a person answers the question ‘do you or can you provide investment advice’ with a simple ‘no, but I can introduce you to someone who does’, that may be an inducement. But, if so, it is likely to be an inducement to contact someone to find out information about his services rather than to *engage in investment activity* or to *engage in claims management activity*.

...

...

Invitations to attend meetings or to receive telephone calls or visits

- 8.4.25 G These are clearly invitations or inducements. Whether they will involve invitations or inducements to *engage in investment activity* or to *engage in claims management activity* rather than to attend the meeting or receive the call or visit, will depend upon their purpose and content. *PERG 8.4.7G* discusses communications which are a significant step in the chain of events leading to an agreement to *engage in investment activity* or to *engage in claims management activity*. The purpose of the meeting, call or visit to which the invitation or inducement relates may be to offer the audience or recipient investment services or services which constitute a *controlled claims management activity*. In this case, the invitation or inducement will be a significant step in the chain if it seeks to persuade or incite the invitee to *engage in investment activity* or to *engage in claims management activity* at the meeting, call or visit. Any *financial promotions* made during the meeting, call or visit would still need to be *communicated* or *approved* by an *authorised person* or be exempt.

...

Enquiries about a person's status or intentions

- 8.4.27 G A *person* ('A') may enquire:
- (3) ...; or
- (4) whether a person has been involved in an accident.

Enquiries of this or a similar kind will not amount to inducements to *engage in investment activity* or to *engage in claims management activity* unless they involve persuasion or incitement to do so. ...

Solicited and accompanying material

- 8.4.28 G Solicited or accompanying material which does not contain any invitation or inducement to *engage in investment activity* or to *engage in claims management activity* will not itself be a *financial promotion*. This is provided that the material is not part of any *financial promotion* which may accompany it. This is explained in greater detail in *PERG 8.4.29G* to *8.4.30G*.

...

Telephone services

...

8.4.31A G Where the telephone services that P provides, or other services provided in conjunction with those telephone services, have the result that P is carrying on the regulated activity of seeking out, referrals and identification of claims, instead of (or in addition to) communicating a financial promotion that relates to controlled claims management activity, P will require permission to carry on the regulated activity of seeking out, referrals and identification of claims.

...

## **8.7 Engage in investment activity**

8.7.1 G A communication must be an invitation or inducement to *engage in investment activity* (or to *engage in claims management activity* (see *PERG 8.7A*)) for the restriction in section 21 to apply. ...

...

After PERG 8.7 (Engage in investment activity) insert the following new section PERG 8.7A. The text is not underlined.

## **8.7A Engage in claims management activity**

Controlled claims management activity

8.7A.1 G A communication must be an invitation or inducement to *engage in claims management activity* (or to *engage in investment activity* (see *PERG 8.7*)) for the restriction in section 21 to apply. Section 21(10A) of the *Act* defines this phrase as “entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity”. And section 21(10B) of the *Act* provides that an activity is a “controlled claims management activity” if:

- (a) it is an activity of a specified kind;
- (b) it is, or relates to, *claims management services*; and
- (c) it is carried on in *Great Britain*.

8.7A.2 G The activities which have been specified are those set out in paragraph 11A of Schedule 1 to the *Financial Promotion Order* (which are listed in the *Glossary* definition of “*controlled claims management activity*”). These are the same as the activities which have been specified in the *Regulated Activities Order* as *regulated claims management activities*; the exclusions set out in articles 89N to 89X of the *Regulated Activities Order* in relation to *regulated claims management activities* are set out as exemptions in articles 76 to 84 of the *Financial Promotions Order* in relation to *controlled claims*

*management activity.*

8.7A.3 G The activity must be or relate to a *claims management service*. The drafting of the *Financial Promotions Order* has the effect that the *controlled claims management activities* all meet this condition.

8.7A.4 G The activity must be carried on in *Great Britain*: see *PERG 2.4A*.

The distinction between controlled claims management activity and regulated claims management activity

8.7A.5 G The *regulated activity* of *seeking out, referrals and identification of claims*, as specified in article 89G of the *Regulated Activities Order*, constitutes three activities one of which is seeking out *persons* who may have a claim unless that activity constitutes a *controlled claims management activity*.

8.7A.6 G For a communication to constitute a *financial promotion*, it must constitute an invitation or inducement to *engage in claims management activity* (or to *engage in investment activity*): see *PERG 8.4*. Where a *person* advertises the services of a *firm* which carries on a *regulated claims management activity* with a view to seeking out *customers*, the *person* is likely to be communicating an invitation or inducement to *engage in claims management activity*: the *person* will therefore have to be an *authorised person* or the communication will have to be approved by an *authorised person*, if the *person* is not to breach the prohibition in section 21 of the *Act*.

8.7A.7 G It may be possible for a *person* (for example, for a *lead generator*) to seek out claimants or potential claimants without communicating an invitation or inducement to *engage in claims management activity*. Whether or not there is an invitation or inducement would depend on the facts and circumstances of the communication. Where there is no invitation or inducement, the seeking out would constitute the *regulated activity* of *seeking out, referrals and identification of claims*, and the *person* would need to be an *authorised person* if they are not to breach the *general prohibition*, or to hold the necessary *permission* if they are not to breach the requirement for *permission* in section 20 of the *Act*.

Amend the following as shown.

## **8.9 Circumstances where the restriction in section 21 does not apply**

...

8.9.4 G With *approval* generally, issues may arise as to what would be subject to the restrictions in section 21 where an invitation or inducement to *engage in investment activity* or to to *engage in claims management activity* is made through a publication, broadcast or website or is accompanied by other

material. ...

...

## 8.10 Types of financial promotion

...

Solicited v unsolicited real time financial promotions

...

8.10.10 G Article 8(3) of the *Financial Promotion Order* also has the effect in broad terms that *financial promotions* made during a visit, call or dialogue will be solicited only if they relate to *controlled activities* or *controlled investments* or *controlled claims management activities* of the kind to which the recipient envisaged that they would relate. ...

8.10.11 G ... Article 8(4) of the *Financial Promotion Order* recognises this and has the effect that an *unsolicited real time financial promotion* will have been made to the *persons* other than the *person* who expressly asked for or initiated the call, visit or dialogue in which it was made unless they are:

(1) ...; or

(2) expected to engage in any investment activity or to engage in claims management activity jointly with that *person*.

8.10.12 G In the *FCA's* view, *persons* who may be *engaging in investment activity* or *engaging in claims management activity* jointly include:

...

8.10.13 G There will be occasions when *financial promotions* are received by *persons* other than those in *PERG* 8.10.11G(1) or *PERG* 8.10.11G(2) who will not have solicited them. For example, a more distant relative or friend ('F') who acts as a support to the *person* who is to *engage in investment activity* or to *engage in claims management activity* ('P') or P's professional adviser ('A'). As explained in *PERG* 8.6.10G, in such cases the *financial promotion* will not be made to F or A unless it is also addressed to them. And it will only be addressed to F or A if the invitation or inducement relates to F or A *engaging in investment activity* or *engaging in claims management activity*. So a solicited financial promotion made to P will not also be an unsolicited *financial promotion* made to F or A.

...

## 8.11 Types of exemption under the Financial Promotion Order

...

8.11.5 G ... If the indication is given enough prominence, taking account of the

medium through which it is *communicated*, to ensure that the recipient will be aware of it and able to consider it before deciding whether to *engage in investment activity* or to *engage in claims management activity*, the *FCA* would regard article 9 as being satisfied.

...

## 8.12 Exemptions applying to all controlled activities

...

Financial promotions to overseas recipients (article 12)

- 8.12.2 G This exemption concerns *financial promotions* which are made to or directed only at *overseas persons* (except in the circumstances referred to in *PERG* 8.12.8G). But this exemption does not apply to communications in respect of *controlled claims management activity*.

...

Financial promotions from customers and potential customers (article 13)

- 8.12.9 G *Financial promotions* made by a prospective customer to a *person* who supplies a *controlled investment* or services comprising *controlled activities* or *controlled claims management activities* with a view to his acquiring the *investment*, or receiving the services or receiving information about those *investments* or services, are exempted. This exemption will only be of relevance to corporate customers or others who are acting in the course of business. Other types of customers will not be subject to section 21 to begin with.

...

Introductions (article 15)

...

- 8.12.11B G This exemption also does not apply to any *financial promotion* that is made with a view to, or for the purpose of, an introduction to a *person* who carries on a *controlled claims management activity*.

Exempt persons (article 16)

- 8.12.12 G ... Article 16(1) applies to all exempt persons where they make *financial promotions* for the purpose of their exempt activities. .... So, it allows *exempt persons* both to promote that they have expertise in certain *controlled activities* or *controlled claims management activities* and to make *financial promotions* in the course of carrying them on.

...

Generic promotions (article 17)



8.12.14 G Under this exemption, the *financial promotion* itself must not relate to a *controlled investment* provided by a *person* who is identified in it, nor must it identify any *person* as someone who carries on any *controlled activity* or *controlled claims management activity*. So, it will apply where there is a *financial promotion* of a class of products. For example ‘ISAs are great’ or ‘buy into an investment trust and help the economy’. Such *financial promotions* may be made by a *person* such as a trade association which is not itself carrying on a *controlled activity* or a *controlled claims management activity*. ...

...

8.12.16 G Other *persons* may be able to take advantage of the exemption. For example, a *person* making a generic *financial promotion* may identify himself, whether he may carry on a *controlled activity* or *controlled claims management activity*, or not. This is provided that the *financial promotion* does not (directly or indirectly) identify him as someone who carries on a *controlled activity* or a *controlled claims management activity*.

...

Investment professionals (article 19)

...

8.12.22 G This exemption does not apply to communications in respect of *controlled claims management activity*.  
A

Journalists (article 20)

8.12.23 G The broad scope of the restriction in section 21 of the *Act* will inevitably mean that it will, from time to time, apply to journalists and others who make their living from commenting on news including financial affairs (such as broadcasters). This is liable to happen when such *persons* offer share tips or recommend the use of a particular firm for investment purposes or *claims management services*. Such tips or recommendations are likely to amount to inducements to *engage in investment activity* or to *engage in claims management activity*.

...

8.12.26 G Provided the conditions in *PERG* 8.12.25G are met, the exemption in article 20 applies to any *non-real time financial promotion*. However, there is an additional condition where the subject matter of the *financial promotion* is *shares* or *options*, *futures* or *contracts for differences* relating to *shares* and the *financial promotion* identifies directly a *person* who issues or provides such an investment, or the subject matter of the *financial promotion* is a *controlled claims management activity* and the *financial promotion* directly identifies a *person* who undertakes that activity. In such cases, the exemption is subject to a disclosure requirement which is itself subject to

certain exceptions (see *PERG* 8.12.27 G). ...

...

## 8.14 Other financial promotions

...

8.14.2A G References in Part 6 of the *Financial Promotions Order* to “controlled activity” are to be read as including “controlled claims management activity” (article 27).

One-off financial promotions (articles 28 and 28A)

8.14.3 G Article 28 exempts *financial promotions*, other than *unsolicited real time financial promotions*, which are one-off in nature. Whether or not any particular *financial promotion* is one-off in nature will depend upon the individual circumstances in which it is made. Article 28(3) sets out conditions which, if all are met, are conclusive. Otherwise they are indicative. Even if none are met the exemption may still apply. This makes it clear that the overriding issue is whether the *financial promotion* is, in fact, a one-off. The conditions are that:

- (1) the *financial promotion* is made only to one recipient or to a group of recipients in the expectation that they would *engage in investment activity or engage in claims management activity* jointly;

...

8.14.4 G The *FCA* considers the effect of each of the conditions in *PERG* 8.14.3G(1) to *PERG* 8.14.3G(3) to be as follows.

- (1) ... If the *financial promotion* is addressed to more than one *person* they must be proposing to *engage in investment activity or engage in claims management activity* jointly (see *PERG* 8.14.6G).

...

8.14.6 G In the *FCA*’s view, a group of recipients who may be *engaging in investment activity or engaging in claims management activity* jointly could include:

...

8.14.7 G A *financial promotion* may fail to satisfy all of the indicators referred to in *PERG* 8.14.4G because it is addressed to more than one recipient and they are not *persons* who will *engage in investment activity or engage in claims management activity* jointly. ...

...

8.14.13 G The article 28A exemption does not apply to communications in respect of

A controlled claims management activity.

...

Nationals of EEA States other than the United Kingdom (article 36)

8.14.18 G This exemption allows a *person* in another *EEA State* who lawfully carries on a *controlled activity* in that State to promote into the *United Kingdom*. (Note that there is particular provision made in respect of *controlled claims management activity* which may have the effect of treating the activity being promoted as being carried on in *Great Britain* rather than in that other *EEA State*; see *PERG 2.4A* and *PERG 8.7A.4G*). ...

Joint enterprises (article 39)

8.14.19 G ... A joint enterprise means, in general terms, arrangements entered into by two or more *persons* for commercial purposes related to a business that they carry on. The business must not involve a *controlled activity* or a *controlled claims management activity*. ...

8.14.20 G ... This means that the sponsors or promoters of a *company* who arrange for private investors to become shareholders will not be setting up a joint enterprise simply because the *company* may intend to carry on a relevant business which is not a *controlled activity* or a *controlled claims management activity*. ...

...

High net worth companies, unincorporated associations and trusts (article 49)

...

8.14.26- G The article 49 exemption does not apply to communications in respect of  
A *controlled claims management activity*.

...

Advice centres (article 73)

8.14.40B G Article 73 exempts any *financial promotion* made by a *person* in the course of carrying out his duties as an adviser for, or employee of, an advice centre. This is provided the *financial promotion* relates to:

(3) ... ; or

(4) *controlled claims management activity*.

...

**8.15 Financial promotions by members of the professions (articles 55 and 55A)**

...

## Non-real time financial promotions by professional firms

...

- 8.15.6 G A *financial promotion* made under article 55A must contain a statement in the following terms: “The [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment and consumer credit-related and claims-management related services to clients because we are members of [relevant designated professional body]. We can provide these investment and consumer credit-related services and claims-management related if they are an incidental part of the professional services we have been engaged to provide”. ...

...

**8.22 The Internet**

...

- 8.22.2 G The test for whether the contents of a particular website may or may not involve a *financial promotion* is no different to any other medium. If a website or part of a website, operated or maintained in the course of business, invites or induces a *person to engage in investment activity or to engage in claims management activity*, it will be a *financial promotion*. ...

- 8.22.3 G ... The *FCA*’s views on the position of hypertext links (which should be read with the remainder of *PERG* 8, especially *PERG* 8.4 (Invitation or inducement)) are as follows.

...

- (2) The material on a host website which contains the hypertext link may in itself be a *financial promotion*. For example, it may contain text which seeks to encourage or incite *persons* to activate the link with a view to *engaging in investment activity or engaging in claims management activity*.
- (3) Website material which represents a directory of website addresses or e-mail addresses will not be a *financial promotion* in its own right. That is unless the material also contains an inducement to contact a named addressee with a view to *engaging in investment activity or engaging in claims management activity*.

...

**8.23 Regulated activities**

...

- 8.23.6 G Guidance on the distinction between controlled claims management

activity and regulated claims management activity can be found at PERG 8.7A.5G to PERG 8.7A.7G.

## Annex K

### Amendments to the Wind-down Planning Guide (WDPG)

In this Annex, underlining indicates new text.

#### 3 The concept and process of wind-down planning

...

#### 3.6 Impact assessment: who will be affected by a wind-down?

...

- 3.6.4 G *Firms* can support their impact assessment of winding down by a risk assessment of each stakeholder group along with the mitigating actions the *firm* would consider appropriate. Some factors that a *firm* may consider include:
- (1) How quickly can a *firm* conclude any outstanding transactions? Will there be any tax or other implications for *customers*?
  - (2) Can the *firm* help transfer its *customers* to another *financial institution* or, where relevant, *firm with a permission to carry on regulated claims management activities*? If the *firm* has many *customers* to be transferred out, do other *firms* in the same sector have the capacity to take them on?
  - (3) How quickly can *client monies* and *custody assets* be returned?

...



We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future. We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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