

Claims management: how we will regulate claims management companies

Policy Statement

PS18/23

December 2018



This relates to

Consultation Paper 18/15 which is available on our website at: www.fca.org.uk/publications/consultation/cp18-15.pdf

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1 Summary

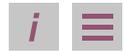
Introduction

- 1.1** On 1 April 2019 we become the regulator of claims management companies (CMCs) that are set up or serving customers in England, Wales and Scotland. At the same time, the Financial Ombudsman Service (the Ombudsman Service) becomes responsible for resolving customer disputes about CMCs.
- 1.2** In June 2018, we consulted on draft rules and guidance for CMCs in Consultation Paper (CP) 18/15 – 'Claims management: how we propose to regulate claims management companies'. This described the standards that CMCs regulated by the FCA should meet.
- 1.3** We proposed to introduce a new Claims Management: Conduct of Business sourcebook (CMCOB) and to apply relevant parts of the existing FCA Handbook. This Policy Statement (PS) summarises the feedback we received on CP18/15 and our response to it.
- 1.4** In August 2018 we consulted on the regulatory fees for CMCs in Consultation Paper 18/23 (CP18/23) – 'Claims management companies: recovering the costs of FCA regulation and the Financial Ombudsman Service'. We include feedback and our final rules on fees in this PS.
- 1.5** We also consulted on how the Senior Managers and Certification Regime (SM&CR) will apply to CMCs in autumn 2018. We will publish final SM&CR rules in early 2019.

Who this applies to

- 1.6** You need to read this document if you are:
- a CMC set up or serving customers, in England, Scotland and Wales, including those dealing with section 75¹ claims
 - an organisation that is not a CMC but is affected by CMCs, such as those using CMCs to generate leads
 - a trade body representing CMCs or representing firms that receive claims from CMCs
 - representing customers' interests
 - involved in regulating businesses that provide claims management services, for example, the Information Commissioner's Office (ICO)

¹ 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.



- 1.7** You might also be interested in this document if you are a customer who uses, or is thinking of using, firms that provide claims management services.
- 1.8** Some categories of organisation are excluded from FCA regulation when providing claims management services. For example, claims management services carried on by law firms will be excluded.

Context

- 1.9** Since 2007 the Government has been increasingly concerned about misconduct in the claims management sector. In 2015, it commissioned the independent Brady Review to examine the problems and make recommendations to improve the way this sector is regulated.
- 1.10** The Government accepted these recommendations. The Financial Guidance and Claims Act 2018 (FGCA) transfers the regulation of CMCs from the existing Claims Management Regulator (CMR), which is part of the Ministry of Justice (MoJ), to the FCA. It also extends regulation of CMCs to Scotland. The Government also confirmed that those CMCs dealing with section 75 claims will be regulated by the FCA.
- 1.11** Parliament has approved secondary legislation that defines which claims management activities will be regulated. It sets out the CMC temporary permissions regime, and the other changes necessary to transfer powers and responsibilities to us.

The activities we will regulate

- 1.12** We will regulate 2 different groups of activities across 6 claims sectors. Diagram 1 shows these activities and illustrates the 7 permissions that firms can apply for. CMCs that are set up or serving customers in England, Wales and Scotland must apply for the permissions which cover their activities in the relevant sector. There will be 1 permission for lead-generation activities covering all the sectors, and 6 sectoral permissions that cover the activities of advising a claimant, investigating a claim and representing a claimant.

Diagram 1: The activities and claims sectors we will regulate²:

| | | CMC sectors | | | | | |
|--|--|--|---|--|--|--|---|
| | | Personal Injury | Financial Services and Financial Products | Housing Disrepair | Specified Benefit | Criminal Injury | Employment Related |
| | | Claims for damages for personal injuries or death | Claims in relation to financial services and financial 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 other employment-related payments, and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment |
| Regulated Activities | Seeking out of claims or potential claims seeking out persons who may have a claim | Seeking out, referrals and identification of claims or potential claims | | | | | |
| | Referrals of claims or potential claims referring details of a claim, potential claim or of a claimant, or potential claimant to another person | | | | | | |
| | Identification of claims or potential claims identifying a claim, potential claim or a claimant, or potential claimant | | | | | | |
| | Advice in relation to a claim providing advice in relation to a claim or potential claim | Advising, investigating or representing in relation to a personal injury claim | Advising, investigating or representing in relation to a financial services or financial products claim | Advising, investigating or representing in relation to a housing disrepair claim | Advising, investigating or representing in relation to a claim for a specified benefit | Advising, investigating or representing in relation to a criminal injury claim | Advising, investigating or representing in relation to an employment claim |
| | Investigation in relation to 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 | | | | | | |
| Representation in relation to a claim representation in writing or orally, regardless of the tribunal, body or person before which or to whom the representation is made | | | | | | | |

Other changes to the regulatory environment for CMCs

1.13 The FGCA introduced an interim fee cap for Payment Protection Insurance (PPI) claims of 20% (excluding Value Added Tax (VAT)), which came into force in July 2018. The CMR will enforce this cap until responsibility for regulation is transferred to the FCA. The FGCA also gives the FCA powers to cap fees for claims management services more broadly, and puts a duty on the FCA to use these powers for claims for all financial services and financial products. The FGCA cap will stay in place until we use our own powers to impose a new fee cap. We will consult on any fee cap rules we propose to make.

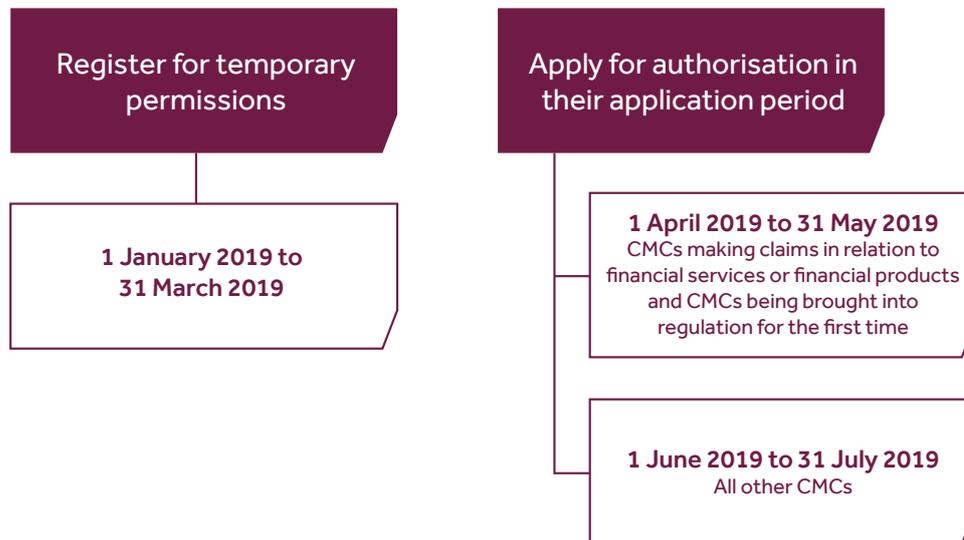
Authorisation process for CMCs

1.14 Diagram 2 summarises the key dates for CMCs who want to continue providing regulated claims management activities after April 2019. Chapter 9 provides more detail on the authorisation process for CMCs.

² This table is not intended to be guidance on legislation. For a full description, CMCs should refer to the Claims Management Activity Order.

Diagram 2 – The key dates CMCs need to be aware of for registering and applying for authorisation with the FCA

All CMCs must register then apply for authorisation



What we want our regulation of CMCs to achieve

1.15 In this PS, we set out the final rules and guidance for CMCs. Our aim is to make sure they are trusted providers of high quality, good value services that help customers pursue legitimate claims for redress, and benefit the public interest.

1.16 We have 3 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 get 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 that prioritises high standards of conduct and improves public confidence in claims management services

Summary of feedback and our response

1.17 We received 87 responses to CP18/15. Over 200 firms registered to attend our regional roadshows. We have incorporated feedback from responses to CP18/15, feedback from the roadshows and other stakeholder meetings.

1.18 The vast majority of responses supported our proposals. Respondents recognised the need to strengthen the regulation of the industry. Many expressed frustration that some CMCs were tarnishing the reputation of those CMCs who were working on behalf of the customer. We also received some suggestions for changes to the proposed rules. In general, we intend to implement the consultation proposals, but will make some changes based on the feedback.

Changes to our original proposals

1.19 Following this feedback, we made the following changes to our CP18/15 and CP18/23 proposals, including:

- Clarified the requirements for lead generators when using the term 'no win, no fee'. Lead generators who do not know the fee of the firm they are referring to must give an indication of the fee that the customer may need to pay. Lead generators must also provide details in the financial promotion about any termination fees which exist. If they are unsure of the termination fee, for example they do not know which firm the customer will be referred to and therefore the fee that will be charged, they will need to state that a customer may have to pay a termination fee.
- Reduced the amount of information CMCs need to set out on the services they will provide in the one-page summary document.
- Made some changes to our pre-contract disclosures requirements including:
 - requiring that CMCs clarify whether their fee is based on the gross or net amount of the compensation award
 - clarifying that CMCs must ask the customer if they know of other methods to pursue their claim, such as legal expense cover
 - requiring that CMCs get a customer's consent before charging costs that were not disclosed upfront
 - requiring the CMC to ask the respondent and customer if they are aware of an outstanding liability which any compensation could be off-set against
 - requiring CMCs to ask the customer whether the customer is bankrupt or in an Individual Voluntary Arrangement (IVA) or similar arrangement
 - where the customer has outstanding liabilities which the compensation may be off set against, or is bankrupt or in an IVA or similar arrangement, making them aware that some or all of the compensation award may go towards paying off the debt and the customer will still have to pay the CMC's fee from their own funds
 - requiring the CMC to make customers aware that in pension-related claims, they may not have immediate access to their pension fund at the time they are required to settle the CMC fee
- Made some minor changes to our ongoing disclosure requirements including:
 - expanding our guidance to include further examples of what constitutes a 'material development' that must be notified to the customer
 - requiring CMCs to notify and obtain consent from their customers for any significant steps they intend to take to progress the claim where more than six months has passed since they last notified and obtained consent from the customer



- supplementing and adjusting the rule requiring a CMC to give customers a revised fee estimate once it has enough information to do so
- Made some changes to our reporting requirements including:
 - asking an extra question to collect figures for client money held for more than 5 days, apart from when a cheque or other payable order has been made, but not banked
 - altering the complaint form's guidance to reflect that lead generators do not need to report complaints about third parties
- Accepted the suggestion to allow CMCs to deduct a portion of marketing expenditure from a CMC's total expenditure when calculating the overheads requirement.
- Allowed CMCs to amend their overheads expenditure, used in the calculation of their fixed overheads requirement, by basing it on a multiple of the last 6 months' unaudited overheads expenditure where there has been a decrease in overheads spending of 20% or more in that time.
- Included a transitional provision to make clear that the FCA's client money rules apply to existing client money which was held or received by CMCs immediately before they obtained their temporary permission or Part 4A permission.
- For the FCA fees, we have introduced a lower minimum periodic fee of £500 for smaller firms with turnover up to £50,000 instead of the single minimum fee we had proposed of £1,000 for firms with turnover up to £100,000. We have also added a new transitional provision to clarify what data will be used to calculate the Ombudsman Service general levy in 2019/20. We have not made any other changes to the proposals we consulted on in CP18/23.

1.20 As part of our CP we conducted a cost benefit analysis (CBA) under section 138I(2) (a) of the Financial Services and Markets Act 2000 (FSMA). We have updated our CBA in response to comments received regarding the CBA as set out in CP18/15. We have also updated our assumptions of the number of CMCs we expect to register. And we have updated some of the estimated costs to reflect certain changes made in response to the CP. We give further detail on this in Chapter 12.

1.21 We received several general comments from respondents about CMCs' behaviour. These included submitting multiple redundant claims, behaving unethically and generally providing a poor service. We also had several comments from CMCs themselves about the behaviour of the firms dealing with claims. They reported how complaints went missing, letters of authority (LoAs) were lost or ignored and claims were turned down without being fully investigated.

1.22 One of our aims is to improve the professionalism of the CMC sector. CMCs provide a valuable service for consumers, especially consumers in vulnerable circumstances who may not feel confident or able to raise a claim themselves. We expect firms dealing with claims to treat CMCs in a professional manner and to provide the same service to CMCs that they would if they were dealing directly with the customer. We welcome

information about CMCs not dealing with customers fairly in the same way that we welcome intelligence about firms not dealing with customers or CMCs fairly.

Implications of EU Withdrawal

- 1.23** In March 2018, the UK and the EU agreed the terms of an implementation period, which would start on 29 March 2019 and last until at least 31 December 2020. During this period, common rules would continue to apply and access to each other's markets would continue on current terms.
- 1.24** However, the implementation period is part of the withdrawal agreement which must be ratified by the UK and the EU. In order to be ready for all scenarios, we have worked to put the necessary arrangements in place for us to continue to meet our statutory objectives and reduce harm should the withdrawal agreement not come into effect. As part of that, we have consulted³ on changes to our Handbook so that it is consistent with wider UK legislation and the UK's new position outside of the EU in the event that there is no implementation period.
- 1.25** The rules in the instrument do not take those proposed changes into account. If the withdrawal agreement is not ratified and there is no implementation period, then we will update the rules (including references to EU legislation) accordingly. We will consider further whether it is necessary to consult on those changes.

Equality and diversity considerations

- 1.26** We have considered the equality and diversity issues that may arise from the changes described in this PS, as well as the impact our rules may have on vulnerable customers.
- 1.27** Overall, we consider there are no specific negative impacts for consumers in groups with protected characteristics⁴ or customers who are considered vulnerable. We are making a rule, as consulted on, that requires a CMC to establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable customers.
- 1.28** We will continue to work with other agencies to ensure we have due regard to groups with protected characteristics in line with our duties under the Equality Act 2018. We have published various resources which may help CMCs in dealing with customers with protected characteristics and vulnerable customers and in meeting their obligations under the Equality Act. We give further details in Chapter 13.

Next steps and implementation dates

- 1.29** In general, the rules set out in this PS will apply from 1 April 2019. The prudential resources requirements will come into force on the 1 August 2019. If your firm is

³ See CP18/28 & CP18/36

⁴ ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment, or customers who are considered to be vulnerable.



affected by these changes, you should review your policies and procedures in light of the new rules and guidance and make changes where needed.

2 High-level standards

- 2.1** In this chapter, we summarise the feedback we received on our proposal to extend the high-level standards that apply to all FCA-regulated firms to CMCs. 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.

Principles for Businesses

Our proposals

- 2.2** In CP18/15 we proposed to apply our Principles for Businesses (PRIN) to all CMCs. PRIN is a general statement of the fundamental obligations that all FCA-regulated firms must meet. We also said that CMCs need to carefully consider the detailed rules and guidance which come from the Principles.

Feedback received

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

- 2.3** All respondents welcomed our proposal. Some suggested broadening the scope of Principle 11 to refer specifically to the other regulators with whom CMCs should be open and cooperative.

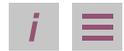
Our response

We are implementing PRIN broadly as consulted on and have updated the territorial application to make clearer how it applies to CMCs. CMCs should be aware of the regulators that enforce laws that apply to them. We have discussions with other regulators about their relationships with CMCs and expect these to continue, especially when we take over regulation of the sector. Principle 11 already requires firms to deal with other regulators in an open and cooperative way.

Threshold Conditions

Our proposals

- 2.4** To be authorised by the FCA, firms must comply with Threshold Conditions. The Threshold Conditions are set out in FSMA, which can only be changed by an act of Parliament, so we did not consult on those Conditions. However, to help CMCs understand what is required, we proposed to apply the guidance that is in the Threshold Conditions section of our Handbook (COND) to CMCs.



Feedback received

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

- 2.5** All respondents, apart from one, agreed with our proposals. One respondent suggested that it would be appropriate to require CMC staff to get some form of qualification. A small number of respondents asked us to clarify the meaning of a 'fit and proper person'. Others made suggestions about how the FCA would supervise CMCs to make sure that individuals who run CMCs are fit and proper.

Our response

We will proceed with our approach as consulted on. There are requirements in COND about the suitability of individuals. Firms must satisfy these both at authorisation and afterwards. These requirements include the applicant being a fit and proper person, which is more fully described under the Suitability Threshold Condition in COND. They also include the requirement to be ready, willing and organised which is described in the Adequate Resources section of COND with some useful information in the systems and controls part of the Handbook (SYSC). SYSC 5.1.1 states 'A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.'

The SM&CR proposals set out in CP18/26 are intended to provide related requirements for individuals. An important part of the SM&CR is to make sure that all staff are appropriately trained to carry out their roles, including being fit and proper to perform them. We aim to publish a policy statement in response to the SM&CR CP in the new year.

Systems and Controls

Our proposals

- 2.6** We proposed to apply most of our rules and guidance about systems and controls to all CMCs. These are set out in the SYSC section of our Handbook and they explain how CMCs should organise and manage their affairs. We also proposed that the guidance in 'Financial Crime: a guide for firms' should apply to CMCs. As we set out in the CP, 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 to comply with Principle 3.

Feedback received

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

- 2.7** All the respondents but one welcomed our proposals. The one objection came from a respondent who felt our approach was too burdensome and would mean many firms would have to become experts on a large rulebook unnecessarily.

- 2.8** Some respondents included additional comments, some of which were about our statement that we would not expect a small CMC dealing with a low number of customers to have the same systems and controls as a large CMC.

Our response

We will implement the rules and guidance in SYSC and the guidance in 'Financial Crime: a guide for firms' as consulted on. We believe the requirements are proportionate. CMCs are required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business. When assessing how a CMC complies with these requirements we will take into account, amongst other things, the nature, scale and complexity of the CMC's business.

General Provisions

Our proposals

- 2.9** In CP18/15 we proposed to apply our General Provisions (known as GEN) to CMCs. GEN rules cover the administrative duties that apply to all the firms we regulate. The rules aim to make sure customers are not misled, that firms are subject to the same general standards and firms clearly state if they are regulated by us.

Feedback received

Q4: Do you agree with our proposals to apply GEN to CMCs?

- 2.10** All respondents but one agreed with our proposals. The respondent who disagreed was concerned that we were proposing too many rules for CMCs, which are mainly small businesses. Some other respondents who supported our proposals asked us to consider providing further guidance.

Our response

We do not believe we are applying too many rules to CMCs and will apply GEN to CMCs as consulted on. We do not intend to provide further rules or clarification on terms used in our Handbook. CMCs may find the guidance the FCA has already published in relation to its rules helpful⁵.

5 For example, www.fca.org.uk/firms/fair-treatment-customers sets out our expectations on the fair treatment of customers.



3 Conduct standards

- 3.1** In this chapter, we summarise the feedback to our proposals to apply various conduct of business rules to CMCs. These proposals aimed to raise CMCs' standards and tackle harms such as some customers not being clear about the services provided.

General conduct of business rules to apply to CMCs

Our proposals

- 3.2** The conduct of business rules, which we proposed to apply to CMCs, would be included in a new Handbook sourcebook called CMCOB.
- 3.3** We outlined several conduct of business rules that would apply to CMCs, including expecting them always to act in the best interests of their customers. To address the harm from spurious and fraudulent claims in the sector, we proposed a specific rule prohibiting CMCs from presenting claims which are fraudulent or vexatious or which have no good arguable basis.

Feedback received

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

- 3.4** All respondents agreed with our proposals. A small number asked us to clarify our expectations of CMCs when investigating the basis of a claim. We proposed in CP18/15 that CMCs should take reasonable steps to investigate the existence and merits of a potential claim, and to substantiate the claim's basis before submitting a claim. Two respondents also asked that, to enable CMCs to comply with the proposed requirements for investigating a claim, we impose a new requirement on banks and other financial institutions to co-operate with requests for information from CMCs.
- 3.5** As part of our consultation process, we considered findings raised in Richard Lloyd's July 2018 [report](#) on his independent review of the Ombudsman Service. In that report, it was recommended that the FCA consider the impact of CMC threats of legal action against the Ombudsman Service where CMCs are unhappy with the decision made. It also recommended that the FCA should take this impact into account when developing conduct rules for CMCs. We also received feedback on the wording of our rule which applies when CMCs consider whether there is a good arguable base for the claim, and that it is neither fraudulent, frivolous or vexatious.

Our response

We will implement most of our proposals unchanged. We continue to monitor the behaviour of banks and other financial institutions in our ongoing supervisory work. We expect third parties to co-operate fully with valid requests for information from CMCs. Where CMCs act

on behalf of customers we expect third parties to deal with CMCs in the same way that they would deal with a customer. We welcome any information where this is not happening.

It is important that customers continue to have access to justice, whilst also ensuring that public body resources are used prudently. In response to the Richard Lloyd report, we are including guidance that CMCs should take account of relevant guidance published by the Ombudsman Service or other relevant statutory bodies, as well as any decisions addressed to a customer they have acted for. CMCs should do this as part of establishing whether the claim has a good arguable base. This should help ensure CMCs do not threaten the Ombudsman Service with legal action if a decision is made which they are unhappy with but which is in line with previous guidance or decisions made by the Ombudsman Service.

Using third-party lead generators

Our proposals

- 3.6** We proposed that CMCs should do due diligence on any lead generator they accept leads from. To comply with these requirements, CMCs should check that the lead generator is authorised and has processes to make sure they are getting leads in line with relevant data protection legislation and the Privacy and Electronic Communications Regulations 2003 (PECR). We proposed that CMCs must not use a lead generator if the CMC is not satisfied about their systems and processes. CMCs would also need to keep a record of lead sources.

Feedback received

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

- 3.7** All respondents but one supported our proposals. Several respondents, though supportive, asked us to clarify the steps CMCs should undertake to ensure that they have carried out sufficient due diligence.
- 3.8** Some respondents considered that the proposed rules did not go far enough. They proposed that a CMC that obtains leads should be made responsible for the lead generator's actions.
- 3.9** Other respondents also said that CMCs should have to tell a potential customer where they got the lead from.

Our response

We will proceed with our general approach as outlined in CP18/15, but will include additional suggestions about the kind of enquiries that CMCs should make when accepting leads. We received requests from some CMCs for extra information and clarification in responses to the CP and



at our roadshow events. The CMR has issued guidance on this topic, some of which we have now replicated.

We are proceeding with our proposal that CMCs should keep a record of the source of any leads and clarifying that this would also include leads as a result of a referral or data about claims or potential claimants.

We note the request to make CMCs responsible for the actions of the lead generator from whom they acquire business. We do not intend to make CMCs directly responsible for the actions of a lead generator. CMCs must carry out enough due diligence to make sure that the lead generators, from whom they acquire referrals, leads or data, comply with PECR and data protection legislation. We have added some guidance to this requirement to clarify our expectations with regard to CMCs ensuring the lead generator has obtained the relevant consent.

Under the privacy and electronic communications legislation⁶ a CMC will be responsible for the actions of the lead generator where the lead generator is acting on the CMC's behalf. We do not expect the location of a lead generator to change the due diligence the CMC is required to undertake. If a lead generator is based abroad and a CMC is unable to satisfy itself that the lead generator has the appropriate systems and controls in place to ensure compliance with PECR and data protection legislation, that lead generator should not be used.

Recording calls

Our proposals

3.10 We proposed that CMCs will have to record all calls with customers and keep the 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 customer's decision to no longer pursue the claim or to withdraw the claim
- the conclusion of any related ongoing legal proceedings
- the conclusion of the handling of any complaint made by the customer to or about the CMC

3.11 These requirements would apply to all CMCs, including those who don't enter into a contract with a customer. It would mean CMCs keep a recording of a sales call to a customer for 12 months, including where a lead isn't generated, if there was no further contact with a customer. If a customer makes a complaint in the 12 months following

⁶ For example, under Regulations 19, 21 and 22

a call, the CMC would need to keep the recording for 12 months after the investigation of the complaint by either the CMC or an ombudsman service had concluded.

3.12 CMCs would not have to record calls with third parties (eg financial services providers).

Feedback received

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 above?**

3.13 Feedback on these proposals was broadly positive. Most respondents who answered this question agreed that CMCs should be required to record all calls. A typical comment was that it helps tackle cold calling and CMCs threatening vulnerable consumers.

3.14 Some disagreed with the proposals, mainly due to cost and some felt that a written record would be enough. Some respondents were concerned about how this requirement could interact with the General Data Protection Regulation 2018 (GDPR). Smaller firms were worried about how they could meet these requirements. However, at our roundtables we found that some small firms were already recording calls. They said it wasn't an overly burdensome requirement and it had significant benefits.

3.15 Feedback on the time needed to hold recordings was also supportive. A large majority felt that call recordings should be kept for a year, and in some cases, more. Those who disagreed mainly did so based on cost and highlighted that if a case lasted for 5 years some calls would need to be kept for 6 years. Some also felt that any requirements here should also apply to other firms that we regulate and some felt that CMCs in sectors such as employment or housing disrepair should be exempt from the requirement.

3.16 Some lead generator CMCs asked whether the call would need to be kept until the conclusion of the claim by the firm they passed the claim onto.

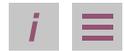
Our response

We think the benefits of call recording outweigh the costs and have not amended our approach.

We also think that we need specific requirements for this sector compared to other sectors that we regulate. CMCs carry out a large amount of business by telephone and we have seen aggressive sales and marketing techniques in this sector. These requirements also had strong support from consumer bodies.

Costs of call recording

In response to the feedback received, we checked the cost assumptions we used in the CBA. We also asked CMCs who raised concerns about the costs of our proposals to support their concerns with evidence. The responses did not suggest our cost estimates were incorrect. It is



important to note that our CBA broke down the costs between CMCs with a turnover of above £1 million and those below. This means that a firm with a turnover of much less than £1 million will probably face lower costs than the average CMC set out in the CBA.

We considered the 'per line' cost of recording calls for those CMCs who currently do this. For a CMC with a turnover of under £1 million the average costs are £300 for the installation of a line, £487 a year on recording and £259 a year on storage. We also know of products where the cost per line includes keeping the call recording for 25 years.

GDPR

FCA rules have the status of 'legal obligations' under GDPR. We and the ICO consider that our call recording requirements are consistent with the GDPR requirements.

CMCs who act as lead generators

If a CMC passes a claim onto a third party and has no further contact with the customer they will need to keep the relevant calls. This could be for a year after their final contact with the customer, or a year after a customer's complaint about the CMC has been resolved, whichever is later.

If CMCs acting as lead generators have no further contact with the customer and there has been no complaint about the lead generator they do not need to keep the call for a year after the claim is concluded by the third party.

Employment and housing disrepair CMCs

We have considered the value of recording calls in these sectors to see if we should amend our requirements. Although CMCs make fewer marketing calls in the employment sector, the CMR felt there is considerable value in recording calls, especially as poor record keeping can be an issue for CMCs in the employment sector. The CMR also highlighted that a large number of CMCs in the housing disrepair sector are lead generators and we believe call recording would also be helpful in this sector.

Marketing by CMCs

Our proposals

3.17 All CMCs that we regulate will be subject to our rules on financial promotions. These include rules to make sure materials are clear, fair and not misleading. We also proposed that:

- where any marketing includes reference to the cost of the claim being on a 'no win, no fee' basis the CMC should also set out details of their fee
- any marketing will also have to show, where relevant, that there are statutory ombudsman or compensation schemes that the customer could use for free

Feedback received

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

3.18 Most respondents broadly supported our proposals on marketing by CMCs.

Financial promotions mentioning 'no win, no fee' and similar terms

3.19 Some lead generator respondents asked if they would have to comply with the 'no win, no fee' rule, while others stated that they would not be able to confirm what the fee of the firm that handled the claim would be. Some respondents said that it would be complicated to comply with the rule, or that the rule created an uneven playing field with CMCs that do not mention they charge on a 'no win, no fee' basis.

3.20 One respondent said that the requirement to include any termination fee that may be charged in the financial promotion is unfair compared to what is required of other firms we regulate and so is discriminatory for CMCs.

3.21 Some respondents asked whether a free PPI check would need to meet the financial promotion requirements.

Claims that may be referred to a statutory ombudsman or compensation scheme and can be made by the customer for free

3.22 Most respondents were supportive of this proposal. Some respondents were unsure if lead generators had to comply with the requirement to show these options and others asked whether the alternative options had to be set out in all scenarios.

3.23 Those disagreeing with the proposal said that customers should already know that they can claim for free. They stated the requirement to set this out was punitive as no other FCA regulated sector had similar rules. A couple of respondents questioned whether there was evidence of consumer harm caused by not signposting to free alternatives.

3.24 Others suggested that limited character space in social media marketing would make it difficult to comply with the information disclosure rules. Some respondents also said this would cause problems with radio advertising due to the cost of airtime.

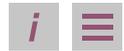
Marketing styles

3.25 Respondents outlined various marketing styles and asked us to consider implementing rules to prohibit CMCs from advertising in those ways.

Our response

Financial promotions mentioning 'no win, no fee' and similar terms

Although some respondents opposed the rule because they felt it was complicated to comply with and could create an unlevel playing field, they did not provide any detail on the difficulties they would experience. Other firms we regulate do not use wording such as 'no win, no fee' or similar terms so we consider it reasonable to have specific requirements for CMCs in relation to this statement. We believe that requiring CMCs that use 'no win, no fee' in their advertising to outline their fees provides important information to customers to help them make an informed decision as to whether or not to use the CMC. In any event, CMCs can choose whether or not to use this type of marketing and whether



they will be captured by the specific requirements in relation to this statement.

We acknowledge that some lead generators may not know the exact fee that the customer will pay where claim details are forwarded on to a third party. So, we are clarifying the requirements for lead generators who use the term 'no win, no fee', but do not know the actual fee. We will require lead generators to set out an indication of the fee or fees which customers may be charged for their claim. Lead generators can do this by either setting out the typical fee or a range of fees which customers may pay. We also set out guidance on this rule. Where the lead generator sets out the range of fees, this should include the highest and the lowest fee which may become payable. To comply with this rule, lead generator CMCs will need to know the potential fees charged by the third parties they pass on claim details to. If they do not know the potential fees they should not advertise as 'no win, no fee'. So that customers are not misled, we are clarifying that the lowest fee presented in the range should not be quoted unless the lead generator passes on a reasonable proportion of its customers to the firm which charges that fee.

We maintain that CMCs must include details of a termination fee in financial promotions that use the term 'no win, no fee' or similar. This reduces the risk of a potential customer not realising they may still have to pay a termination fee if they decide to end the claim after the expiry of the cooling off period. We do not consider the rule to be discriminatory. We apply rules that further our operational objectives to address the harms in the sectors we regulate. We consider this requirement is a proportionate way of reducing the potential for customer harm.

We are also making the requirements for disclosing termination fees the same for lead generators and CMCs that handle the claim. We require that, if the lead generator does not know what the termination fee is, they include a statement highlighting that the customer may need to pay a termination fee if they withdraw from the claim before it concludes.

The activity of carrying out a free PPI check is a regulated claims management activity. As a result, both CMCs that handle claims and lead generators will have to meet our general rules on financial promotions. This includes the requirement to set out that the customer is not required to use the services of the CMC to make a claim and can present the claim themselves for free, should a statutory ombudsman or compensation scheme exist.

We do not consider a free PPI check in itself to be similar wording to a 'no win, no fee' service. However, if the free check advert links to such a service it is likely to be captured by this rule. When deciding this, we will consider whether the customer may reasonably believe they are using the services of a CMC who operates on a 'no win, no fee' basis. If CMCs are unsure of whether their marketing has similar wording to 'no win, no fee', the cautious approach would be to include the fees the customer will have to pay.

Claims that may be referred to a statutory ombudsman or compensation scheme which the customer could make for free

We are implementing our rule as proposed.

We proposed this rule as responses to our Financial Lives Survey confirmed that 35% of UK adults who had made a mis-sold financial services or financial products claim did not know that they could have done so without using a CMC. This proposal was intended to provide potential customers with information to make an informed decision about whether they wanted to use a CMC. This approach is consistent with how we regulate firms in other sectors. We require debt management companies, for example, to inform customers that there are free alternatives to the advice they offer.

CMCs, including those that are solely lead generators, will be required to state that the customer can use a statutory ombudsman or compensation scheme in a financial promotion only where these bodies or schemes can be used for the sort of claim the financial promotion relates to. Where they can be used, CMCs, including lead generators, must also make clear that the customer does not have to use the services of the CMC to make their claim and that customers can make the claim themselves for free. For instance, where a financial promotion involves a personal injury claim, and there is no relevant statutory ombudsman or compensation scheme, the rule that the financial promotion makes clear that the customer can make the claim themselves for free will not apply.

We require that communications with customers, including financial promotions, must be clear, fair and not misleading. In line with this requirement we have clarified our rules to make clear that when a CMC identifies itself in a financial promotion or communication, it identifies itself as a CMC.

We have previously provided guidance on using social media for financial promotions. CMCs can refer to this guidance when considering our general approach to using social media in financial promotions. It is important that customers receive relevant information, such as which statutory ombudsman or compensation scheme is available to their type of claim, at the point the financial promotion is made. This is so they can make an informed decision as to whether to use a CMC or take the claim forward themselves. We will implement the disclosure requirements as consulted on equally to various mediums of advertising, including where broadcasting on radio.



Marketing styles

Respondents raised concerns about marketing styles they had seen. We set these out below for clarification in a non-exhaustive list. We consider such marketing styles are unlikely to meet the requirement for CMCs' communication to be fair, clear and not-misleading. In some cases, such marketing styles may also conflict with the firm's requirement to act with integrity:

- guaranteed pay-out or misleading high percentage success rates, particularly where these may affect vulnerable people
 - customer testimonials used in marketing which suggest a specific outcome rather than a typical outcome
 - using images and/ or names of public figures without their consent
 - CMCs holding themselves out as having been instructed by another regulated firm when they have not been
 - CMCs implying they have had information supplied to them by regulated firms when they have not
-

Pre-contract disclosure

Our proposals

One page summary document

- 3.26** We proposed that CMCs must provide additional pre-contractual information before entering into a contract with a customer. The main disclosure requirements included a standardised fee illustration or estimate, details of any relevant statutory ombudsman or compensation scheme, a summary of the service the CMC will provide and the customer's right to cancel or terminate the contract.

Additional pre-contractual information

- 3.27** We proposed that CMCs must provide additional pre-contractual information before entering into a contract with customers. This includes, but is not limited to, the terms and conditions of the contract, details of any referral fee paid to a third party for the introduction of the claim and an outline of the CMC's complaints procedure.

Finding out if there are other ways a customer can pursue the claim

- 3.28** We proposed to carry over the existing CMR Client Specific Rule 10. This requires CMCs to make reasonable enquiries into alternative options available to the customer to pursue the claim, such as whether the customer has some form of legal expenses insurance.

Reasonable steps to ensure customers understand the contract

- 3.29** We proposed to carry over Client Specific Rule 14. This requires CMCs to take additional steps to ensure that the customer understands the contract they are agreeing to. We supplemented this rule with proposed guidance to direct CMCs to take further steps when dealing with vulnerable customers.

Fee illustration

- 3.30** So that potential customers could understand and compare the CMC fees they may have to pay, we proposed a standard approach to calculating 'typical examples' to illustrate fees. We proposed that CMC fees would be illustrated for redress values of £1,000, £3,000, and £10,000 and be inclusive of VAT. We also proposed that CMCs promptly update customers with a reasonable estimate of the fee that will be charged once it has enough information to do so.

Lead generator disclosure requirements

- 3.31** For CMCs that are lead generators, we proposed that these firms prominently state when communicating with customers that they receive a fee for introducing the customer to a third party.

Feedback received

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

- 3.32** Feedback on these proposals was generally supportive. Most respondents broadly agreed with the package of pre-contract disclosure proposals because it enables customers to make an informed decision.
- 3.33** Some had concerns about the feasibility of some of the disclosure requirements being contained on a single page. Some respondents suggested that the FCA or a trade body should create templates for the CMC sector.
- 3.34** Some firms also said that for certain claims, such as pension and investment, the requirement to set out fees based on compensation amounts of £1,000, £3,000, and £10,000 were too low. Some respondents pointed to the Financial Services Compensation Scheme (FSCS) limit of £50,000 being more realistic. Others said that providing higher figures would create unreasonable customer expectations of likely compensation amounts. Feedback also highlighted the potential for customer harm if it is not clear whether the CMC fee is based on the gross or net amount of the customer's compensation award.
- 3.35** Some respondents didn't agree with telling customers they can pursue a claim themselves for free, although others felt this was sensible and mirrored what they did already.
- 3.36** Some respondents asked for clarity about how we expected them to comply with our proposals for firms to find out whether the customer already has an alternative means in place to fund the claim.
- 3.37** One respondent suggested that CMCs should be prevented from charging a fee they have not disclosed. Another proposed that we should prohibit CMCs from charging fees based on a percentage of a set-off or reduction on an outstanding balance where no cash payment was made. Another suggested that CMCs should do due diligence to establish whether the customer is bankrupt before they offer any contract, as fees cannot be deducted from the award in these cases.
- 3.38** One respondent asked us to clarify whether the requirement for disclosure of fees paid to a third party includes marketing costs paid to marketing agencies for advertisements undertaken using the CMC's brand name, as opposed to the 'traditional' lead generation model.



- 3.39** We also spoke to the Legal Ombudsman Service (LeO) about common complaints they received and the key information they thought should be provided to customers.

Our response

One page summary document

It is important that customers can easily digest information. We have considered feedback on the challenge of including all information requirements on a single page. In response, we are requiring the single page summary CMCs provide to contain a high-level summary only of the services they offer, as opposed to more detailed information. In response to comments received by LeO, we are also requiring that CMCs include concise details of how they will keep the customer updated on their claim's progress and to set out what steps the customer will be expected to take. CMCs that are not entering into a contract with a customer, such as many lead generators, will not have to provide a one page summary document.

Templates

In response to requests for templates of the one page summary, trade bodies may wish to work with their members to develop a template which meets the information requirements and in particular, Principle 7.

Fee illustration

We have re-assessed the average claim size in pension and investment claims. We analysed our Complaints Data Analysis in 2017 H2 and data from the Ombudsman Service. The evidence from these sources did not show that average redress figures for pension and investment claims fell outside the originally proposed standardised figures of £1,000, £3,000 and £10,000. Based on the evidence available, the desire for fee illustrations to be presented in a consistent manner and the wide agreement to the original proposals, we will be proceeding with our rules as consulted on.

We acknowledge that there are CMCs that handle claims that generate redress amounts in higher brackets. We proposed that we would require CMCs to state that the fee illustration is not an estimate of the amount likely to be recovered for the customer and to update customers on fee estimates when they have sufficient information to do so. This will enable the CMC to give the customer more accurate fee information. We give more detail on this requirement in our response to the on-going disclosure requirements.

We are also requiring that CMCs entering into a contract with the customer clarify in their pre-contract disclosure whether they will charge the fee based on the gross or net amount of the compensation award. CMCs are not required to include this in the one page summary document.

Finding out if there are other ways a customer can pursue the claim

We are clarifying what we expect from CMCs when complying with the proposed rule requiring them to find out whether there are other ways

a customer can make their claim. We expect CMCs to ask the customer if they are aware of, for example, any insurance policy such as legal expenses cover, that relates to the claim. CMCs will not be required to contact third parties, such as insurers, to find out this information. We have made minor amendments to our rules to reflect this.

Undisclosed upfront costs

Before a CMC charges a customer for a cost it has not disclosed – and which the customer therefore did not have the chance to agree to – the CMC must obtain and record the customer's consent. We have reflected this in our finalised rules.

Outstanding liabilities

We will require the CMC to carry out due diligence to establish whether the customer has an outstanding liability which the compensation may be used to pay towards. CMCs must check this with the customer before the customer signs the contract. In these cases, the CMC must tell the customer that they will still have to pay the CMC fee if the redress is used to off-set an outstanding liability.

We consider that where the customer pursues a claim that has the effect of reducing a liability owed, there may be some value to this pursuit and so it would be legitimate for a CMC to charge a fee. We are requiring CMCs to make the customer aware of the possibility that the customer might not receive any redress directly from their claim, as it will be offset against the liability, and would therefore still have to pay the CMC fee from their own funds. This would help customers make a fully informed decision about whether to engage the services of a CMC.

In complying with this rule, we remind CMCs of their responsibility to ensure that any communication with the customer is clear, fair and not misleading. This information needs to be set out in the pre-contractual information provided to the customer. The CMC must check this with a third party when submitting an information request. They should also update the customer if such an outstanding liability is identified as this is in line with the ongoing disclosure requirements set out below.

Bankruptcy and similar arrangements

We are also requiring CMCs to perform due diligence to understand if the customer is bankrupt or has an IVA or similar arrangement. One way of complying with this requirement is to ask the customer. We are also requiring the CMC to record the customer's response to this question. The CMC will need to do this before the customer signs the contract. Should the CMC choose to offer its services in this case, we require them to tell the prospective customer that they will still have to pay the CMC fee from their own funds if the redress is used to pay creditors.

Disclosing fees paid to third parties

We have carried across Client Specific Rule 11 from the existing regulatory regime for CMCs on fees paid to third parties that need to be disclosed. All fees disclosed under the existing regime will still need to be disclosed under the new regime.



Ongoing disclosure requirements

Our proposals

- 3.40** We proposed that, once the claim has begun, CMCs must update the customer about any material developments. We set out proposed guidance on what might be considered a material development.
- 3.41** We proposed that CMCs must notify their customers on becoming aware of a cost which had not already been disclosed but which the customer must meet.
- 3.42** We proposed that where a CMC has not offered a fixed fee, or where the likely fee differs from the fee illustration, it should update the customer about the fees for handling the claim once it has enough information to do so.
- 3.43** We proposed that the CMC should send the customer an itemised bill and provide a clear explanation of how the fee had been calculated. We proposed that firms must not deduct their fee from the compensation amount unless they have received the customer's consent to do so.
- 3.44** Where the claim is rejected by the respondent, we proposed that the CMC must tell the customer of the available methods by which the customer may continue to pursue their claim and whether there is a statutory ombudsman or compensation scheme they can use. We also proposed that where the CMC becomes aware of an alternative dispute resolution scheme that the respondent is subject to, that the CMC must inform the customer that they can present the claim to that alternative dispute resolution scheme.
- 3.45** When providing its services, we proposed a requirement for CMCs to forward on information intended for relevant parties promptly and within at most 10 working days.

Feedback received

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

- 3.46** Most respondents agreed with our proposals. A small number asked us to clarify what would be captured under 'material developments'. Some said that the requirement to update the customer every 6 months was not frequent enough, with most of these respondents suggesting that updating customers every 3 months was a better timeframe.
- 3.47** A respondent suggested that CMCs should be prevented from charging a fee it has not already disclosed.
- 3.48** A small number of respondents commented on the proposal to provide the customer with a revised fee estimate. While most of these comments focused on clarifying when the revised fee update should be provided, only a few respondents expressed difficulty in providing a revised fee estimate. Some respondents highlighted that in providing a revised fee estimate, customers might be led to expect a higher compensation amount than they would actually receive. We also received comments stating that providing updates, such as revised fees, is crucial to the good conduct of a claim.
- 3.49** Some respondents requested that CMCs be required to tell the customer about offers of settlement whether financial or non-financial and the full amount of compensation. It was also suggested that CMCs should not be allowed to deduct their fee from the compensation amount, although some respondents expressed the alternative view, supporting deductions as a way of making payment.

- 3.50** Another suggested that CMCs should notify their customer as soon as the CMC receives any allegation of fraud about their customer.

Our response

We are making some minor amendments and clarifications to our proposed rules.

Keeping customers informed

Our rules require CMCs to tell customers of material developments in the progress of the claim. We proposed guidance in CMCOB to give examples of what we considered would be captured under this requirement. We received feedback requests to clarify further what a material development is. As a result, we will be expanding this guidance to include any offer of settlement, even where the settlement offered was not the desired result of making that claim (e.g. because it is a non-financial offer). We have also included examples, such as where a statutory ombudsman decision has been received. We remind CMCs that the guidance set out in CMCOB is not an exhaustive list of material developments.

It is important that customers are kept informed of the steps which CMCs plan to take in relation to presenting and pursuing the claim. CMCs will be required to update the customer on any steps that were not outlined to the customer prior to the agreement commencing. This can include referring the claim to a statutory ombudsman or commencing legal proceedings.

CMCs will also be required to notify the customer of any significant step the CMC intends to take to progress the claim where six months has passed since the CMC last notified the customer of that step. The CMC must also obtain customer consent within 6 months prior to taking that significant step. We consider a significant step to be an action such as referring the claim to a third party, such as an ombudsman, or commencing legal action. We have provided guidance to clarify this. CMCs may obtain customer consent over the telephone or in a durable medium.

It is also important that customers agree to a cost before they are asked for payment. We are making our expectations clear by introducing a rule that requires CMCs to obtain and record customer consent before invoicing the customer for a cost which was not previously disclosed. CMCs will be required to obtain customer consent either over the telephone or in a durable medium.

We are requiring CMCs to ask the person against whom the claim is to be made, whether the customer has any outstanding liabilities which the compensation may be used to offset. This should be done at the first opportunity the CMC has, for example when sending an LoA or an initial information request. Where the respondent confirms this is the case, we are requiring the CMC to promptly inform the customer of this. The CMC must also inform the customer that any compensation secured in respect of that claim may be used to reduce the outstanding liability and



that the customer will still have to pay the CMC's fee themselves. These new requirements complement the requirement under pre-contract disclosure where CMCs must ask the customer if they are aware of any outstanding liability which the compensation might be used to reduce.

Deducting fees

Our finalised rules do not ban CMCs from deducting their fee from the compensation amount. We understand that this arrangement may be helpful to some customers who have said they want their compensation to be handled in this way. In our consultation we proposed to require CMCs to get customer consent before they deduct the CMC fee from the compensation award. We will implement this rule as consulted on.

Frequency of updates

We have considered how often CMCs need to update customers under CMCOB 6. This includes updates on material developments as well as passing on information. Taken together, we consider these requirements will mean customers receive updates more often than once every 6 months. However, we recognise that when a claim is, for example, being heard in a tribunal or referred to an ombudsman, material developments may not happen as frequently. We provide guidance to CMCs on how to manage customers' expectations for example, CMCs may wish to tell customers that updates may not be as frequent while the claim is not within its control. This may be, for example, because a third party that is not expected to provide an update for a significant period of time is dealing with the claim. In these cases, CMCs should also consider telling the customer that they can contact the CMC at any point to discuss the claim if they want to.

Revised fee estimate

We will proceed with implementing the rule that requires a CMC to provide customers with a revised fee estimate once it has enough information to do so. In response to feedback, we have added guidance to illustrate when CMCs will be expected to provide this. This is particularly relevant for CMCs dealing with claims that will have a higher value than the figures in the fee illustration, e.g. pension or investment claims, and we have added guidance to make this clear.

We recognise that the full amount of compensation due may not be known, especially in some pension cases, until the end of the claims process. However, CMCs should consider carefully whether they have enough information to give the customer a better indication of the likely fee based on the CMC's experience of similar claims. We would not expect this to result in CMCs overstating the likely compensation amount in order to attract customers.

When calculating a revised fee estimate CMCs should take into account any interest and investment income that is likely to be payable to the customer by the respondent. We have clarified this in the guidance. We have also made a minor adjustment by providing guidance suggesting that CMCs may include a disclaimer when they are providing the revised fee update and should communicate any assumptions on which their revised fee estimate is based. The disclaimer would explain that the

figure given might change and may not represent the actual amount the customer will get. This will help better manage customer expectations about the likely compensation they might get and the fee they might have to pay.

Allegations of fraud

If a CMC becomes aware of an allegation that the customer has committed fraud, that information must be forwarded on to the customer promptly. We have updated our rules on CMCs notifying customers to include this to avoid any uncertainty. We would also expect the firm to tell the customer of the consequences of making a fraudulent claim.

Collecting Fees

Our proposals

- 3.51** We proposed a requirement for CMCs to give customers a clear explanation of their fees and charges by giving them an itemised bill when requesting payment. Our rules also required CMCs not to deduct their fees from compensation awards without the customer's consent.
- 3.52** We also proposed to require that CMCs develop and implement clear and effective policies and procedures for dealing with customers who cannot pay fees and charges. Our proposals also required CMCs to focus on customers that the CMC reasonably believes are vulnerable. We reminded CMCs that they may be carrying out a credit-related regulated activity if they allow the customer to enter into an instalment plan or an extended period of time to pay fees and charges. CMCs will need to make sure they have the appropriate permission for this.

Feedback received

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

- 3.53** Most respondents agreed with our proposals. Some respondents argued that it was better to require banks or FCA-regulated firms to pay the CMC fee directly to the CMC and the remaining compensation to the customer. There were also a couple of requests for us to clarify what qualified a customer as 'in arrears'.
- 3.54** Many respondents agreed that CMCs should implement clear, effective and appropriate policies and procedures for customers who are in arrears, and who may therefore be vulnerable customers.
- 3.55** There were also calls for fee caps on personal injury claims.



Our response

We will be implementing our rules on explaining and collecting fees as consulted on, with the following amendment.

One suggestion was that CMCs should inform customers of the full compensation amount being offered. In our original proposal, we required CMCs to explain in their itemised bill how they had calculated their fees and charges. We are amending the rule so that when providing the itemised bill which shows their fee and charges calculation, CMCs also include the full compensation amount being offered, or recovered, for the customer.

We have not seen evidence of harm resulting from FCA regulated firms paying the customer directly, so we have not introduced rules to require CMCs to be paid directly.

In CP18/15 we proposed that CMCs should have clear, effective and appropriate policies and procedures for dealing with customers in arrears. We consider this phrase to capture customers who were unable to meet the CMC fee payment once it has fallen due. To ensure these customers are treated fairly we have changed some of the guidance in the relevant section of CMCOB to rules, to make clear our expectations for CMCs.

The Government has imposed on us a duty to implement a fee cap for financial services claims, and we will consult on that fee cap in due course. We will also consider whether we need to implement a fee cap in other sectors, including for personal injury claims.

4 Supervision and reporting

- 4.1** In this chapter, we summarise the feedback we received on our proposed rules for supervision of CMCs. This includes CMCs' obligations to report key information, events and changes to us both on a regular and one-off basis.

Application of SUP rules and guidance to CMCs

Our proposals

- 4.2** In CP18/15, we proposed to apply the relevant sections of our supervision manual (SUP) to CMCs. We proposed to require CMCs to tell us about significant changes in their business, and to report key data to us every year.

Feedback received

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

- 4.3** Almost all respondents supported our proposals.
- 4.4** One respondent wanted us to highlight how SUP 2 rules mean that CMCs that outsource work to other companies (including lead generators) must take reasonable steps to ensure that the outsourced suppliers are open and cooperative with the FCA's information gathering work.

Our response

We will introduce our proposals as consulted on. SUP 2 rules will apply to authorised CMCs who outsource work to different organisations. This includes lead generators working on behalf of CMCs.

Event-driven notifications that apply to CMCs

Our proposals

- 4.5** We proposed to apply our notification requirements to CMCs. We also proposed a specific requirement in CMCOB that CMCs are required to inform us if they find out that a lead generator is operating as a CMC without the appropriate authorisation.

Feedback received

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

- 4.6** Almost all respondents supported our proposals.



- 4.7** A few respondents suggested that the new notification should go beyond requiring CMCs to tell us about unauthorised activity to include notifications of illegal behaviour by other CMCs, the ability to report suspicious individual or firm activity and data breaches.
- 4.8** Some respondents asked whether we required changes in control under the SUP rules. If not, they proposed that these notifications should be required. One respondent suggested CMCs should notify us of changes in control before they happen.
- 4.9** A small number of respondents wanted us to clarify how and whether to report personal data breaches to us and the division of responsibilities between us and the ICO.

Our response

We will introduce our proposals as planned.

Further notification requirements

As set out in CP18/15, whistleblowing mechanisms for individuals and firms will be available to CMCs as they are for other FCA-regulated firms. CMCs are required to notify us of any civil, criminal or disciplinary proceedings brought against the firm. Additionally, Principle 11 states that 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 we would reasonably expect to be told. We welcome intelligence about illegal or suspicious behaviour by other CMCs.

Controllers and close links

Controllers and information about those with close links to the CMC will be collected from CMCs and assessed at the point of authorisation. Regulated firms are also obliged to notify us of proposed or actual changes in control⁷. A CMC should notify us when a person has decided to acquire, increase, reduce or cease control of its business. For the CMC to fail to do so would be a breach of FCA rules. It is also a criminal offence for controllers to fail to notify a change in control, or to acquire or increase control before receiving our approval for the transaction.

HM Treasury has exempted persons who decide to acquire, increase, reduce or cease to have control over certain non-Directive firms⁸.

Most CMCs will only need to notify a change in shares or voting power of 20% or more, or where the change will enable the controller to exercise significant influence over the management of the firm⁹. CMCs should satisfy themselves as to which rules apply to them¹⁰.

⁷ See SUP 11.4 in the Handbook for further information.

⁸ A non-Directive firm is one that has its head office or registered office in the UK and is not; a bank; investment firm authorised under MIFID; UCITS management company; or Solvency II firm.

⁹ See SUP 11.3.2A(3).

¹⁰ See SUP 11.1.1 and 11.1.2

Data breaches

A breach of GDPR could potentially mean a firm is breaching FCA rules on adequate systems and controls as per the SYSC Handbook module. As part of the obligations under SYSC, firms should establish, maintain and improve appropriate technology and cyber resilience systems and controls. If data systems are breached we expect a notification to be provided to us under Principle 11. We may consult with the ICO when considering our response to such a notification.

Ongoing reporting requirements

Our proposals

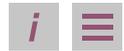
- 4.10** In CP18/15, we proposed to introduce a set of specific reporting requirements to clarify our expectations under the overarching obligations of Principle 11. The proposals aimed to set out clearly the information we required from CMCs to ensure we could monitor the industry and supervise effectively.

Feedback received

Q15: **Do you have any comments on the reporting requirements set out in this CP and 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 proposals for the FCA to impose an administration fee on CMCs for late data submissions?**

- 4.11** Most respondents accepted the data requirements. Some made suggestions on further data that we might want to collect. Almost all respondents agreed that we should collect an administration fee from CMCs if they were late in submitting data.
- 4.12** Some suggested that we should collect data more frequently than we proposed. One respondent disagreed with our proposals and stated that we are collecting too much data.
- 4.13** Many respondents had suggestions on the administration fee that we proposed to introduce to CMCs. Among these were requests that we should consider:
- extenuating circumstances (such as an FCA IT failure)
 - highlighting potential enforcement action
 - increasing the fee depending on how late the data was submitted
 - introducing a formal appeals process
 - that smaller CMCs should not have to pay an administrative fee



Our response

We are proceeding with our proposals largely as consulted upon. However, we do intend to make some minor changes as set out below.

Additional reporting requirements

We have included an additional question on form CM001. This asks CMCs to confirm for how many customers they held client money for a period of longer than 5 business days. We do not believe it is proportionate to further increase our annual reporting requirements. This does not prevent us making ad hoc data requests from firms if we consider this is necessary to supervise the market effectively.

More frequent data collection

There is a wide range in size and type of firms covered by our CMC rules and guidance. As such, we feel the most appropriate frequency of reporting the data in SUP and the Dispute Resolution: Complaints sourcebook (DISP) is yearly. So, we will not change these proposals as set out in CP18/15.

Proportional reporting requirements

We considered our data collection and still think all the questions are valuable and necessary to allow effective supervision of CMCs. So we will keep the level of reporting requirements we proposed in CP18/15.

Submission method

We will provide information on how to submit regulatory data before any submissions are due. Our preferred way for CMCs providing us with notifications is for them to use the CONNECT system.

Clarification on client money question in form CMC001

Question 31 of form CMC001 should include clients whose money has been sent out by cheque and is uncleared or unbanked. Cheques are counted as client money until they are cleared in the client's account. We have changed our reporting requirements to ask an additional question in CMC001 in relation to where client money has been held for more than 5 days, excluding where a cheque or other payable order has been made, but not banked. This data will help our supervision of CMCs handling of client money.

Complaints reporting for firms undertaking lead-generation activities

The only complaints that lead generators should report are those which directly relate to their services providing or collecting leads. We have altered the complaint form's guidance to reflect this and make it clearer to CMCs.

Administration fee

We are implementing the proposals on the administration fee as consulted on. It applies to every firm we regulate and we see no reason that this should not be extended on the same terms to CMCs. There is already flexibility in the process to give relief from the payment of the administration fee. If we think the payment of any fee would be unfair, we may reduce or remit all or part of the fee the CMC would have to pay.

5 Prudential standards & wind-down procedures

5.1 In this chapter, we summarise the feedback we received on our proposals to apply prudential standards to CMCs and our response to this feedback.

Our key proposals

5.2 We proposed that all CMCs will need to have sufficient financial resources to meet their liabilities, which is reflected in a general solvency requirement.

General solvency requirement

5.3 We classified CMCs into 2 groups based upon their annual reported turnover in the year ending on their Account Referencing Date (ARD):

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

Prudential resources requirement

5.4 We proposed that all CMCs, apart from those that are solely lead generators, would be required to 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 requirement

5.5 We proposed that this requirement will apply from 1 August 2019.

5.6 We also proposed that 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 and hold client money. CMCs that hold client money would need to comply with this requirement from 1 August 2019.

5.7 We proposed the existing professional indemnity insurance (PII) requirements for CMCs that represent customers in personal injury claims would remain.

Wind-down procedures

5.8 We proposed that CMCs that decide not to carry on claims management activity, or are stopping operations (whether voluntarily or involuntarily) would be required to carry out specific wind-down procedures. This included applying the wind-down planning guidance which sets out key steps firms should consider.



- 5.9** For CMCs that are not lead generators, we proposed that within 20 business days of it being decided that they will stop claims management activities, they must:
- tell their customers that they will cease to trade and where relevant, explain the next steps the client could take
 - tell each third party involved in the claim that the CMC will cease to trade and where relevant, provide the name of the CMC who will take over the claim if they know this
- 5.10** We proposed that these CMCs must:
- return a copy of all information and documents relating to the claim to the customer within 40 business days, where the claim is open or ongoing
 - tell the customer if it passes details of the customer's claim to a third party, such as another CMC, to progress it
- 5.11** We proposed that any lead generator that has told a customer that it intends to pass on a lead to someone who will help with a claim, but has not done so, must tell the customers this.

Feedback received

Q17: Do you agree with our proposal to apply bespoke prudential standards to CMCs, other than lead generators, and to separate these CMCs into 2 groups for the purposes of applying prudential requirements?

- 5.12** Over half of the respondents agreed with the proposal. Others disagreed with all or part of the proposals.
- 5.13** A few respondents thought the proposals were not wide enough and should include CMCs that are lead generators. One of these respondents thought that 2 tiers would not be enough to cover the different types of firms and suggested having a class for micro-companies and sole-traders. Another said that the threshold for Class 1 should be reduced to £500k, with a minimum requirement of £20k, and Class 2 firms should have a minimum requirement of £10k.
- 5.14** One respondent was concerned that it was smaller CMCs who could do the most harm to customers and that all CMCs should have the same requirements. Some respondents also suggested that the CMC business model was too different from those in other regulated sectors to be subject to similar prudential regulation.

Our response

We have considered the feedback and decided to implement the proposals as planned. Based on our assessment of CMCs' financial soundness, and our findings from last year's survey of CMCs, our package of proposals for the prudential standards provide a set of requirements that we think adequately address the harms we have identified.

Our approach to firms that we prudentially regulate is to focus upon the customer harms they could cause and potential market disruption. A sudden exit from the market by a firm could result in harm to customers since there would be a disruption to customer claims.

CMCs need to have enough capital resources to withstand unexpected shocks to their finances. Not having enough capital could result in a sudden exit from the market. If a firm exits the market, having this resource can help to make sure that it happens in an orderly way with minimal harm to customers.

By linking the prudential resources requirement to overheads expenditure, we have effectively created multiple tiers as a CMC's prudential resources requirement adjusts in accordance with their overheads expenditure. Therefore, the prudential resources requirement captures the different types of firms based on the consumer harm that could materialise if they face unexpected shocks to their finances or if they wind-down in a disorderly manner.

For the application of the prudential standards, we decided to separate CMCs into 2 groups based on annual income so that a CMC with an annual income below £1 million and relatively small overheads expenditure would have a lower capital requirement to reflect the lesser consumer harm that could occur.

Feedback received

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 achieving an orderly wind-down?

- 5.15** Most respondents broadly agreed with the proposals – although a few thought they did not go far enough. One respondent thought that the proposals were the minimum that should be required while another suggested that the fixed overhead requirement should be based on 6 months of fixed overheads. Some respondents also suggested that the proposals did not require an adequate amount of capital to be held.
- 5.16** One respondent suggested that the requirement should be based on a percentage of income, rather than fixed overheads. Another was concerned that we should not rely on the forecast amount of fixed overheads for new applicants, and that £5,000 should be the only requirement for the first year that a firm operated.
- 5.17** Of the respondents that disagreed, one thought that all the requirements were too high. Another thought that a 'one size fits all' approach would not work for the diverse size and business models of CMCs. One thought that CMCs that charged an 'up-front fee' did not need to have a fixed minimum requirement as the fee would cover any work that needed to be done during wind-down. Most of the others were concerned about what constituted a fixed overhead and did not think that advertising, marketing and staff costs should be included. One respondent thought that the fixed overheads requirement was too high and suggested having to hold the equivalent of one sixth of the rolling last 6 months' overheads. They were also concerned about what could be included or had to be deducted to calculate the amount of capital that a firm had.



- 5.18** One respondent suggested that if certain costs were to be excluded in the calculation of a firm's overheads expenditure, they would support extending the overheads requirement from 2 to 3 months of the firm's overheads expenditure. The respondent argued that during wind-down these costs, such as advertising expenditure, would not be incurred and so should be removed from a firm's overheads expenditure. Two respondents suggested basing the requirement on a more current indicator of activity levels giving the volume of transactions through the client account as an example.
- 5.19** One respondent thought that CMCs' business models were unlike any other sector, with a lot of upfront costs. They felt these would probably change once the PPI deadline was reached as these costs would be significantly reduced. They also thought that the potential for consumer harm was reduced as the lender would correspond directly with the client, rather than through the CMC.

Our response

Our intention is to introduce a prudential requirement that would move in step with a firm's size, risk profile and complexity of operations. This would mean that the amount of capital resources required would change according to the harm to customers that could be caused if a CMC was in financial distress or voluntarily or involuntarily wound-down. CMCs that do not have enough capital to absorb unexpected shocks to their finances are a significant risk to customers, as they find it difficult to remain solvent. We used survey and financial statement data in deciding the appropriate level of the prudential resources requirement.

We have decided that we will retain the proposed fixed minimum amounts of £10,000 for Class 1 CMCs and £5,000 for Class 2 CMCs. We consider that these represent the appropriate minimum amounts of eligible capital required to minimise harm to customers should a CMC suffer unexpected shocks to their finances. These amounts will also ensure that if a CMC exits the market it does so in an orderly way. We have concluded that the fixed minimum amounts of £10,000 for Class 1 CMCs and £5,000 for Class 2 CMCs represent the minimum level of capital required to address the consumer harm that we have identified in the sector.

We have looked at alternative suggestions for the risk-based element of the prudential requirement and whether they would align with our objective for this. We do not believe that alternative proposals would perform any better than the fixed overheads requirement in fully addressing the prudential risks effectively. So we will implement the risk-based element of the prudential resources requirement, calculated according to overheads expenditure, as planned.

Later in this chapter, we address the situation that may arise where a change in a CMC's business activities leads to a fall of more than 20% in their overheads expenditure as measured over a six-month period.

Marketing expenditure

Some respondents suggested that marketing expenditure is a major part of many CMCs' expenditure, and they would no longer incur this cost if they were winding-down. Respondents felt it should be excluded from overheads expenditure when calculating their fixed overheads requirement. Although not specifically raised by respondents, this would imply that marketing expenditure could be viewed as discretionary and so classified as 'other variable expenditure' when deciding the amount of overheads expenditure used to arrive at the fixed overheads requirement.

Marketing expenditure includes:

- advertising or public relations fees and expenses
- financial promotion expenses
- salaries of staff that are exclusively attached to the marketing function
- market research and customer surveys
- publications including printed promotional material such as brochures and leaflets and the firm's annual report and accounts
- sponsorships
- gifts to customers

It is not clear what the exact proportion of marketing expenditure that should be considered discretionary is. It depends upon several factors, many of which are unique to each CMC. In some cases, contractual arrangements dictate marketing expenditure in the near term and firms cannot terminate these arrangements at short notice.

Marketing expenditure is an important driver of revenue generation for CMCs, and so CMCs might be reluctant to reduce it. This could speed up a disorderly wind-down if revenue falls significantly or if it hinders the CMC's ability to emerge from a period of financial distress with a viable business plan.

However, we do recognise that sometimes a proportion of marketing expenditure could be discretionary. Despite its importance in revenue generation, it is possible that CMCs would reduce marketing expenditure in the event of wind-down. So we recognise that some types of marketing expenditure can be discretionary. We will reflect this by allowing firms to deduct 20% of total marketing expenditure from their total expenditure when they determine their overheads requirement.



Specific requirements for CMCs that hold client money

Feedback received

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

- 5.20** Most respondents to this question broadly supported the proposals. Of those who agreed, some did not think that there should be a flat rate but suggested having tiered rates based on the amount of client money held, the size of the CMC, turnover, or using a percentage of the amount of client money held. A small number of respondents felt £20,000 was inadequate.
- 5.21** Of those who disagreed, one thought that there should not be a 'one size fits all' approach and another thought it was disproportionate for micro-companies and sole traders. One respondent thought it was not clear how we arrived at the additional requirement for holding client money. Another suggested that it should be set at 50% of the average claim pay-out from the FSCS. One respondent said that client money should be held in a separate client trust account so that it would be protected in the event of wind-down.

Our response

We will proceed with our proposals as consulted on. If a firm fails, holding client money is likely to complicate insolvency proceedings. An insolvency practitioner (IP) would have to spend additional time dealing with returning the money or transferring it to another firm. It is difficult to say how much this would cost, given that each case will have many variables and specific factors. For example, the time the IP needs would vary according to the amount of money, state of the firm's records and complexity of the firm's activities. We think that the additional capital resources amount of £20,000 does provide an appropriate contribution to resolving the client money a firm holds.

We did consider using a metric to tier the amount of additional capital resources based on the amount of client money held or other alternatives such as annual income. To align the incentives of directors and shareholders with those of clients so appropriate care is taken with the client money and to provide additional consumer protection in the actual event of an insolvency, we believe that tiering the client money requirement would be disproportionate. This would apply higher capital requirements for firms that would already be expected to hold more capital, worked out as a proportion of their overheads expenditure. It would also penalise firms that are not necessarily more likely to cause consumer harm.

When the prudential resources requirement will apply

Feedback received

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

- 5.22** Most respondents broadly agreed with our proposals. One asked how we would deal with applications for authorisation if the rules did not apply until later. A few respondents thought that CMCs should have to meet the requirement as soon as the FCA becomes the regulator – 1 April 2019. One respondent was concerned that the requirements were not appropriate for micro-companies and sole-traders but otherwise agreed with the proposed date. One respondent said they agreed if we amended the requirements.
- 5.23** Most of the respondents who disagreed said that the overall requirements were not appropriate and so they could not agree to the implementation date. A small number of respondents thought that CMCs should have to meet the requirements from a later date. Two of these noted the PPI deadline was also in August and that some firms may change their business model because of this, meaning that their capital requirements would change.

Our response

We will continue with the proposals set out in CP15/18, and the prudential resources requirement will apply from 1 August 2019. Many CMCs have no experience of prudential standards and it is right to give them extra time to adapt to them.

Keeping the prudential requirement date

We examined the capital positions of CMCs and assessed their ability to build up additional capital resources. This analysis showed us that firms need more time to get enough relevant capital to meet their prudential resources requirement.

However, delaying the application date beyond 1 August 2019 is unnecessary and potentially bad for customers. Our concern is that some CMCs may choose to wind-down shortly after the PPI deadline of 29 August 2019. This will affect customers and so CMCs must comply with the prudential resources requirement before the PPI deadline.

Another issue is that a CMC could change the type of business activities they carry out because of the PPI deadline. This could significantly change how much they spend on overheads. Respondents suggested that CMCs in this position should be able to adjust their capital resources to reflect the lower fixed overheads requirement, as there has been a significant reduction in the firm's overheads expenditure.

Calculating the fixed overheads requirement

Our approach for calculating the fixed overheads requirement is called a 'subtractive' approach. This means that we deduct variable cost items (items whose cost increases or decreases according to activity levels) from the total expenditure to arrive at the value for overheads



expenditure. We recognise that if a firm's business activities change, then this could change the profile of their overheads expenditure, reducing the potential harm to customers or the market. If a business reduces its spending on a higher risk activity, the risk reduces. We accept that if this happens, it should be reflected in a lower prudential resources requirement.

We will consider a change in business activities is significant and material if there has been at least a 20% reduction in actual overheads expenditure, over a 6 month period since the fixed overheads requirement was last updated. When this happens, to determine the fixed overheads requirement, we will allow CMCs to amend their overheads expenditure, used in the calculation, by basing it on a multiple of the last 6 months' unaudited overheads expenditure.

Professional indemnity insurance

Feedback received

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?

5.24 All the respondents broadly agreed with keeping PII for CMCs dealing with personal injury claims. Of these, the majority thought the requirement should also be extended to all CMCs. A few thought it should be extended to employment claims only, and one thought it should be extended to timeshare claims, if that becomes regulated. One respondent thought that CMCs should not be allowed to use PII against regulatory penalties.

Our response

We considered extending the PII requirement to all CMCs but decided that this was not necessary. The justification for requiring CMCs that represent customers in personal injury claims to hold PII insurance is based on the nature of personal injury claims. The most common type of claim in a personal injury case is professional negligence. In professional negligence cases, claimants must begin legal action within a 3-year time limit. In these cases, if a CMC represents a claimant but makes mistakes that could jeopardise a claimant's right to compensation, a CMC may face a civil liability claim. In these cases, additional protection from PII would be helpful to pay redress. This underlying reasoning cannot be translated across to CMCs that represent consumers in other claim sectors.

Extending the PII requirements to all CMCs would mean higher insurance costs. Without an appropriate justification, including evidence to show a gap that would not be filled by our other prudential (and conduct)

requirements, we believe it would be disproportionate to extend the scope of PII insurance cover to all CMCs.

In our CP18/15, we recognised the value of PII in managing risk through loss control and the benefits from risk transfer. We would support firms that choose to voluntarily buy this insurance protection even where it is not a requirement.

We consider that our PII proposals are in line with our approach to concentrate on the harm to consumers and markets that could be caused when a CMC cannot absorb unexpected shocks to their finances or exits the market suddenly. We will be proceeding with our proposals to keep the PII requirements for CMCs that represent customers in personal injury claims but not to extend these requirements to all CMCs.

Feedback received

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?

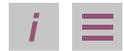
- 5.25** Most respondents to this question broadly agreed with our proposal. A small number of these respondents agreed with our proposals as long as we did not lessen the proposed prudential requirements. A small number of others wanted these requirements to be extended to all CMCs.
- 5.26** Two respondents disagreed as they thought the minimum level of cover should be increased. One suggested an aggregate limit of indemnity of £1m, the other thought it should be £2m to bring it in line with Solicitors Regulation Authority (SRA) requirements.

Our response

There was little support for applying different minimum policy terms for the PII policy to those set out in the Compensation (Claims Management Services) (Amendment) Regulations 2008.

However, we acknowledge there are concerns that the minimum PII policy terms include relatively low limits of indemnity. These may not be enough to cover the third party liabilities from a CMC's professional negligence, wrongful acts, errors and omissions when they represent customers in personal injury claims. We do not have any evidence to support the view that our minimum terms are inadequate.

We will keep the minimum terms for the PII policy under review to ensure that the PII requirements continue to adequately address the professional and civil liabilities that could arise from CMC activities.



Status of actionable damages in relation to prudential rules

FSMA allows individuals to take court action for damages where they have suffered loss resulting from a breach of an FCA rule. However, the FCA has the power to provide that individuals cannot claim damages in relation to particular rules. In the rules we consulted on, we proposed that the fair, clear and not misleading rules in CMCOB should not provide the basis for customers to claim damages provided that certain conditions were met. In line with the approach taken for other types of firm, we have added prudential rules in CMCOB 7 (with the exception of the rules on professional requirements) to the list of rules customers cannot claim damages for if they were breached. This list is set out in a new schedule in the rules under CMCOB.

Wind-down procedures

Feedback received

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

- 5.27** We received mixed responses to this question. Most respondents either agreed with having wind-down procedures in place or did not raise any concerns with the proposals. The main issues they raised were about the length of time a CMC has to tell its customers that it will cease its claims management activities, and the issue of phoenixing when claims are transferred to another CMC.
- 5.28** One respondent suggested that the 40-day timeframe should be extended to 60 days. Other respondents suggested the timescales should be shorter, pointing out the risk of critical deadlines in the claims process being missed or the CMC closing down before it has complied with the requirements. They argued the proposals should go further and require that the CMC's notification to customers should include details of imminent deadlines.
- 5.29** Respondents also had concerns that a CMC might transfer the claim to another CMC it has close ties to, enabling 'phoenixing'. They called for specific monitoring where CMCs recommend another CMC, as well as prohibiting CMCs from unilaterally transferring the claim to another CMC without the customer agreeing before it was transferred.

Our response

We consider that the rules and guidance in other areas of our Handbook will reinforce our proposed rules to ensure an orderly wind-down takes place. As a result, we will implement these proposed rules in full.

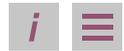
We have considered respondents' concerns about the timescales for sending the customer notification, and we think our proposals are adequate. We expect CMCs to still comply with other areas of the Handbook while they are winding down until they have cancelled their authorisation. This includes complying with the rule to inform customers of material developments in their claim. This will make sure that the

customer is kept informed of important deadlines, even while the CMC is winding down.

As discussed earlier in this chapter, we have prudential requirements in place which mean CMCs have resources to wind-down in an orderly manner. We see no need to shorten the timeframes in which CMCs have to notify customers or return customer files to reduce the risk that they would close before complying with these requirements.

We addressed more broadly how we will tackle the practice of phoenixing in CP18/15. These measures will still apply when we begin to regulate CMCs.

Transferring a claim to another CMC can provide the customer with a seamless claims experience. We do not want to ban CMCs from transferring a claim to another company if this is in the customer's best interest. However, we remind CMCs that they will also be expected to comply with the Principles for Businesses while winding down. Where a CMC recommends another company to the customer, it will also have to explain any connection it has with the CMC it is recommending, in order to comply with the principle of client communication being fair, clear and not misleading. Where CMCs recommend a claim, we require them to manage any conflicts of interest fairly between themselves and their client.



6 Client money

- 6.1** In this chapter, we summarise the feedback we received on our proposals for CMCs holding client money and our response.

General responses to the proposals

- 6.2** Most respondents supported our proposals, while some suggested amendments or challenged aspects of the proposals. Some respondents made general suggestions about adjusting CMC client money requirements depending on the size of the firm.

Our response

We have decided to keep one set of rules for CMCs based on our overall understanding of the market and the size and nature of firms involved.

Client Asset (CASS) oversight officer

Our proposals

- 6.3** We proposed that CMCs appoint a person to be responsible for overseeing a CMC's client money operations, reporting to the CMC's governing body and completing client money-related aspects of regulatory returns.

Feedback received

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

- 6.4** Most respondents agreed with the proposal. A few gave responses which either did not address whether CMCs should have a CASS oversight officer or saying that CMCs should not hold client money or should not need to hold client money. Other respondents suggested that only CMCs that hold above a certain threshold of client money should have a CASS oversight officer.

Our response

We will take forward the rules as proposed in CP18/15. We do not believe that holding a small amount of client money justifies removing the need for a CASS oversight officer. All CMCs holding client money have specific responsibilities. It is important to have one person with oversight of a firm's client money, ensuring there is a clear and consistent approach. Without a CASS oversight officer, there is a risk that responsibilities are split between different areas or that the focus on meeting CASS responsibilities is watered down.

Segregation of client money

Our proposals

- 6.5** We proposed that CMCs 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 title, receive and hold client money as trustee on the terms of a statutory trust set out in CASS 13 and pay a customer any interest earned on their client money. We also proposed that CMCs pay out all client money as soon as possible.

Feedback received

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

- 6.6** Most respondents agreed with our proposals. One respondent who agreed proposed that holding money for longer than 7 days should be reportable to the FCA. A small number of respondents disagreed with the proposal to pay money to clients as soon as reasonably possible, proposing time periods between 5 and 10 days. One of these respondents felt that the risks did not justify reconciliations being carried out more than monthly. Some other respondents thought that the requirement was to pay money to clients within 2 days of receipt and had various concerns including the time it takes for cheques to clear and the need to collect client payment details.
- 6.7** The remaining responses included a request for clarification of how to treat payments on account and one to broaden the definition of client money to include upfront fees taken before the ban on them came into effect. One respondent asked what a CMC should do if it cannot contact the customer to make a payment.

Our response

The requirement in CP18/15 was to pay money for damages, compensation or settlement of a claim recovered for a customer as soon as reasonably possible after receiving it and to take steps to do so within 2 business days. We did not propose a strict requirement for CMCs to pay this money to clients within 2 days. As some respondents pointed out, this may not be possible if, for example, money is received as a cheque, given the time it takes for the cheque to clear. CMCs should make sure that they do not use one client's money to pay another and that their systems and controls should ensure this. CMCs should make every effort to contact customers to pay money due to them, even if this is difficult. CMCs must continue to hold the money as client money until returned.

We understand that CMCs may take a payment on account for expected work. This should be protected as client money, until it is due and payable to the CMC.



We want CMCs to pass monies on to clients promptly and will take forward these rules as proposed. We have included a CASS transitional provision in our final rules to make clear that the FCA's client money rules apply to existing client money which was held or received by CMCs immediately before they obtained their temporary permission or Part 4A permission.

Statutory trusts in the event of lapse of permission

- 6.8** CASS 13.3.1R provides that any client money held or received by a CMC is held by the firm as a trustee under a statutory trust. The statutory trust is intended to protect the money received or held by the firm on behalf of its customers from loss, including on the failure of the firm. Such a statutory trust created by CASS 13 is not intended to come to an end in the event that a CMC's temporary permission or its Part 4A permission ceases. This means that where a CMC's temporary or Part 4A permission ceases, the CMC continues, after that point, to be a trustee under the statutory trust in respect of any client money it held immediately before its temporary or Part 4A permission ceased. This could also impact on the CMCs wind-down planning arrangements which are referenced in Chapter 5.

Record keeping

Our proposals

- 6.9** We proposed requirements on record keeping, reconciliations and dealing with excess or shortfalls on a client bank account and notification requirements. The main requirement we proposed was that CMCs should keep the records and accounts they need to allow them at any time and without delay to distinguish client money held for one customer from that held for another, and from their own money.

Feedback received

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?

- 6.10** Most respondents agreed with the proposals. Those that disagreed generally focused on our proposal of daily reconciliations which they saw as too frequent. They suggested these were made between every 5 and 10 days. Some said they felt longer timescales were appropriate as daily reconciliations would create a significant burden for a small benefit. One felt that it would not stop theft. Some said that other proposals, such as the requirement for a CASS oversight officer, meant that less frequent than daily reconciliations were justified. Another respondent pointed out that there are different frequencies for reconciliations for other types of firms holding client money.

Our response

We are implementing the proposals as consulted on. We recognise that our proposals included some additional elements to the current regime, such as the CASS oversight officer. However, these proposals do not reduce the need for CMCs to have accurate books and records, and reconciliations are a key way to ensure this. We agree that reconciliations will not prevent someone from wilfully committing fraud, but in a strong control environment they can allow fraud to be detected earlier.

When considering the frequency of reconciliations, we drew experience from a wide range of firms as the burden of conducting daily reconciliations matches the scale, nature and complexity of CMC business. For a simple business with a small number of transactions, this is likely to be relatively resource-light. For a highly complex business with very frequent transactions, the exercise will require more resource. The more frequent the transactions, the greater the possibility for errors. Mistakes can happen for many reasons, not necessarily originating with the CMC itself. For example, counterparties making unexpected payments that need to be identified, clients paying incorrect fees etc. Some firms have told us that dealing with these matters is usually easier when they happen so we think that conducting reconciliations daily as proposed is not overly burdensome, and likely to ensure more protection for clients.

Daily reconciliations make sure that if a CMC fails, an IP tasked with resolving the failed CMC will have a more recent record of transactions to help. The longer the time between the most recent reconciliation and a CMC's failure, the more difficult, time consuming and expensive it is for the IP to reconstitute the records and return money to clients.

If a CMC has few staff able to carry out these functions, it should plan for this work to be done when these staff are available. Firms need to have adequate arrangements to safeguard client money and should have suitable contingency plans in place.

External audit

Our proposals

- 6.11** We proposed that CMCs subject to the client money rules must appoint an auditor to produce a report on client assets. This report should set out the auditor's opinion on whether or not the CMC has complied with the CMC client money rules. The auditor must produce the report, rather than the CMC, and CMCs must cooperate with the auditor and provide them with relevant information.

Feedback received

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



- 6.12** Most respondents agreed with our proposals. Two respondents suggested that smaller CMCs should be exempt from the requirement. One respondent suggested that the 4-month deadline for submission to the FCA was too strict and should be 6 months instead. Another respondent requested guidance on what to do with untraceable money.

Our response

We will proceed with our approach as consulted on. We do not agree that smaller CMCs should be exempt from the external audit requirement. The auditor's report on client money is one of our key supervisory tools and we review all reports. Making sure firms protect client money is one of our priorities. This is an external check and balance on the CMC's compliance in an area where there is the potential for harm to customers. It is also an opportunity for firms to find potential improvements. Even if a CMC is small and handles only a few cases involving client money, there is still a risk of harm for its customers.

The deadline for submission of 4 months is in line with other sectors and ensures that information is not too out of date when we get it.

We have not included specific rules on untraceable clients. CMCs should make every effort to return money to clients and continue to protect this money until they are able to do so.

Money due to the CMC, distributing client money if a firm fails and overall proposals

Our proposals

- 6.13** In CP18/15 we set out our expectation that CMCs should remove any money they are owed from a client bank account because it does not need to be treated as client money. We also set out our proposals for a failed CMC to return client money on a pro-rata basis.

Feedback received

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

- 6.14** Most respondents agreed with our proposals. A few other respondents asked us to clarify 'pro-rata' payments to clients in our proposals for returning client money if a CMC fails. One respondent disagreed with the pro-rata approach and suggested instead a 'first in, first out' approach. One respondent opposed the proposals for being too burdensome.

Our response

We proposed pro-rata distribution of funds to customers in the case of insolvency of a CMC because not all client money may be left. For example, a CMC may not have segregated client money in a client bank account and it could be in the CMC's bank account instead. The cost of returning client money to the customers of a failed CMC can be paid out of the client money the CMC holds. We feel the fairest way to deal with these losses, in line with other industries under CASS, is that clients bear any losses in proportion to what the CMC owes them.

Additional rules and guidance

Feedback received

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?

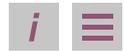
- 6.15** Most respondents suggested additional rules or guidance that were not CASS-related. We have dealt with these under the relevant sections of this PS.
- 6.16** Of responses that do involve CASS rules, one suggested that we should be notified of any breaches within 24 hours. Another suggestion, also in response to question 28, was that CMCs should have a CASS resolution pack modelled on CASS 10. One respondent asked us to clarify whether we would conduct an audit of a failed CMC's client account before funds were returned to customers. Two respondents suggested we introduce specific rules about payments from accounts, including deducting fees and payments to third parties.

Our response

Firms should report breaches to us promptly when they discover them so that we can decide if we need to take any action. We won't introduce a CASS resolution pack at this time, but will keep the rules under review.

If a CMC fails, they will appoint an IP. To distribute any client money held by the CMC, the IP will need to complete a reconciliation of the accounts to identify which clients are due any money. This will not be done by us.

CMCs should deduct fees from a client bank account immediately. This is because once these fees are due and payable to the CMC, this money is no longer client money and should not be held in a client bank account. Carrying out reconciliations should help firms ensure they deduct fees promptly. They must remove any money that is not client money from a client bank account.



7 Dispute Resolution

7.1 In this chapter, we summarise the feedback we received on our proposals to apply our complaints-handling rules and guidance, as set out in DISP, to all CMCs we regulate. These are the rules that cover how CMCs should handle customer complaints and when complaints can be referred to the Ombudsman Service. We are making changes to the Ombudsman Service compulsory jurisdiction. The Ombudsman Service is mirroring those changes to its voluntary jurisdiction. So this chapter is issued jointly by the FCA and the Ombudsman Service.

Our proposals

7.2 We proposed that complaints about authorised CMCs should come under the compulsory jurisdiction of the Ombudsman Service.

Feedback received

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?

7.3 Most respondents supported our proposal, saying it would give customers the necessary opportunity for redress.

7.4 A few respondents raised concerns about the body that will deal with customer complaints about CMCs being the same body that deals with customers' claims brought by CMCs. These respondents felt that this could affect the Ombudsman Service's view of them and may prejudice the Ombudsman Service's decision-making.

7.5 Other concerns raised by respondents included how the Ombudsman Service intends to undertake the additional workload of complaints against CMCs, and asked whether the Ombudsman Service would have the capacity and capability to manage this.

7.6 A few respondents asked us to clarify how the complaints forwarding requirements and the complaints reporting requirements in DISP interact. They also asked whether there might be privacy issues when forwarding on complaints.

Our response

We are implementing our proposals on DISP as consulted on. Below we give our response to the issues raised.

Potential for conflicts of interest at the Ombudsman Service

The Ombudsman Service publishes its policy on conflicts of interest on its website. It will be updating this before its compulsory jurisdiction is expanded to include complaints against CMCs in April 2019 to ensure that it continues to be adequate for the Ombudsman Service to carry out its functions. It is worth noting that the Ombudsman Service already considers complaints against businesses and organisations which represent consumers on complaints. For example, it considers

complaints against both not-for-profit debt advice agencies and independent financial advisers. Richard Lloyd's recent independent review of the Ombudsman Service found no evidence of "institutional bias". As part of the Ombudsman Service's normal plan and budget consultation later this year, it will provide an update on its transfer arrangements and proposed operating structure.

The capacity and capability of the Ombudsman Service

The Ombudsman Service has assured the FCA that it has both the capability and the capacity to take on the additional workload of complaints against CMCs. It already considers many hundreds of thousands of complaints every year on a wide range of consumer problems, and has also informed the FCA it will be recruiting additional staff.

Complaints forwarding

If a CMC is satisfied that another firm or CMC is solely or jointly responsible for the matter being complained about, the CMC may forward the complaint, or the relevant part of it, in writing to the other firm or CMC. The forwarding CMC must do this in line with DISP requirements. It must inform the complainant in a final response of why it has done this, and give the complainant the contact details of the other firm or CMC.

The complaints reporting rules make it clear that a CMC must not include a complaint that has been forwarded in its entirety to another respondent under the complaints forwarding rules in its FCA reports. However, where a CMC has only forwarded part of a complaint or where the CMC and another firm may be jointly responsible for a complaint, then it should be reported by both firms.

When forwarding complaints according to the DISP requirements, we expect CMCs to comply with any other legal requirements that apply to them, including for example, requirements under the GDPR.

Feedback received

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

- 7.7** Almost all respondents supported our proposal. A few respondents made additional suggestions and raised some related issues.
- 7.8** One respondent asked what will happen to customer complaints that a CMC is dealing with if its authorisation is cancelled. Another asked how small CMCs should manage complaints made against them when, for example, the only person available to consider a complaint may be the same person whose acts or omissions are being complained about.
- 7.9** One respondent questioned the fairness of the requirement to self-publish complaints data once the threshold of 1,000 complaints in 12 months is met. Another respondent challenged including 'expressions of dissatisfaction' in the definition of a complaint.



7.10 Some respondents asked for clarification on how the complaints record rule and the GDPR requirements interact.

Our response

We are implementing these proposals as consulted on. We set out below our response to the issues raised.

In-progress complaints with the Ombudsman Service or a firm that a CMC has raised on behalf of customers before its authorisation is cancelled

As set out in CP18/15,¹¹ CMCs that are no longer authorised to carry out claims management activity or are going out of business must give customers and third parties specific information and return copies of documents about ongoing claims to customers. This will allow customers to choose a new CMC to continue with their claim or the current CMC can transfer its claims on to a new authorised CMC which will continue to manage the claims on the customer's behalf. These requirements apply to a CMC before it stops operating.

In-progress complaints against a CMC before its authorisation is cancelled

The cancellation of authorisation would not, by itself, affect the Ombudsman Service's jurisdiction over an in-progress complaint against a CMC, but the Ombudsman Service might not progress the complaint unless it obtains consent to do so from the administrator. If a CMC is winding-down and is insolvent, we are unlikely to cancel its authorisation until the wind-down process is completed. However, whether redress is paid out for complaints against a CMC that has stopped its regulated claims management business or is going to close down will depend on the facts in each case and any insolvency process.

Small CMCs managing complaints against them

The DISP rules apply whatever a firm's size, and the complaint would still need to be considered fairly and independently by the CMC. The DISP rules do not stop a firm from outsourcing its complaints handling function.

Self-publication of complaints data

We consulted on requiring CMCs with more than 1000 complaints in a 12-month reporting period to publish a summary of their complaints data. The requirement for CMCs to publish complaints data is a way to ensure that CMCs are transparent about the level of complaints made against them. Many FCA-authorized firms also have to meet this requirement and our view is that CMCs should have to meet the same complaints reporting requirements. We expect this requirement will encourage CMCs to correct problems that have previously caused complaints, to reduce the level of future complaints. Customers and CMCs should both benefit from improved customer satisfaction.

11 Paragraphs 6.22-6.25

As CMCs will come under our jurisdiction, the definition of a complaint in the DISP handbook will apply to CMCs. The definition includes 'any oral or written expression of dissatisfaction'. This is similar to the definition of complaint in the CMR rules that CMCs already understand and apply.

How the complaints record rule and GDPR interact

DISP will require a CMC to keep a record of each complaint received and how it was resolved. It will also require CMCs to keep those records for 3 years from the date they received the complaint. The GDPR has introduced a right for individuals to have their personal data erased. It will be for each firm to decide how it complies with its obligations under DISP and under the GDPR both on an ongoing basis and in the event of an individual exercising its right to have its personal data erased.

Feedback received

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

7.11 Most respondents supported our proposal. Many said that consumers dealing with CMCs not covered by the compulsory jurisdiction might not have access to redress if these CMCs are not given the option to join the voluntary jurisdiction.

Our response

We will implement our proposals unchanged.



8 Enforcement

Our proposals

- 8.1** In CP18/15, we proposed to apply our Enforcement Guide (EG) and our Decision and Procedure and Penalties Manual (DEPP) to CMCs.

Feedback received

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?**

- 8.2** All the responses were broadly positive. Many welcomed the proposals and saw them as a positive step to improve the industry. Some respondents said that these proposals would help provide clarity and ensure enforcement was consistent.
- 8.3** Some additional comments from firms covered issues they wanted us to address or consider more generally. For example, one respondent called for us to prioritise tackling 'nuisance marketing' and to work with the ICO and other stakeholders to implement a joint strategy to tackle it. Some respondents also asked us to work closely with the ICO to avoid unnecessary duplication of regulation. One respondent asked us to consider including free complaint tools offered by some CMCs, which help customers raise and resolve claims themselves, within the scope of regulation. This respondent argued that these tools follow very similar processes to a CMC, although they accepted that this was presently outside the regulatory framework.
- 8.4** Another respondent asked us to clarify the circumstances where we would use our power to suspend a CMC's authorisation, and whether this would allow a firm to collect fees or resolve ongoing complaints.
- 8.5** One respondent called for a robust programme of investigations in the first 3 years to ensure we identified unscrupulous CMCs quickly and regulated them out of the sector. Another urged us to increase the number of unannounced visits and audits of CMCs, looking at those with a track record of non-compliance. We were also asked to make wider use of warrants and seizure powers to get a true picture of CMCs' activities. One respondent said that before acting, we should make sure that we have conducted a full and thorough investigation and give the firm or individual the opportunity to respond to the allegations.
- 8.6** Another respondent proposed that we add an entry to the Financial Services Register when a firm had been subject to any warnings. Others said that we should publish the notice of enforcement action on our website as soon as possible to send a strong message and to deter non-compliant CMCs.

- 8.7** Several respondents said that we should pay attention to those CMCs who do not seek re-authorisation and monitor their activities to ensure that they do not operate as an unregulated CMC and continue their activities without being regulated.

Our response

Having considered the feedback, we will introduce our proposals as consulted on. We will take the same general enforcement approach to claims management activities as we apply to other regulated activities.

Some of the issues raised by respondents will not only involve enforcement. There will be issues that mean we need to use a combination of our powers and functions, including our authorisation and supervision powers. We may also tackle some issues by working with other external stakeholders such as the ICO. We have had a Memorandum of Understanding with the ICO since 2014, and will continue to work with them on cold calling issues.

DEPP 6A gives more information about our powers to impose suspensions or restrictions. As well as the power to suspend a firm from carrying out a specific regulatory activity for a set period of time, we can also put a restriction on a firm. This allows us to require a firm to take, or stop taking, specific actions involving their regulated activities. Both these powers are disciplinary measures we can use as well as, or instead of, imposing a financial penalty or issuing a public censure. When we decide whether to suspend or place a restriction on a firm, one of the factors we will consider is the effect on others, including customers of the firm.

We set out our approach to publicity in chapter 6 of EG. In some circumstances, we can issue a warning notice statement, and decide what information about the firm or individual we will include on the Financial Services Register. The factors we consider when deciding what information to publish about a warning notice include whether publication would be unfair, the fact we have a choice, as opposed to a duty, to publish and that those we send a warning notice to have not had a formal opportunity to make their case yet. This is why we consult those we send warning notices to and have to consider whether any of the grounds in section 391 of FSMA, that prevent us from publication, apply in each case.

We will also monitor to make sure that unauthorised CMC activity is not being carried out by previously authorised firms. We will do this by monitoring different information sources including consumer reports received through our contact centre and online reporting by authorised firms within the CMC sector.



9 Authorisation

- 9.1** In CP18/15 we gave details of our proposed approach to authorising CMCs. We also explained the temporary permission (TP) regime proposed by HM Treasury and the time periods in which CMCs must send us their applications for authorisation. HM Treasury laid a Statutory Instrument (SI) before Parliament, which was made on 28 November 2018. Among other things, the SI introduces the TP regime for CMCs¹².
- 9.2** It is important that all CMCs know what they need to do and when. We give detailed information about this on our website, and summarise it in this chapter.

Temporary Permission

- 9.3** When the FCA's regime begins on 1 April 2019, there will be a period of TP. Qualifying CMCs must register for TP with us between 1 January and 31 March 2019. Once TP begins on 1 April, qualifying CMCs that have registered with us for TP will be able to continue trading. We will send them an invoice for their first year's FCA periodic fee for payment within 14 days of registration.
- 9.4** A CMC that does not register for TP by 31 March 2019 will have to stop carrying on regulated claims management activities or face potential enforcement action through the civil or criminal courts for unlawful activity.
- 9.5** All CMCs with TP will need to apply for authorisation during the application period we have given them, to replace their TP.
- 9.6** We will regulate 2 different groups of activities across 6 claims sectors. CMCs set up,¹³ 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. HM Treasury has provided that there will be one permission for lead-generation activities covering all the sectors, and one permission for each of the 6 claims sectors we will regulate covering the activities of advising a claimant, investigating a claim, and representing a claimant¹⁴. Depending on what activities they undertake, some CMCs will require just one permission and others may require several. This allows us to assess CMCs only against the permissions that they need.
- 9.7** All CMCs will need to demonstrate that they meet minimum standards, known as Threshold Conditions, both at the point we authorise them and on a continuous basis at all times, for each permission that they apply for.
- 9.8** CMCs will need to apply for authorisation by us in the right application period for their businesses. We plan to publish directions that set out 2 application periods:

12 See the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

13 'The territorial scope of the FCA's claims management regime is set out in Article 2 of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.'

14 Diagram 1 in the chapter entitled 'Summary' of this Policy Statement sets out the permissions for each of the claim sectors.

- Application period 1 (between 1 April 2019 and end of May 2019):
 - all financial services CMCs that advise claimants, investigate claims or represent claimants (but not those who are solely lead generators)
 - CMCs being brought into regulation for the first time¹⁵
- application period 2 (between 1 June 2019 until the end of July 2019): all other CMCs¹⁶

9.9 If a CMC does not apply during their allocated application period they will lose their TP and be unable to carry on regulated claims management activities. These CMCs will have 30 days to wind-down their regulated business and will be unable to enter into any new contracts involving regulated claims management activity.

9.10 Firms which are already authorised by the FCA in other sectors will need to apply for a variation of permission rather than make a new application. These firms will still be required to register for TP for their claims management activity and must submit their variation of permission application in the relevant application period. As with other CMCs, a failure to follow this process means the firm would not have TP and couldn't carry on regulated claims management activity after 1 April 2019.

9.11 New CMCs will continue to be able to submit authorisation applications to the CMR until 31 March 2019. If the CMR grants that application before 1 April, the CMC can obtain TP as described above. If the CMR has not made a decision about the application before 1 April, as required by HM Treasury's SI we will treat the application as though it had been made to the FCA, as long as the CMC submits a further form to us and pays the top up fee. We will make this form available online in due course¹⁷.

9.12 CMCs with TP will appear on the FCA Register from 1 April 2019. Once they have been re-authorised this will be reflected in the FCA Register.

9.13 All CMCs with a temporary permission or a full FCA authorisation are required to fully comply with the relevant FCA rules and will be supervised by us from 1 April 2019.

Firms that currently benefit from Part XX FSMA

9.14 The exemption in section 327 (Part XX of FSMA - Provision of Financial Services by Members of the Professions) will not be available for regulated claims management activity in Great Britain¹⁸. Even if a CMC is a member of a professional body, it will not be able to benefit from Part XX exemption for regulated claims management activity, or any other FSMA-regulated activity it carries on if it has permissions to carry on regulated claims management activity. These firms need to get authorisation from the FCA for all of their FSMA-regulated activities plus any authorisation they have obtained from their designated professional body. Firms can continue to rely on the

¹⁵ For example, those operating only in Scotland or dealing exclusively with claims in relation to section 75 of the Consumer Credit Act 1974.

¹⁶ For example, those involved in personal injury or housing disrepair and those that are solely lead generators.

¹⁷ See Article 41(3)-(8) of the SI. Article 41(9) and (10) of the SI provide that where the CMR had approved the grant of an authorisation to an applicant but at the time of the transfer the applicant has not paid the authorisation fee, they are entitled to TP provided they pay the fee to the FCA. Once paid, the CMC will be deemed to have both registered with the FCA for TP and paid any TP fee.

¹⁸ See s. 327(7) FSMA and Article 91(5) of Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.



exemption whilst they have claims management temporary permission and as such can seek authorisation for other FSMA regulated activities at the same time as seeking authorisation for regulated claims management activity.

Firms that are currently FCA Appointed Representatives

- 9.15** CMCs that are exempt from authorisation as they are currently Appointed Representatives (ARs) for activities regulated by the FCA will need to decide how they wish to proceed. There will not be an AR regime for CMC firms and firms cannot be both authorised and exempt at the same time once they exit TP. Further detail is available on our [website](#).

10 FCA Fees Proposals

10.1 This chapter sets out our feedback on the proposals for FCA fees that we published for consultation last August in CP 18/23. We received 27 responses to CP18/23. The chapter covers:

- application fees
- periodic fees
- fee arrangements for temporary permission: payment of 2019/20 periodic fee in advance.

Application fees

Our proposals

10.2 We proposed tiered application fees based on CMCs' turnover:

- CMC turnover up to £1m - £1,200 fee
- CMC turnover above £1m - £10,000 fee

10.3 In line with our standard practice, firms already authorised by the FCA with Part 4A permissions will pay only 50% as a variation of permission (VoP) fee.

Feedback received

CP18/23 Q1: Do you agree with our proposed application fees for authorisation?

10.4 There was some support for the fees but several respondents thought the fee increase from £1,200 to £10,000 for firms with turnover above £1m was too steep. One suggested that it might have a detrimental effect on competition by putting off new market entrants. This respondent would have preferred us to adopt the structure we use for other FSMA fees, which are based on the complexity of the application rather than the size of the CMC. Others suggested more graded tiering above £1m. Some said it was wrong in principle to charge CMCs to reapply after they had already paid to be authorised by the CMR.

Our response

The CMR charged a single fee of £2,000 and we have reduced that to £1,200 for CMCs anticipating turnover up to £1m. We believe this avoids the risk of the fee discouraging market entry. We don't agree that £10,000 should be a deterrent to CMCs expecting turnover above £1m and so we don't accept the need for further tiering. New applicants are normally business start-ups but CMCs are already trading so we think it's reasonable to take account of the incomes of the smaller CMCs.



Periodic fees

Our proposals

- 10.5** We will recover our costs through annual periodic fees. There will be 7 claims management permissions and we proposed to include all of them in a single fee-block rather than setting up separate fee-blocks for different permissions, or for CMCs that limit their activity to a single permission.

Feedback received

CP18/23 Q2: Do you have any comments on our proposal to create a single new fee block for CMCs?

- 10.6** While several respondents strongly supported a single fee-block for CMCs, the balance of opinion was against this proposal. One commented that the single block assumes the same risk for all, regardless of regulatory activity. Categorising CMCs on the activities they conduct would, the respondent considered, bring the cost of regulation down for the FCA and consumers. A few suggested all 7 claims management permissions should be put into separate fee-blocks. Respondents were more concerned that CMCs with permissions which they considered less risky, such as lead generation, should be kept separate from CMCs which had more risky business models. One recommended a two-tier fee-structure based on risk. The permission that includes lead generation (advice, investigation or representation of a PPI claim) would be put in a lower risk, therefore lower cost, fee-block. The remaining 6 permissions would be in the higher risk fee-block where the bulk of the FCA's regulatory activities would be targeted. One of the arguments presented for regarding lead generation as less risky was the lower volume of complaints from customers.

Our response

This question does not apply until 2020/21 onwards. In 2019/20, we will be charging CMCs as they register for temporary permission. From 2020/21 CMCs will be granted specific permissions and put into a separate CMC fee-block.

Once CMCs have successfully been authorised and have obtained their permissions, we do not propose to subdivide the CMC fee-block. We do not agree that lead generation poses less regulatory risk than other claims management activities. Lead generators are usually the first point of contact with customers. They carry out the initial assessment of the claims, their merits and their chances of success, in the course of which they handle large volumes of personal data. They choose the appropriate agencies to pass their clients on to and, critically, they set clients' expectations. So, there is a risk of consumer detriment from lead generation. Complaints may not be a satisfactory indicator in this context, as they are often directed against the CMCs that handled the cases rather than the intermediaries with whom the client may no longer have a relationship.

Many FCA fee-payers have more than one permission and so it is unlikely that all CMCs with a particular permission will be ring-fenced into one fee-block or the other. If we create more than one fee-block, several

CMCs will find themselves paying fees in both, all or some of them. It is our experience that fee-payers benefit from sharing cost recovery with a larger population.

Speculation by some CMCs that creating separate fee-blocks might affect the cost of regulation was misjudged. Fee-blocks are neutral mechanisms for recovering costs and have no impact on the way we regulate.

Our proposals

10.7 We calculate our fees on the basis of a metric known as a 'tariff base.' This is an objective, transparent and simple measure that can be consistently applied across the fee-block for fair distribution of cost recovery. We proposed that the tariff base for CMCs should be the definition of turnover used by the CMR which the firms are already familiar with. Our regulatory remit is slightly broader than the CMR's and so our definition also encompasses:

- all regulated activity in Scotland
- business arising from section 75 of the Consumer Credit Act 1974

Feedback received

CP18/23 Q3: Do you agree that we should base our periodic fees for CMCs on the definition of turnover that they already use when submitting data for fees to their current regulator, including the new activities relating to Scotland and section 75 of the Consumer Credit Act 1974?

10.8 Most respondents supported the continuation of the CMR definition, but some argued for a risk-based tariff applying a 'polluter pays' model. One commented that it was not fair that CMCs with a high turnover will pay the highest fees, even though they might not pose the highest risk.

Our response

We will maintain the definition as consulted on.

We do not base FCA fees on risk assessments because these are open to challenge and lack transparency, since it is often not possible to explain the rationale behind them without violating commercial sensitivity. In addition, assessments may change from year to year, making risk potentially a volatile measure which does not offer certainty to fee-payers. Instead, we use size as a proxy for impact.

Our proposals

10.9 The CMR requires CMCs to report their turnover for the 12 months up to 30 November in the year preceding the relevant fee-year.



Feedback received

CP18/23 Q4: Would you prefer in future to report turnover on the basis of your own financial year, or would you prefer to maintain the current reporting requirement of a year ending 30 November?

- 10.10** Many respondents expressed no preference, some said they wanted to stay with the current arrangement, several said they would find it easier to use their own year end.

Our response

Although respondents did not express strong views, we believe it will be more convenient for CMCs to report their turnover on the basis of their own financial years because they will not have to conduct a separate exercise for fees. This is the model we apply to the great majority of FCA fee-payers. They submit their data within 2 months of the end of the financial year ending during the calendar year preceding the relevant fee year. We will apply this rule from 2020/21 onwards, so that means the fees for CMCs in 2020/21 will be based on their turnover for the financial year ending during 2019.

Our proposals

- 10.11** We proposed a minimum fee of £1,000 on turnover up to £100,000. CMCs with turnover above that threshold would pay £1,000 plus the variable rate per £1,000 on the balance of their income.
- 10.12** Firms authorised for other FCA-regulated activities will have to pay the CMC minimum fee, plus the minimum fee they pay in other fee blocks, because we need to make sure that all firms with permission to undertake claims management work contribute to the set-up costs.

Feedback received

CP18/23 Q5: Do you have any comments on our proposals for periodic fees, including the minimum fee of £1,000?

- 10.13** We received comments on 2 areas:

Minimum fee

- 10.14** The CMR set tiered minimum fees, starting at £200 for CMCs with turnover up to £5,000. Several respondents asked us to return to a similar model, arguing that the increase to £1,000 was disproportionate. Some said the fee might put CMCs out of business or discourage them from entering the claims management market. Others pointed out that when CMCs reported low turnover it was often because they operated in other sectors and registered for claims management only for the occasional times they helped a client with a complaint. These experienced practitioners could be lost to the market. Similar points were made by participants in the regional roadshows we held in October.

Removal of cap on higher fees

- 10.15** The CMR caps the fees of the largest CMCs but there is no cap on FCA fees. We did not consult on this but several respondents considered it unfair. One commented that size

does not necessarily correspond to risk. Another pointed out that a large proportion of the fees would be paid by a small number of CMCs, and their contribution would amount to considerably more than the cost of their own regulation. One commented that the impact would be to treble its own fees, and that it could result in CMCs cutting costs, with potential for consumer detriment.

- 10.16** 2 respondents agreed with our proposal, one asserting that it was the largest CMCs which required the most regulation, the other welcoming it because it would ensure CMCs' fees were proportionate to their size and impact in the market.

Our response

Minimum fees

Our tiered application fee recognises that there can be a case for alleviating the impact of fees on smaller CMCs to avoid barriers to market entry. We also recognise that, with CMCs, we are dealing with firms that are already trading. Unlike start-up businesses, they have not factored our fees structure into their business planning, to help them decide whether to enter this market. If they want to continue trading, CMCs must pay the fees. We note the argument that professionals who are not primarily engaged in claims management might be reluctant to help their clients if they will be out of pocket. We want to avoid potential barriers to market entry.

As a result, we have decided to tier our minimum fees:

- Turnover up to £50,000 - £500
- Turnover up to £100,000 - £1,000

CMCs with turnover above £100,000 will pay £1,000 plus the variable fee.

Removal of cap on higher fees

- 10.17** We don't cap other FCA fees and don't accept the argument that we should make an exception for CMCs. Capping passes costs down the line to the smaller variable fee-payers. For example, if we capped the fee at £500,000 of turnover, applying the rate of £13 per £1,000 on which we consulted, a CMC with turnover of £1m would pay £6,200 in fees, or 0.62% of turnover. A CMC with £500,000 would also pay £6,200, representing 1.24% of turnover. This is not reasonable.

- 10.18** We have learned from experience that, whatever their initial risk profile, the impact of large firms in the event of market failure can be substantial – both on regulation and the repercussions for other firms.

Our proposals

- 10.19** We proposed that CMCs must pay their full periodic fee for 2019/20 when they register for temporary permission. For CMCs with turnover above £100,000, this is the minimum fee of £1,000 plus the variable rate per £1,000 of turnover. CMCs that are authorised during the year will not have to pay any additional periodic fees. From 2020/21 onwards, they will be invoiced for their periodic fees on the same basis as all other fee payers.



10.20 These fees will contribute towards, but not pay off, the cost of constructing the regulatory gateway for temporary permissions and authorisations and the supervisory structure. There have been changes within the claims management industry and we are concerned that a number of CMCs may exit the market without seeking authorisation. It would be unfair for CMCs that take advantage of the regulatory gateway, but leave within the first year, to pass their share of the project costs to those CMCs still authorised by us in the future. We have estimated the total cost of setting up and delivering the new regulatory regime up to 2020/21 at £16.8m. Creating and operating the gateway for temporary permissions represents much of the cost and so we have decided to collect a substantial proportion of our project costs in the first year.

Feedback received

CP18/23 Q6: Do you have any comments on our proposal to charge the 2019/20 periodic fee when CMCs register for temporary permission?

10.21 Most respondents objected to payment in advance, one calling it a 'fractious approach.' Others argued that it would drive CMCs out of the market. Two regarded it as unfair on businesses who did not go on to apply for full authorisation.

10.22 Several respondents agreed that some CMCs would enter temporary permission with no intention of seeking authorisation and so payment in advance was reasonable to avoid costs being passed on to others. One commented that it would be unfair if CMC's which have been the subject of widespread customer complaints leave other businesses to pay their share.

Our response

We are collecting our fees in advance to reduce the level of cost recovery to be carried forward in the future by CMCs which are successfully authorised by us and are therefore compliant with our standards. CMCs which do not intend to remain in the market should not be able to use our gateway without contributing towards our costs.

Separate to the feedback we have received on our fees consultation, some CMCs have questioned the numbers of CMCs that we estimated will register with the FCA in the CBA we published in CP18/15. We have run scenarios for different numbers of CMCs remaining in the market. When we consulted in CP18/23, we said we were aiming to recover around 42% of our set-up costs in 2019/20. This was based on a cautious assumption of 547 CMCs of which 89 were Class 1. We will not be certain of the number of CMCs that will seek to be regulated by the FCA until registration begins.

As we explain in our feedback on the CBA, we have updated our projections of firm numbers to take account of information received after publication of the CP. Consequently, we have revised both our cautious scenario and our core CBA scenario. The updated numbers are set out in the CBA.

Our updated modelling suggests our cost recovery in 2019/20 could be between 48% and 58%. The CMCs which satisfy our threshold conditions and obtain authorisation will have to pay off the remaining balance of the set-up costs from 2020/21 onwards. Having considered the consultation responses, we remain of the view that it would be unfair for a substantial proportion of the project costs to be met solely by those firms that successfully apply for authorisation. In view of that and the continued uncertainty about how many CMCs will remain in the market, we have decided not to adjust our fee rate in the light of the updated numbers; if higher cost recovery were to materialise in 2019/20, it would help to relieve the pressure on those CMCs who obtain full authorisation. For the same reason, we do not propose to refund fees for CMCs that close their business without obtaining authorisation or applying to cancel their temporary permission.

Our proposals

- 10.23** We have calculated the rate for 2019/20 on the basis of the turnover figures up to 30 November 2017 which CMCs submitted to the CMR for their 2018/19 periodic fees. These are the most recent data available to us. On this basis, we proposed a periodic fee of £13 per £1,000 of turnover for 2019/20. This is payable on incomes above £100,000.
- 10.24** To make sure all CMCs are satisfied that our records match the figures they supplied to the CMR, we wrote to them in September 2018, asking them to confirm that the figure is correct and to add any income from Scottish business and activity under section 75 that are not currently regulated by the CMR.

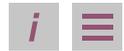
Feedback received

CP18/23 Q7: Do you have any comments on our proposed periodic fee rates and arrangements for recovering 2019/20 fees?

- 10.25** Most respondents considered the £13 fee rate too high and many questioned our cost estimates, saying we had not given sufficient information to judge whether the amounts we were recovering were reasonable. A number reiterated their concern about the removal of the fee cap. Several asserted that our fees might deter CMCs from remaining in the market.
- 10.26** Many objected to basing our fees on their November 2017 figures, arguing that we should use more recent data, especially since that year represented the high point of PPI business, and there had been widespread reductions in income since then.

Our response

As we explained in our consultation paper on our proposals to regulate CMCs (CP18/15), we are setting up an enhanced, new regulatory regime. This requires significant investment and we have to recover our costs. Next year, when we know how many CMCs we will be regulating and how much we have been able to recover through the current exercise, we



will take a view on the period for cost recovery to mitigate costs going forward. We explained that we are removing the fee cap to make sure that the larger CMCs pay their fair share of the costs.

The November 2017 data set is the most recent validated data available so we have to use it. It would have been ideal to use data from November 2018, but that will not be available by the time we start collecting fees in January 2019.

11 Financial Ombudsman Service general levy and case fees for CMCs and the

Financial Services Compensation Scheme

- 11.1** Responsibility for considering complaints about CMCs will transfer from the LeO to the Ombudsman Service. In this chapter, we summarise the feedback we received to our proposals in CP18/23 for recovering the associated transfer costs and the Ombudsman Service's ongoing costs. We also summarise the feedback we received to our proposal not to extend Financial Service Compensation Scheme cover to customers of CMCs at present. The powers to make rules on funding the Ombudsman Service are shared between the FCA and the Ombudsman Service, so this chapter is issued jointly.

Case fees

Our proposals

- 11.2** The Ombudsman Service is responsible for writing the rules about case fees which are then approved by the FCA Board. The Ombudsman Service does not charge a business for the first 25 cases that it deals with. For the 26th and each subsequent complaint, a case fee is charged (in 2018/19 this fee was set at £550). The Ombudsman Service currently expects to charge CMCs the same case fees as other businesses it covers. Ombudsman Service case fees for 2019/20 will be consulted on by the Ombudsman Service in December 2018 as part of the usual plan and budget process.
- 11.3** In CP18/23 we proposed that CMCs should be subject to the same requirements as other businesses covered by the Ombudsman Service regarding case fees. These rules set out penalties for late payment of case fees and enable the Ombudsman Service to refund, reduce or waive case fees in certain limited circumstances.

Feedback received

CP18/23 Q8: Do you agree that CMCs should be subject to the same requirements as other businesses covered by the Financial Ombudsman Service regarding case fees?

- 11.4** Most respondents supported our proposal and thought that CMCs should be subject to the same requirements as other businesses covered by the Ombudsman Service.
- 11.5** Some thought case fees should be linked to turnover or size to make sure smaller businesses were charged proportionate fees. A few said case fees should be adjusted depending on the amount of work the Ombudsman Service had carried out on an individual case. Some respondents suggested there should be reduced case fees



for straightforward complaints concerning fees because the costs of investigation are likely to be minimal. Charging the same fee for all cases could result in CMCs subsidising complaints received from other FCA-authorized firms.

Our response

The decision to transfer responsibility for dealing with all types of complaint about CMCs from the LeO to the Ombudsman Service is a decision which has already been taken by HM Treasury.

Most respondents were supportive of our proposals on fees for the Ombudsman Service so we intend to implement the rules as consulted.

The Ombudsman Service will consider the feedback received to CP18/23 when it consults on case fees as part of its annual plan and budget consultation and will confirm case fees for CMCs and other businesses in March 2019.

Annual fees and levies

Our proposals

11.6 The general levy applies to all businesses covered by the compulsory jurisdiction, and it is raised and collected by the FCA. It is payable across industry blocks and a business will fall into one of more of the industry blocks depending on the business activities it conducts. In CP18/23 we proposed to create a new industry block for all types of business with one or more of the CMC permissions that we consulted on in CP18/15 (including CMCs with only the lead generator permission). The Ombudsman Service estimated that it will need to raise £1.5m to £2.5m by general levy for 2019/20 to cover transfer costs and deal with complaints about CMCs in the 2019/20 financial year. The general levy will be divided between CMCs in the new CMC industry block.

11.7 In CP18/23 we proposed that the tariff base for CMCs will be annual income and the general levy payable by CMCs will be £x per £1,000 of annual income subject to a minimum fee of £50. We estimated that £x would be £2.70 to £4.50. Since we consulted, the Ombudsman Service has revised its estimations and has asked us to collect £2.2m by general levy. Currently, CMCs that have notified us that they do not conduct business with eligible complainants,¹⁹ are exempt from certain rules in DISP and from paying the Ombudsman Service general levy. In CP18/23 we proposed that the same exemption should apply to CMCs.

Feedback received

CP18/23 Q9: Do you have any comments on our proposals to create a new industry block for CMCs in FEES 5 Annex 1R?

CP18/23 Q10: Do you agree that the tariff base for CMCs should be income? If you disagree what alternative approach would you suggest?

CP18/23 Q11: Do you agree that CMCs should be exempt from paying the Financial Ombudsman Service general levy if they do not deal with eligible complainants?

- 11.8** Most respondents supported our proposal to create a new industry block for CMCs. A few respondents thought that a separate industry block with a reduced levy or tariff base should be created for CMCs carrying out activities which had historically generated low numbers of LeO complaints (for example CMCs not involved in complaints about financial services and financial products).
- 11.9** The majority of respondents supported our proposal that the tariff base for CMCs should be income. Those that disagreed thought that the tariff should be risk based and that it should take into account compliance history, the size of the business and the activities carried out by the CMC. One respondent thought that the rates should be identical to those currently charged by the LeO.
- 11.10** Respondents generally supported our proposal that CMCs not dealing with eligible complainants should be exempt from paying the general levy.

Our response

We plan to proceed with the proposals that we consulted on. We do not think that it would be appropriate to create separate industry blocks or tariffs for CMCs that generate fewer complaints. Low numbers of referrals are not necessarily a good indication of a lower risk of consumer harm. For example, an ombudsman scheme may receive a lower number of referrals if a business has not provided appropriate information to customers on how they can escalate their complaint, or if it is dealing with certain types of consumer who are less sophisticated and less likely to escalate their complaint. Developing different industry blocks or tariffs based on numbers of complaints would be costly and difficult to implement and may require revision throughout the financial year.

The general levy is based on the budgeted costs and numbers of staff required to handle complaints in each industry sector. These ongoing fixed costs reflect the extent to which different sectors generate different levels of complaints. The Ombudsman Service sets the case fee at the level necessary to raise the budget not covered by the general levy, which enables the Ombudsman Service to collect additional funds as demand increases.

In 2018/19 approximately 12% of the Ombudsman Service's total revenue was received via the general levy and the rest was received via case fees and group fees. This means that most of the costs of handling complaints are recovered through the case fee, which ensures that the businesses that generate large numbers of referrals are required to make a greater contribution to costs.

Since we consulted, the Ombudsman Service has revised its estimations and has asked us to collect £2.2 m by general levy. The general levy payable by CMCs on 2019/20 will be £3 per £1,000 of annual income subject to a minimum fee of £50. This rate has been



calculated based on the number of firms that we expect to apply for authorisation in the core CBA scenario. The updated numbers are set out in the CBA.

Reporting requirements and joining and leaving the Financial Ombudsman Service

Our proposals

11.11 To enable the Ombudsman Service to calculate its general levy, firms must provide a statement (or a best estimate) of their 'relevant business' for each fee year. In CP18/23 we proposed that CMCs must provide this information by the end of February each year²⁰. If not, it must pay an administrative fee of £250 and the general levy will be calculated using the valuation for the previous period (where available) multiplied by a factor of 1.10.

11.12 We proposed that if a CMC becomes subject to the Ombudsman Service during a financial year it must pay a rateable proportion²¹ of the general levy. If a respondent ceases to be a CMC during a financial year it will remain liable to pay case fees in respect of cases within the jurisdiction of the Ombudsman Service. CMCs that apply for, but do not obtain authorisation will not receive a refund of the amount that they have paid towards the general levy.

Feedback received

CP18/23 Q12: Do you have any comments on our proposed reporting requirements for CMCs?

CP18/23 Q13: Do you agree with our proposals for CMCs that join or leave the Financial Ombudsman Service part way through a financial year?

11.13 Most respondents supported our proposals. A few respondents thought that the general levy should be refunded in full if the FCA refuses a full application.

Our response

We intend to implement the proposals that we consulted on with one amendment. We do not think it would be appropriate to refund the full amount that a CMC has paid towards the general levy if its application for authorisation is not approved, because it is possible that the Ombudsman Service will have incurred costs in dealing with cases during that financial year. Implementing the proposal as consulted on will ensure that requirements are the same for all businesses covered by the Ombudsman Service.

We are introducing a transitional provision that will enable us to use the same data that we will use to calculate FCA fees to calculate the FOS general levy for 2019/20. We intend to use turnover data as at November 2017 already received from the CMR to calculate the

²⁰ or at a date requested by the FCA if the CMC becomes subject to the Ombudsman Service part way through the financial year.
²¹ as specified in the formula set out in FEES 4.2.7ER8.

2019/2020 FOS general levy for CMCs. In September 2018, we wrote to all CMCs registered with the CMR and explained that we intended to use the same data for both FOS and FCA fees and we provided firms with an opportunity to confirm the accuracy of the data or provide revised data. The transitional provision will ensure that we have the relevant data to enable us to invoice CMCs from April 2019.

Financial Services Compensation Scheme

Our proposals

- 11.14** The FSCS is an industry funded scheme of last resort that acts as a compensation safety net for consumers of authorised financial services firms. Currently, customers of CMCs do not have access to FSCS or an equivalent compensation scheme. In CP18/23 we explained that we do not plan to extend FSCS cover to customers of CMCs, but we may review the position in the future if there is evidence of significant consumer harm.

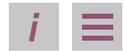
Feedback received

CP18/23 Q14: Do you agree that FSCS cover should not be extended to customers of CMCs?

- 11.15** Most respondents agreed with our proposal. A few respondents suggested that customers of CMCs that handled client money should be protected but noted that we had proposed to review the position at a later date.

Our response

We do not intend to extend FSCS cover to customers of CMCs at present, but we may review the position in the future if there is evidence of significant consumer harm. Our Client Money regime which is set out in detail in chapter 6 introduces new requirements for CMCs holding client money to protect client money and ensure a smooth wind-down if a CMC closes.



12 Feedback to our Cost Benefit Analysis

- 12.1** When we propose rules, we must publish a CBA under Section 138I(2)(a) of FSMA. The CBA must include an analysis and estimate of the costs from, and the benefits delivered by, our proposed rules. We published a CBA for our proposals in June, alongside CP18/15. We conducted a rigorous and detailed assessment of the costs and benefits of introducing our proposed rules, using survey information we asked firms to provide.
- 12.2** This chapter sets out our response to the CBA feedback.

Feedback received

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

Exit /amalgamation

- 12.3** Some respondents suggested that our proposals would result in fewer CMCs remaining in the market than our CBA estimate. Respondents gave a number of reasons why CMCs would have lower revenues or higher costs, potentially leading to more CMCs exiting the market or an increase in smaller CMCs amalgamating. These reasons were:
- interim fee cap: a small number of respondents said that the fee cap imposed through the FGCA may lead to reduced CMC revenues
 - pre-contract disclosure: one respondent said that the proposed pre-contract disclosure rules may lead to reduced CMC revenues
 - PPI deadline: one respondent said that the deadline for PPI claims would reduce revenues for CMCs
 - prudential requirements: one respondent said that what they described as the 'substantial prudential requirements' may create costs that would lead to a 'substantially greater than anticipated CMC exit'
 - increased fees compared to CMC's current regulatory regime: one respondent noted the increase in regulatory fees (set out in the fees CP)
 - compliance costs: one respondent said that the costs of compliance could result in CMC exits and amalgamations

Our response

In our CP18/15 CBA, to calculate the total compliance costs to CMCs, we assumed a population of 736 CMCs (89 Class 1 and 647 Class 2). This was based on the number of CMCs that told us in survey responses that they intend to leave the market. Separately, because of the uncertainty

in the number of CMCs that will remain in the market we used a more cautious (lower) scenario for the number of CMCs that will register with the FCA to inform our fees consultation.

It is impossible to predict how many CMC's will exit the market or amalgamate. Overall CMC numbers have been declining for some time and for several reasons. Respondents raised further factors that may reduce the number of CMCs, compared to our estimates based on the pre-consultation survey. CMCs also have more information on regulatory fees now than they did when they answered our survey. If more CMCs exit the market than we predicted, the compliance costs for the industry as a whole would go down accordingly. We also know that we have less reliable data on the number of Scottish CMCs and CMCs that deal with s75 claims that are likely to apply for FCA permissions.

We have produced an updated projection of firm numbers that includes 2 scenarios. The core scenario applies the methodology used in the original CBA to new CMC data and responses to our CMC awareness and communications preferences survey (both received after the publication of the CP). We arrived at the revised estimate of 790 firms. Of these, 111 are Class 1 firms, and 679 are Class 2 firms. This reflects a greater number of CMCs, especially Class 1 firms that are in the market since we published CP18/15. Because of the ongoing uncertainty about the number of CMCs that will remain in the market, and the potential response bias in the surveys (where CMCs exiting the market may be less likely to respond to our survey), we have set out an alternative, more cautious scenario. The alternative scenario has 25% fewer CMCs (across Class 1 and Class 2 firms) with 592 remaining in the market, of which 83 are Class 1 firms and 509 are Class 2 firms.

Cost of compliance

12.4

Some respondents argued that our estimates of the costs of compliance were outdated and inaccurate, which meant that we understated them. Many of these respondents did not say which aspects of compliance costs we had understated, and offered limited arguments or evidence. In a small number of initial responses to CP18/15 respondents gave reasons for questioning the costs of compliance, or offered suggestions and improvements:

- Fees for compliance consultants: One respondent suggested that a more accurate measure of compliance costs would be the fees that a professional services company would charge to advise clients on compliance and help set up complaint processes. They gave the hourly fee rate for these services as £350 - £1500 depending on quality, and suggested that we ask professional services companies about the costs of their compliance services.
- Cost of investment in compliance: The same respondent also suggested that there would be extra costs over and above compliance officers. These would include the opportunity cost of investment in staff and management time to ensure compliance. The respondent suggested that these costs could be as high as 10%-15% of overall costs.



- Compliance cost may be 4 times the average estimated cost: One respondent said that they have begun to implement the new compliance requirements. This includes delivering a significantly improved quality assurance process which they believe will satisfy the new regulatory requirements. They said their ongoing costs for this process would be about £570,000, which is significantly higher than the CBA's estimated ongoing costs per CMC. This respondent's costs include 10 team leaders and 10 assistant team leaders undertaking quality assurance, a dedicated compliance team of 3 staff and ongoing professional compliance support. Two trade bodies also gave similar views.
- One respondent suggested that CMCs should link the variable costs of compliance to the revenues from their regulated activities.

12.5 We wrote to a number of respondents asking for more information on compliance costs but did not receive substantial new information to cause us to change our estimates.

Our response

Much of our Handbook applies to all or most firms and is not CMC-specific. We consider that applying those (non-CMC specific) parts of the Handbook to CMCs is a consequence of HM Treasury's decision to transfer regulation to the FCA. Those non-CMC specific parts of the Handbook do not therefore fall within the scope of this CBA which is limited to assessing the costs of applying the rules we proposed to introduce specifically for CMCs.

Our CBA factored in the costs to CMCs of familiarising themselves with the rules and guidance we have introduced specifically for CMCs. We expect CMCs to understand for themselves how our rules will impact their business. CMCs do not need to consult professional services to comply with our CMC-specific rules and guidance. As such, we do not account for compliance consultants' fees in the CBA and so have not asked professional services firms for new information about their fees. We have set out the expected involvement of compliance personnel and legal staff in our cost estimates (which do not include costs for training to comply with the Senior Managers and Certification Regime). This includes the costs of familiarising themselves with our proposed regulations and a review of the legal text.

In CP18/15 we set out the type of staff costs for each of our policy proposals. In our view, these costs allow for sufficient staff costs to ensure CMCs can comply with our proposals. We based some of our CBA estimates on the survey results of CMCs' compliance costs. We asked the CMCs that disagreed with our CBA for further evidence. They did not provide us with further details of why their quality assurance processes require higher staffing costs than our estimates. As a result, we are unable to comment on the reasons for the difference between our estimates and respondents' estimates.

More generally, the CBA's CMC cost estimates are the averages for a wide range of firms with significantly different sizes and reported costs. These averages are useful for estimating the compliance costs to the

industry as a whole. But they do not accurately reflect the costs faced by individual CMCs: some will inevitably be higher or lower than these averages.

Our compliance cost estimates do take into account the revenue the CMC generates (i.e. Class 1 or Class 2). While we could have broken the estimates down further into their component parts, we believe our approach is reasonable for estimating industry-level costs. Our estimates also reflect the reality that some compliance costs do not vary with sales volume.

Potential impact of reduced profits or numbers of CMCs

- 12.6** Two respondents said that CMC consolidation and exits, caused by the proposed regulations, may lead to reduced competition and ultimately to poorer value services to customers.
- 12.7** One of the same respondents said that the positions in the CBA are inconsistent. In particular, our assumption that the proposed rules would lead to reduced CMC profits due to higher compliance costs, but lower costs and better quality of service for customers.

Our response

We think that the combination of policy proposals in CP18/15 ensure that customers will receive better service quality from CMCs, or enable them to make claims directly or with the help of a fee-free service.

The proposed rules may lead to more customers making direct claims, so lowering their costs and encouraging greater price competition among CMCs. Both of these effects reduce customers' overall financial cost for claiming compensation. The proposed rules also increase our expectations of the service and information a CMC will need to provide. If they are not currently meeting these expectations, then this will improve the quality of the service and information they give. While we agree that the compliance costs will reduce CMC profits, and that some CMCs may exit the market, we do not see why this would hinder these positive effects.

Changes to our CBA as a result of feedback to CP

- 12.8** If we consider the final rules to differ significantly from those consulted on, we are required to publish the details of the difference together with a cost benefit analysis. We have updated the cost estimates in some places to reflect changes to the prudential rules and the rules about communications with customers which were made following the consultation. We have also updated our assumptions about the number of CMCs that will register with the FCA when compared with the CBA in CP18/15. This takes account of both the new information from the CMR and responses to CP18/15 about the CBA.
- 12.9** We have made a number of minor changes across our sourcebooks. A large majority of these changes are to the proposed rules in 3 areas of the Policy Statement:



- Chapter 3 – Conduct standards
- Chapter 6 – Client money
- Chapter 5 – Prudential standards

12.10 Below we give examples of changes made to these sections.

Conduct standards and client money

12.11 In the conduct standards and client money chapters we have made some minor changes and clarifications to our proposed rules. We do not believe these changes have a material impact on the CBA. This is because the changes are either minor amendments, helping CMCs better understand how to meet a rule or in some cases reducing the requirements. We have set out the changes and rationale in the preceding chapters. We give some examples below.

- We clarified that CMCs must have clear, effective and appropriate policies and procedures for dealing with customers in arrears. We provide detail on our existing expectation that this includes customers who are unable to meet the CMC fee payment once it has fallen due. We do not consider this requirement will create significant extra costs, as CMCs can still recover any reasonable costs they incur in recovering a debt.
- Before submitting a claim, CMCs should take into account guidance produced by relevant statutory ombudsmen or statutory compensation schemes about their decisions and previous Ombudsman or compensation scheme decisions in which the relevant CMC was involved. Our guidance clarifies how CMCs can comply with the existing requirement to decide if a case has a good arguable base.
- We have required CMCs to report 1 additional field as part of client money reporting they would already need to submit. We do not believe that this would materially affect their costs.
- Some firms questioned whether the requirement to set out the fees customers could be charged applies to lead generators. We have clarified this in our updated rules. The CBA reflected our original intention that lead generators would be required to update their marketing materials so we have not adjusted the costs.

Additional communication in pre-contract and ongoing disclosure

12.12 We have set out a number of new communication requirements for CMCs to undertake as part of their pre-contract and ongoing disclosure to their customers. They include:

- Requiring CMCs to ask the customer when making enquiries before the start of the contract whether the customer has any outstanding liabilities with the respondent or is about to become involved in insolvency arrangements such as bankruptcy or similar. If this is the case, CMCs must inform the customer that they will, where necessary, need to pay the CMC's fees from their own funds.
- For pension claims, requiring CMCs to inform the customer when making enquiries before the start of the contract that they may not have access to their pension at the point the CMC's fee becomes payable, but will, where necessary, need to pay the CMC's fees from their own funds.

- Requiring CMCs to ask the person against whom the claim is to be made whether the customer has any outstanding liabilities which they might use some or all of the compensation to reduce. If this is the case, the CMC must inform the customer that where necessary, they will have to pay the fee from their own funds.
- Requiring CMCs to gain and record customer consent before invoicing the customer for a cost which had not been disclosed in the pre-contractual documentation.
- Requiring CMCs to notify the customer of any step it intends to take to progress the claim if this was not set out in the pre-contract disclosure information, or if 6 months has passed since then, customer consent would, where necessary, need to be obtained before taking that step.

12.13 Collectively, we estimate that these communications will add an average of 1.5 minutes of telephone communication per claim. These communication requirements may therefore add around £0.5m - £0.8m in ongoing costs to the industry²².

Prudential standards

12.14 As a result of the feedback on our prudential proposals we are amending the draft rules in 2 places. Firstly, we accepted the suggestion that CMCs could deduct a portion of marketing expenditure from their total expenditure when they calculate their overheads requirement. Secondly, we also agreed with the proposal to amend the fixed overheads requirement when there is a material change in a CMC's business activities. If CMCs are allowed to deduct 20% of their marketing expenditure from total expenditure when calculating their overheads requirement (based upon the range of estimates for the capital shortfall and the cost of equity) this would result in a reduction of £0.2m in ongoing costs compared to the original CBA published in CP18/15.

12.15 By further accounting for the revised number of CMCs we expect to remain in the market, under both the core scenario and the alternative scenario, we expect the ongoing compliance costs to the industry arising from prudential standards to be between £2.0m and £5.7m.

12.16 We have not amended the CBA to account for changes to the fixed overheads requirement when there is a material change in a CMC's business activities. If CMCs choose to exercise this option to reduce the cost of their prudential requirement, the estimated ongoing costs above (£2.0m – £5.7m) will overstate the cost to the industry.

Revised summary table

12.17 In line with the methodology set out in paragraph 12.6 we have produced two revised scenarios on the projected number of CMCs that will become FCA authorised. The costs CMCs will incur under these two scenarios, taking into account the changes in compliance costs of additional communication and prudential standards, are set out below.²³

22 We have based this estimation on the following assumptions: Class 1 CMCs (of which there will be 83 and 111) will process on average 14,300-15,800 claims per year, while Class 2 CMCs (of which there will be between 509 and 679) will process on average 580-640 claims per year. The hourly staff cost is assumed to be £13 - £14.40 based on the firm survey conducted pre-consultation. If there is a decrease in claims after the PPI deadline we expect the ongoing compliance cost associated with this requirement to decrease accordingly.

23 Note: numbers may not sum to the total due to rounding.

Table: Summary of different firm number scenarios

| | CP18/15 | PS core scenario | PS alternative scenario |
|--------------|---------|------------------|-------------------------|
| Class 1 CMCs | 89 | 111 | 83 |
| Class 2 CMCs | 647 | 679 | 509 |
| Total | 736 | 790 | 592 |

Core scenario: 790 firms, of which 111 are Class 1 (with revenue > £1m)

| Proposal | One-off (£m) | Ongoing (£m) |
|--|--------------|--------------|
| High-level standards – SYSC | 0.3 – 0.7 | 0.8 – 1.1 |
| Conduct standards – Use of lead generators | N/A | 0.1 |
| Amending marketing materials | 1.0 – 1.1 | N/A |
| Communication – Pre-sale disclosure | 0.1 | N/A |
| Communication – Ongoing disclosure | N/A | 0.7 – 1.7 |
| Call recording | 1.0 – 1.1 | 1.6 – 1.8 |
| Prudential | N/A | 2.7 – 5.7 |
| Wind-down procedures | N/A | 0.5 – 1.4 |
| Client money | 0.1 | 0.8 – 1.5 |
| Supervision and reporting (SUP) | N/A | 0.3 – 0.4 |
| Familiarisation costs | 0.7 | N/A |
| Legal review | 0.9 | N/A |
| Additional communication | N/A | 0.6 – 0.8 |
| Total | 4.0 – 4.6 | 8.2 – 14.4 |

Alternative scenario: 592 firms, of which 83 are Class 1 (with revenue > £1m)

| Proposal | One-off (£m) | Ongoing (£m) |
|--|--------------|--------------|
| High-level standards – SYSC | 0.3 – 0.5 | 0.6 – 0.9 |
| Conduct standards – Use of lead generators | N/A | 0.1 |
| Amending marketing materials | 0.7 – 0.8 | N/A |
| Communication – Pre-sale disclosure | 0.1 | N/A |
| Communication – Ongoing disclosure | N/A | 0.5 – 1.3 |
| Call recording | 0.7 – 0.8 | 1.2 – 1.3 |
| Prudential | N/A | 2.0 – 4.3 |
| Wind-down procedures | N/A | 0.4 – 1.0 |
| Client money | 0.0 | 0.6 – 1.1 |
| Supervision and reporting (SUP) | N/A | 0.2 – 0.3 |
| Familiarisation costs | 0.5 | N/A |
| Legal review | 0.6 | N/A |
| Additional communication | N/A | 0.5 – 0.6 |
| Total | 3.0 – 3.4 | 6.1 – 10.8 |

13 Feedback on the Equality Impact Assessment

- 13.1** In CP18/15 we considered whether our proposals could have a potentially discriminatory impact on groups with protected characteristics. We noted that certain groups with protected characteristics are more likely to use CMCs.

Feedback received

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

- 13.2** Respondents raised concerns about CMCs exiting the market and the impact on customers with protected characteristics, the PPI deadline leading to aggressive marketing directed at vulnerable customers and the need for a united approach between the FCA and other agencies to help consumers with protected characteristics. Several responses focussed on the supervision of CMCs and the importance of the supervision of their services for customers with protected characteristics.

Our response

Overall, we do not consider that the PS will materially impact any of the groups with protected characteristics under the Equality Act 2010. We will, however, take account of any equality and diversity implications as part of monitoring the impact of the new rules and guidance.

We acknowledged the likelihood of CMCs leaving the market in our CP. We noted that the expected shrinkage in the market was in line with the annual reduction in numbers of CMCs. The exact extent of exit remains uncertain at this stage. We recognise that there are a number of factors such as the PPI deadline and the fee cap which may further reduce the number of CMCs that would remain in the market compared to our estimates from the pre-consultation survey. Our Equality Impact Assessment (EIA) considered the impact of the proposals in the CP, rather than other developments in the market. The concerns raised in response were generally about these other developments.

Our rules on marketing undertaken by CMCs will apply from April 2019 and we have introduced a rule that requires a CMC to establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable customers. We will monitor the market, including in the lead up to the PPI deadline, for behaviour which is not in line with our rules and will act where we find this.

We will continue to work with other agencies to make sure we have due regard to groups with protected characteristics in line with our duties under the Equality Act.



The FCA has published various resources to help CMCs in dealing with customers with protected characteristics and following some of their obligations under the Equality Act.

These resources include:

- [Our Approach to Customers](#)
- [Occasional Paper no. 8: Customer Vulnerability](#)
- [Ageing populations: update from the FCA](#)
- [Financially vulnerable customers' thematic review: key findings](#)

We will be undertaking a consultation in 2019 on guidance for all firms on the identification and treatment of vulnerable customers. This guidance will be a useful resource for CMCs in the future. It is the responsibility of CMCs to ensure that they are complying with their obligations under the Equality Act.

14 Other Issues

- 14.1** In this chapter, we summarise the feedback we received that was unrelated to the questions we had asked.

Feedback Received ***Cold calling ban***

- 14.2** We received several pieces of feedback on the cold calling ban. These respondents felt that cold calling should be banned across all CMCs.

Collaboration

- 14.3** We also received feedback on collaboration between CMCs and banks as well as between CMCs and the FCA. Some respondents called for the relationship between CMCs and solicitors to be as transparent as possible and for the FCA to work closely with the SRA. Some respondents asked who the FCA contact would be for CMCs.

Customer consent

- 14.4** Respondents asked us about the ways customers give consent to CMCs and requested more guidance on LoAs. Some CMCs felt that counterparties were putting unnecessary steps in the way of a CMC representing a customer, including seeking a new signature every 6 months.

CHCs

- 14.5** Some respondents felt that credit hire companies (CHCs) should be regulated by the FCA.

DBAs²⁴

- 14.6** Some respondents commented on the relationship between the rules relating to CMCs and Damages Based Agreements (DBAs) regulations. One respondent asked whether the interim PPI CMC fee cap applies to DBAs given there is an existing fee cap set out in the DBAs regulations.

Firm authorisation

- 14.7** Some respondents asked if groups or platforms that perform a function similar to a CMC should be authorised and regulated by the FCA.

GDPR

- 14.8** We have addressed GDPR in the PS where it is relevant to specific issues. There were some more general queries raised by respondents and we address these points in this chapter.

- 14.9** Respondents queried how GDPR applied to our rules in a range of areas, such as passing on of information where a customer is uncontactable and collecting payment data.

24 References to DBA regulations in this Policy Statement refer to The Damage Based Agreement Regulations 2013 (SI 2013/609) applicable in England and Wales. At the time of writing The Scottish Government is consulting on Scottish Damages Based Agreement Regulations, these rules are not yet finalised, however, the [consultation paper can be found here](https://consult.gov.scot/justice/success-fee-agreements/)



- 14.10** They were also unclear on requirements around data retention and purging of data when a firm winds down. We were asked to clarify if explicit customer consent is required where a firm intends to pass customer data on to another firm.
- 14.11** One respondent suggested that the FCA should require the CMC to disclose the identity of the lead generator. The respondent reasoned that this would ensure that the customer can consider if their Data Protection Act rights have been observed, and to exercise their new rights under the new Data Protection Act.

Our response

The majority of responses we have summarised here raise issues that either fall outside the scope of our regulation or are covered by FCA principles and conduct rules. CMCs will be expected to abide by the FCA's conduct rules.

Cold calling ban

- 14.12** A ban on CMC cold calling without consent was introduced in September 2018 by Government who is responsible for determining its scope. The ICO is the main enforcer of the cold calling ban and we will work closely with the ICO to address any concerns. We require all CMCs, when using a lead generator, to take steps to ensure the lead generator has appropriate systems and controls in place to comply with the Privacy and Electronic Communications Regulations 2003 (or the equivalent legislation in the EEA State where the lead generator is established) and the GDPR. We have included additional guidance in the CMCOB to this effect.

Collaboration

- 14.13** CMCs can contact us via claimsmanagement@fca.org.uk with enquires or to highlight poor behaviour of third parties/other CMCs. We will continue to work closely with other bodies that regulate the behaviour of CMCs, or similar firms. We expect firms we regulate to work professionally together and in the interests of consumers, and this is also true for CMCs and financial service firms including banks. We will expect CMCs to deal with their regulators, including the FCA, in an open and cooperative way, and to disclose appropriately to the relevant regulator anything relating to the firm which that regulator would reasonably expect notice of. This is required by Principle 11.

Customer consent

- 14.14** We expect LoAs to provide sufficient information to allow firms to undergo necessary checks that the CMC has the customer's consent to act on their behalf. We recognise that UK Finance, working with the CMR, released guidance and a template for claim LoAs. Although it is correct for respondents to put measures in place to make sure the CMC has authority to act on behalf of a customer, we would be concerned if these measures were being used to hinder a customer's ability to progress their complaint using a CMC. We also note the guidance does not require a new signature every 6 months once a claim has been submitted.

CHCs

- 14.15** Which firms we regulate is set by government and it is not appropriate for us to comment on those firms that fall outside of scope. If a credit hire company is not carrying out claims management activity it will not be regulated for this activity by the FCA.

DBAs

- 14.16** We've consulted with the MoJ and the CMR on the topic of DBAs. We agree that the interim PPI CMC fee cap supersedes the DBA fee cap where both fee caps are applicable to a CMC. Therefore, CMCs must abide by the interim 20% PPI CMC fee cap for PPI claims even when the DBA fee cap also applies to their business.
- 14.17** CMCs should consider carefully whether any agreement is captured by the DBA regulations and take steps to make sure they comply. Not complying with the DBA regulations makes an agreement unenforceable. The MoJ is responsible for this policy area and we will work closely with the MoJ where we identify concerns.

Firm Authorisation

- 14.18** Whether firms not currently regulated are carrying out a claims management activity is a matter of fact. We expect firms carrying out activities that are similar to the activities of a CMC to carefully consider whether they need to be authorised by the FCA.
- 14.19** Penalties for carrying out unregulated activity which should be regulated can be significant. We encourage firms to engage with us if they are unsure of the position, although we expect firms to have undertaken their own assessment of their activity prior to contacting us.

GDPR

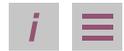
- 14.20** The ICO is the competent authority that regulates and enforces GDPR.
- 14.21** It is for firms to ensure that they are GDPR compliant. GDPR requires that CMCs process data lawfully and sets out six lawful bases. CMCs should consider the guidance on that set out on the [ICO website](#). Where firms are still unclear, we advise that they seek independent legal advice.

Expected effect on mutual societies

- 14.22** In CP18/15 and CP18/23, we explained, as required by Section 138K of FSMA, that we did not expect our proposals to affect mutual societies. The responses received to our consultations have not changed this assessment.

Changes to PERG 5

- 14.23** We have made some non-substantive changes to chapter 5 of the Perimeter Guidance Manual (PERG 5) to remove some of the existing references to "claims management". Whilst this is a change to the insurance distribution chapter it is done to benefit CMC's by removing non-relevant references to claims management from the handbook to help avoid any confusion.



Annex 1

List of non-confidential respondents

33rds Limited

Able Financial Limited

ABTA

Adam Samuel

AGB Financial Services Ltd

Allianz Insurance

Allied Claims Management Ltd

Andrew Hepinstall

Andrew Hummersone

Association of British Insurers

Association of Member-Directed Pension Schemes

Association of Mortgage Intermediaries

Association of Personal Injury Lawyers

Crystal Legal Services Ltd

British Insurance Brokers' Association

Building Societies Association

Canopus

Carey Pensions UK LLP

Caroline Neal Employment Law

Chediston Partners LLP

Chubb

Churchill Sloan Limited

Claims (London) Limited

Claims Management Compliance Ltd



Compliance News Limited Team
Congruent Actuarial Limited
Consumer Finance Association
Credit Hire Organisation
Crystal Financial Claims Limited
DGS
Direct Line Group
DWF LLP
Edam Group
Elementary Financial Planning
Etico Group Limited
Financial Recovery Solutions Ltd
Financial Services Consumer Panel
First 4 Lawyers Limited
FLA
FSCS
Gladstone Brookes Limited
Goodwin Barrett Limited
Graeme Andrew
Grosvenor House Associates (Cornwall) Limited
Hastings O'Loughlin
HB&O Financial Services
helpandclaim.com
Indigo Financial Advice Ltd
Investment & Life Assurance Group
Jewell & Petersen Limited
JFH Services Ltd



Keoghs

Keystone Financial

Law Society of Scotland

Legal Ombudsman

Lloyd's Market Association

LV=

Mayfield Financial Services Limited

MoneySavingExpert.com

Motor Insurers' Bureau

MyChargBack.com

National Accident Helpline

Philip J Milton & Company Plc

Phenix Consultancy

Resort Development Organisation

Richard Tomkinson

RS Mortgage Consultancy

RSA

The Alliance of Claims Companies

The Claims Guys

The Forum of Insurance Lawyers

The Insurance Partnership Financial Services Limited

The Legal Brokerage Ltd

The National Franchised Dealers Association (NFDA)

TUI Group

Tynebank Claims Ltd

UK Finance

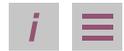
United Legal Assistance Limited



We Fight Any Claim Limited

Weightmans

Which?



Annex 2

Abbreviations used in this paper

| | |
|--------------|--|
| AR | Appointed Representative |
| ARD | Account Referencing Date |
| CASS | Client Asset |
| CBA | Cost Benefit Analysis |
| CHCs | Credit Hire Companies |
| CMCOB | Claims Management: Conduct of Business Sourcebook |
| CMCs | Claims Management Companies |
| CMR | Claims Management Regulator |
| COND | The Threshold Conditions section of the FCA Handbook |
| CP | Consultation Paper |
| DBA | Damages Based Agreement |
| DEPP | Decision and Procedure and Penalties Manual |
| DISP | Dispute Resolution: Complaints Sourcebook |
| EG | Enforcement Guide |
| EIA | Equality Impact Assessment |
| FCA | Financial Conduct Authority |
| FGCA | The Financial Guidance and Claims Act 2018 |
| FSCS | Financial Services Compensation Scheme |
| FSMA | Financial Services and Markets Act 2000 |
| GDPR | General Data Protection Regulation |
| GEN | General Provisions |
| ICO | Information Commissioner's Office |

| | |
|------------------------------|--|
| IP | Insolvency Practitioner |
| IVA | Individual Voluntary Arrangement |
| LeO | Legal Ombudsman Service |
| LoA | Letter of Authority |
| MoJ | Ministry of Justice |
| PECR | Privacy and Electronic Communications Regulations 2003 |
| PERG | Perimeter Guidance Manual |
| PII | Professional Indemnity Insurance |
| PPI | Payment Protection Insurance |
| PRIN | Principles for Businesses |
| PS | Policy Statement |
| SI | Statutory Instrument |
| SM&CR | Senior Managers and Certification Regime |
| SRA | Solicitors Regulatory Authority |
| SUP | Supervision Manual |
| SYSC | Systems and Controls |
| The Ombudsman Service | Financial Ombudsman Service |
| TP | Temporary Permission |
| VAT | Value Added Tax |
| VoP | Variation of Permission |

We have developed the policy in this Policy Statement 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.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.



Appendix 1

Made rules (legal instruments)

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;
 - (5) paragraph 20 (Voluntary jurisdiction rules: procedure); and
 - (6) paragraph 22 (Consultation) of Schedule 17.
- B. The Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 1.1 in Annex G to this instrument apply equally to the Voluntary Jurisdiction of the Financial Ombudsman Service and the Compulsory Jurisdiction.
- C. 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

- D. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the Act:
- (1) section 59 (approval for particular arrangements);
 - (2) section 137A (The FCA’s general rules);
 - (3) section 137B (FCA general rules: clients’ money, right to rescind etc);
 - (4) section 137R (Financial promotion rules);
 - (5) section 137T (General supplementary powers);
 - (6) section 138D (Actions for damages);
 - (7) section 139A (The FCA’s power to give guidance);
 - (8) section 226 (Compulsory jurisdiction);
 - (9) paragraph 13 (FCA’s rules) of Schedule 17; and
 - (10) article 1(2) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.
- E. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

- F. 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

- G. This instrument comes into force on 1 April 2019 except for Part 1 of Annex A, which comes into force on 1 January 2019.

Amendments to the FCA Handbook

- H. 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 |
| Consumer Credit sourcebook (CONC) | Annex H |

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

- I. The Financial Conduct Authority makes the rules, gives the guidance in accordance with Annex I to this instrument.
- J. The Claims Management: Conduct of Business sourcebook (CMCOB) is added to the Business Standards block within the Handbook, immediately after the Banking: Conduct of Business sourcebook (BCOBS).

Amendments to material outside the Handbook

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

- O. The Financial Conduct Authority confirms and remakes in the Glossary of definitions:
- (1) the defined expression “Regulated Activities Order”; and
 - (2) to the extent that they appear in the Glossary of definitions, the defined expressions relating to any other legislation amended by The Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018.

Notes

- P. 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

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

By order of the Board of the Financial Ombudsman Service Limited
7 December 2018

By order of the Board of the Financial Conduct Authority
13 December 2018

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force 1 January 2019

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

advice, investigation or representation in relation to a claim for a specified benefit 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 *claim for a specified benefit*.

advice, investigation or representation in relation to 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 in relation to an employment-related claim 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 claim*.

advice, investigation or representation in relation to a financial services or financial 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 financial product *claim*.

advice, investigation the *regulated activity*, specified in article 89J of the *Regulated Activities Order*, of each of advising a *claimant* or potential *claimant*, investigating a

| | |
|---|---|
| <i>or representation in relation to a housing disrepair claim</i> | <i>claim and representing a claimant, in relation to a housing disrepair claim.</i> |
| <i>advice, investigation or representation in relation to a personal injury claim</i> | the <i>regulated activity</i> , specified in article 89H of the <i>Regulated Activities Order</i> , of each of advising a <i>claimant</i> or potential <i>claimant</i> , investigating a <i>claim</i> and representing a <i>claimant</i> , in relation to a <i>personal injury claim</i> . |
| <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, for the purposes of civil proceedings in Scotland, a pursuer. |
| <i>claim for a specified benefit</i> | a claim of the description specified in article 89F(2)(f) of the <i>Regulated Activities Order</i> (that is, a claim for certain industrial injuries benefits). |
| <i>claims management company</i> | a <i>person</i> carrying on a <i>regulated claims management activity</i> in <i>Great Britain</i> . |
| <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>claims management temporary permission</i> | a temporary <i>Part 4A permission</i> , or variation of <i>permission</i> to carry on <i>regulated claims management activity</i> pursuant to article 80 of the <i>Claims Management Order</i> . |
| <i>CMCOB</i> | the Claims Management: Conduct of Business sourcebook. |
| <i>controlled claims management activity</i> | (in accordance with Part 1A of the <i>Financial Promotion Order</i>) one of the following activities, if carried on in <i>Great Britain</i> : (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 a <i>claimant</i> or a potential <i>claimant</i> to another <i>person</i> (including a <i>person</i> having the right to conduct litigation), or identifying a <i>claim</i> or potential <i>claim</i> or a <i>claimant</i> or |

potential *claimant* in respect of:

- (i) a *personal injury claim*;
 - (ii) a financial services or financial product *claim*;
 - (iii) a *housing disrepair claim*;
 - (iv) a *claim for a specified benefit*;
 - (v) a *criminal injury claim*; or
 - (vi) an *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 financial 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 *claim for a specified benefit*;
 - (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*.

criminal injury claim a claim of the description specified in article 89F(2)(g) of the *Regulated Activities Order*.

employment-related claim a claim of the description specified in article 89F(2)(h) of the *Regulated Activities Order*.

Great Britain England and Wales and Scotland (but not Northern Ireland, the Channel Islands or the Isle of Man).

housing disrepair claim a claim of the description specified in article 89F(2)(e) of the *Regulated Activities Order*.

personal injury claim a claim of the description specified in article 89F(2)(c) of the *Regulated Activities Order*.

regulated claims management each of:

activity

- (a) *seeking out, referrals and identification of claims or potential claims;*
- (b) *advice, investigation or representation in relation to a personal injury claim;*
- (c) *advice, investigation or representation in relation to a financial services or financial product claim;*
- (d) *advice, investigation or representation in relation to a housing disrepair claim;*
- (e) *advice, investigation or representation in relation to a claim for a specified benefit;*
- (f) *advice, investigation or representation in relation to a criminal injury claim; and*
- (g) *advice, investigation or representation in relation to an employment-related claim.*

seeking out, referrals and identification of claims or potential claims

the *regulated activity*, specified in article 89G of the *Regulated Activities Order*, which is any or all of:

- (a) seeking out *persons* who may have a *claim* (unless that activity constitutes *controlled claims management activity*),
- (b) referring details of a *claim* or a potential *claim* or a *claimant* or potential *claimant* to another *person*, and
- (c) identifying a *claim* or potential *claim* or a *claimant* or potential *claimant*,

when carried on in relation to a *personal injury claim*, a financial services or financial product *claim*, a *housing disrepair claim*, a *claim for a specified benefit*, a *criminal injury claim* or an *employment-related claim*.

Amend the following definitions as shown.

agreeing to carry on a regulated activity

the *regulated activity*, specified in article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), of agreeing to carry on an activity specified in Part II, ~~or~~ Part 3A, or Part 3B of that Order other than:

...

claim

...

(3) (in *CMCOB*, and elsewhere in the *FCA Handbook* where used in relation

to regulated claims management activity and ancillary activity) any claim 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.

regulated
activity

- (A) ...
- (B) in the *FCA Handbook*: (in accordance with section 22 of the *Act* (Regulated activities)) the activities specified in Part II (Specified activities), Part 3A (Specified activities in relation to information) and Part 3B (Claims management activities in Great Britain) of the *Regulated Activities Order*, ~~(Specified Activities)~~ which are, in summary:

...

- (to) *administering a benchmark* (article 63S);
- (tp) *seeking out, referrals and identification of claims or potential claims* (article 89G);
- (tq) *advice, investigation or representation in relation to a personal injury claim* (article 89H);
- (tr) *advice, investigation or representation in relation to a financial services or financial product claim* (article 89I);
- (ts) *advice, investigation or representation in relation to a housing disrepair claim* (article 89J);
- (tt) *advice, investigation or representation in relation to a claim for a specified benefit* (article 89K);
- (tu) *advice, investigation or representation in relation to a criminal injury claim* (article 89L); and
- (tv) *advice, investigation or representation in relation to an employment-related claim* (article 89M);

which is carried on by way of business and, except for (ta), (tb) and (to), 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 (tp),

(tq), (tr), (ts), (tt), (tu) and (tv), 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), (nc), (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 (tp), (tq), (tr), (ts), (tt), (tu) and (tv), is, or relates to, *claims management services* and is carried on in *Great Britain*.

Part 2: Comes into force 1 April 2019

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

| | |
|--|---|
| <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>CAPR GR</i> | the General 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>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>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>housing complaint service</i> | in England, the Housing Ombudsman Service; in Wales, the Public Services Ombudsman; and in Scotland, the Scottish Public Service Ombudsman, the Scottish Housing Regulator, and the Housing and Property Chamber of the First-tier Tribunal for Scotland. |
| <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>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</i> | a <i>complaint</i> in respect of which the <i>Financial Ombudsman Service</i> has jurisdiction by operation of article 69(1) of the Financial Services and |

| | |
|---|--|
| <i>management complaint</i> | 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 70(1) of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018. |
| <i>termination fee</i> | (in <i>CMCOB</i>) any fee or charge which a <i>firm</i> charges in the event that the <i>customer</i> terminates an agreement in respect of services provided or to be provided by the <i>firm</i> . |

Amend the following definitions as shown.

| | | |
|---|-----|---|
| <i>acknowledgement letter fixed text</i> | ... | (3) <u>(in CASS 13) the text in the <i>client bank account acknowledgement letter</i> that is not in square brackets.</u> |
| <i>acknowledgement letter variable text</i> | ... | (3) <u>(in CASS 13) the text in the <i>client bank account acknowledgement letter</i> that is in square brackets.</u> |
| <i>client</i> | ... | (10) <u>(in relation to <i>regulated claims management activity</i> and <i>ancillary activity</i>) a <i>customer</i>.</u> |
| <i>client bank account</i> | ... | (3) (in CASS 11 <u>and CASS 13</u>): (a) an account at an <i>approved bank</i> which: (i) holds the <i>money</i> of one or more <i>clients</i> ; (ii) is held in the name of the <i>firm</i> to which CASS 11.9 or <u>CASS 13.6</u> (segregation and the operation of client money accounts) applies; (iii) includes in its title the word “client” (or, if the system constraints of the <i>approved bank</i> or the <i>firm</i> 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. |
| <i>client bank</i> | ... | |

- 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's best interests rule* COBS 2.1.1R or, in relation to regulated claims management activity and ancillary activity, CMCOB 2.1.1R.
- consumer* ...
- (2) (as further defined in section 1G of the *Act*) (in relation to the discharge of the *FCA's* general functions (sections 1B to 1E of the *Act*), the application of the regulatory principles by the regulators in section 3B of the *Act* and references by scheme operators or regulated persons (section 234D of the *Act*)) a *person*:
- ...
- (d) (in relation to the *FCA's* power to make general *rules* (section 137A of the *Act* (The *FCA's* general rules)) a *person* within the extended definition of consumer in article 7 of the Financial Services Act 2012 (Transitional Provisions) Miscellaneous Provisions) Order 2013 (SI 442/2013 Definition of "consumer");
- (e) [deleted]
- (f) in respect of whom a *person* carries on the regulated activity of seeking out, referrals and identification of claims or potential claims whether that activity, as carried on by that *person*, is a regulated activity, or is, by reason of an exclusion provided for under the Regulated Activities Order or the *Act*, not a regulated activity;
- (2A) (as further defined in section 425A of the *Act*) (in relation to the issue of statements or codes under section 64 of the *Act*), general exemptions to consultation by the *FCA* (section 138L of the *Act*) in the publication of notices (section 391 of the *Act*) and the exercise of *Treaty rights* (Schedule 4 to the *Act*) a *person*:
- (a) who uses, has used, may have used, or has relevant rights or interests in relation to any services provided by:
- ~~(a)~~ (i) *authorised persons* in carrying on regulated activities;

- ~~(b)~~ (ii) *authorised persons* who are investment *firms*, or credit institutions, in providing relevant ancillary services; ~~or~~
- ~~(c)~~ (iii) *persons* acting as appointed representatives; or
- (b) in respect of whom a person carries on the regulated activity of seeking out, referrals and identification of claims or potential claims whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the Regulated Activities Order or the Act, not a regulated activity.

...

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 SYSC 19F.2, ICOBS, a *credit-related regulated activity*, *regulated claims management activity*, MCOB 3A, an *MCD credit agreement*, CASS 5, PRIN in relation to *MiFID* or equivalent third country business DISP 1.1.10-BR, PROD 1.4 and PROD 4) 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 has, has had, or may have a *claim*:

(a) who 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*; or

(b) in respect of whom a *person* carries on the *regulated activity of seeking out, referrals and identification of claims or potential claims* or an activity which would be the *regulated activity of seeking out, referrals and identification of claims or potential claims* 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.

financial promotion

(1) an invitation or inducement to engage in investment activity or to *engage in claims management activity* that is communicated in the course of business;

...

financial promotion rules

...

| | | |
|---|------|--|
| | (6) | <u>(in relation to CMCOB) any or all of the rules in CMCOB 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 CMCOB, 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 or potential claims.</u> |
| <i>primary pooling event</i> | ... | |
| | (5) | <u>(in CASS 13) an event that occurs in the circumstances described in CASS 13.11.3R.</u> |
| <i>relevant complaint</i> | (1) | (in <i>DISP</i>) a <u>relevant existing complaint, a relevant new complaint, or a relevant transitional complaint, and (in DISP and FEES 5) a relevant claims management complaint.</u> |
| | ... | |
| <i>respondent</i> | ... | |

- (6) (in DISP 2 and 3 and FEES 5) includes, in accordance with 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* (including regulated claims management activities); and
 - (c) other activities connected with financial markets and exchanges.

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 1R 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 1R, 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 Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A)</u> , unless another applicable <i>rule</i> 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 <i>rule</i> or <i>EU regulation</i> . |
| ... | |
| Principle 5 | if the activities have, or might reasonably be regarded as likely to have, a negative effect on confidence in the <i>UK financial system</i> , applies with respect to activities wherever they are carried on; otherwise, applies 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, 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)</u> . |
| Principles 6, 7, 8, 9 and 10 | <i>Principle 8</i> , in a <i>prudential context</i> , applies 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 Great Britain, even if the establishment from which it is carried on is not located in the UK (see PERG 2.4A)</u> , unless another applicable <i>rule</i> 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 <i>rule</i> or <i>EU regulation</i> . |
| ... | |

...

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.*

...

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> . |
| | | , unless If, however, another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> . |
| | | [Note: article 16(11) first paragraph of <i>MiFID</i>] |
| 2.17A | G | 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 firms 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> . |
| ... | | |
| 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 |
| ... | | | | |

| | | | | |
|-------------|----------|----------|----------|---|
| SYSC 6.3.1R | 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 claims management activity</u>, or operating an electronic system in relation to lending, 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> |
| SYSC 6.3.2G | 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 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</u> regulated claims management activity, or operating an electronic system in relation to lending, applies only where the</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> |

| | | | | |
|-------------|----------|----------|----------|--|
| SYSC 6.3.7G | Guidance | Guidance | Guidance | <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> |
| SYSC 6.3.8R | Rule | Rule | Rule | <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> |

| | | | | |
|--|--|--|--|--|
| | | | | 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) |
|--|--|--|--|--|

...

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

4.4.3 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 distribution activity) or *CASS 13* (Claims management: client money).

...

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 |
|------|--|----------|---|--|---|
| ... | | | | | |
| (15) | <u><i>CASS 13</i></u> | <u>R</u> | <u><i>CASS 13</i> applies in relation to <i>money</i> held by the <i>firm</i> on 1 April 2019 to the extent that such <i>money</i> was received or is held on behalf of an individual, in the course of or in connection with the</u> | <u>Indefinitely</u> | <u>1 April 2019</u> |

| | | | | | |
|------|----------------|----------|--|---------------------|---------------------|
| | | | performance of activities which were: | | |
| | | | (a) <u>carried on before 1 April 2019; and</u> | | |
| | | | (b) <u>would, if carried on after that date, be regulated claims management activities.</u> | | |
| (16) | <u>CASS 13</u> | <u>G</u> | <u>The rule in (15) applies to the firm irrespective of whether it has a claims management temporary permission or a Part 4A permission.</u> | <u>Indefinitely</u> | <u>1 April 2019</u> |

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 <i>firm</i> has complied with the requirements of CASS 13.5</u> | <u>Evidence of such compliance</u> | <u>On compliance with the relevant provision</u> | <u>None specified</u> |
| <u>CASS 13.6.5R</u> | <u>Money received from <i>customers</i> 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 <i>client money</i> under CASS 13.6.6R(2)</u> | <u>Details of unidentified <i>client money</i> held</u> | <u>Being unable to identify money as <i>client money</i> 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 <i>customer</i> and the <i>firm's</i> own money</u> | <u>All that is necessary to enable the <i>firm</i> to distinguish <i>client money</i> held for one <i>customer</i> from <i>client money</i> held for any other <i>customer</i> and from the <i>firm's</i> 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 <i>customer</i></u> | <u>Accurate records to ensure the correspondence between the records and accounts of the entitlement</u> | <u>Maintain up-to-date records</u> | <u>None is specified</u> |

| | | | | |
|-----------------------|--|---|---|--------------------------|
| | | <u>of each customer for whom the firm holds 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

| Handbook reference | Matter to be notified | Contents of notification | Trigger Event | Time allowed |
|---------------------------------|---|---|--|----------------------|
| ... | | | | |
| <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> |

Part 2

In this Part, all the text is new and is not underlined.

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 CASS client bank account acknowledgement letter template Annex 1R

[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 [FRN]), (“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:

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.

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 "UK financial system" when used in Chapter 1 of the Act includes regulated claims management activities.
- (2) 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.

...

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, 3.11</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 <u><i>claims management client money rules</i></u> 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 <u><i>claims management client money rules</i></u> 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) and , CASS 11.13 (<i>debt management client money distribution rules</i>) and CASS 13.11 (<i>claims management</i> | |

| | |
|--|---|
| | client money distribution rules) 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.

...

10A FCA Approved Persons

10A.1 Application

General

...

10A.1.1 **R** This chapter applies to every:

- (1) *firm* that is not an *SMCR firm*; and
- (2) *SMCR firm*, 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.

...

12 Appointed Representatives

...

12.2 Introduction

...

12.2.7 G ...

- (4) Regulated claims management activity is not a type of business for which an appointed representative may be exempt.

...

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 |
|-----------------------|---|-----------------------------------|
| ... | | |
| SUP 16.4 and SUP 16.5 | All categories of firm except: | Entire sections |
| | ... | |
| | (jb) a firm with permission to carry | |

| | | | |
|------------------|-----|---|-----------------------|
| | | <u>on only regulated claims management activities;</u> | |
| | (k) | a firm falling within a combination of (i), (ia), (j), and (ja) and (jb). | |
| ... | | | |
| <u>SUP 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~~
- (18) employers' liability register compliance reporting (*SUP 16.23A*); ~~;~~
A)
- (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 45AR, 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 45BG.

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 44BG (Guidance notes for the completion of the Employers’ Liability Register compliance return in SUP 16 Annex 44AR) insert the following new Annexes, SUP 16 Annex 45AR and SUP 16 Annex 45BG. The text is not underlined.

16 Annual Claims Management Report form Annex

45AR

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</i> 's annual <i>employee</i> turnover rate during the reporting period? | |
| 7 | What was the total remuneration paid to the <i>firm</i> 's <i>employees</i> over the reporting period? | |
| 8 | What was the total amount of variable remuneration paid to the <i>firm</i> 's <i>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 FEES 4 Annex 11AR for the purposes of FCA fees reporting (see <i>guidance</i> in FEES 4 Annex 13G)? | |
| Profit and loss account (over reporting period) | | |
| 11 | What was the <i>firm</i> 's income from <i>seeking out, referrals</i> | |

| | | |
|---|--|--|
| | <i>and identification of claims or potential 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(2)(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 the 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 7.3</i>)? | |

| | | |
|--|---|--|
| 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)(a) 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"> • <i>advice, investigation or representation in relation to a personal injury claim;</i> • <i>advice, investigation or representation in relation to a financial services or financial product claim;</i> • <i>advice, investigation or representation in relation to a housing disrepair claim;</i> • <i>advice, investigation or representation in relation to a claim for a specified benefit;</i> • <i>advice, investigation or representation in relation to a criminal injury claim; and</i> • <i>advice, investigation or representation in relation to an employment-related claim.</i> | | |
| Professional Indemnity Insurance | | |
| 35 | Does the <i>firm</i> have permission for <i>advice, investigation or representation in relation to 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 in relation to 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 <i>client money</i> ? | |
| 39 | For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than two <i>business days</i> ? | |
| 40 | For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than five <i>business days</i> ? | |
| 41 | What was the longest period of time for which the <i>firm</i> held <i>client money</i> for a <i>customer</i> ? | |
| Product Data | | |
| 42 | What was the average fee charged by the <i>firm</i> , during the reporting period in respect of a <i>claim</i> ? | |

| | | | | | | | |
|-----------------------------|--|---------|--|---------------------------------|---|--|---|
| Third-party Lead Generators | | | | | | | |
| 43 | How many leads did the <i>firm</i> purchase from <i>lead generators</i> during the reporting period? | | | | | | |
| 44 | 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 | | | | | | |
| 45 | 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 <i>customer</i> , or details of a <i>customer</i> or <i>claim</i> , 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 <i>claims</i> where lead obtained from <i>lead generator</i> | Number of <i>claims</i> pursued | Number of successful <i>claims</i> | Number of <i>claims</i> 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) | | | | | | |
| | | | | | | | | |
| 48 | <i>housing disrepair claims</i> | | | | | | | |
| | | | | | | | | |
| 49 | <i>claims for a specified benefit</i> | | | | | | | |
| | | | | | | | | |
| 50 | <i>criminal injury claims</i> | | | | | | | |
| | | | | | | | | |
| 51 | <i>employment-related claims</i> | | | | | | | |
| | | | | | | | | |
| 52 | Of the above types of <i>claim</i> , which three saw the largest percentage change in number of successful <i>claims</i> ? | | | | | | | |
| | | Type of <i>claim</i> | | | Percentage change | | | |
| | (a) | | | | | | | |

| | | | |
|--|-----|--|--|
| | (b) | | |
| | (c) | | |

**16
Annex
45BG** **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, referrals and identification of claims or potential claims, 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 one or more of the following activities:

- *advice, investigation or representation in relation to a personal injury claim;*
- *advice, investigation or representation in relation to a financial services or financial product claim;*
- *advice, investigation or representation in relation to a housing disrepair claim;*
- *advice, investigation or representation in relation to a claim for a specified benefit;*

- *advice, investigation or representation in relation to a criminal injury claim; and*
- *advice, investigation or representation in relation to an employment-related claim,*

collectively referred to in these guidance notes as ‘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 (item 5) divided by the average number of employees the <i>firm</i> had during the reporting period (item 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 | Include only variable remuneration such as bonuses, commissions or |

| | | |
|----|--|--|
| | employees over the reporting period? | 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 <i>customers</i> ? | 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 activities</i> , as defined in FEES 4 Annex 11AR for the purposes of FCA fees reporting (see <i>guidance</i> in FEES 4 Annex 13G)? | Refer to the <i>guidance</i> contained in FEES 4 Annex 13G before 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, referrals and identification of claims or potential 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 | |

| | | |
|----|---|--|
| | CMCOB 7.2.8R(2)(b)? | |
| 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 | This should equal the sum of item |

| | | |
|----|--|--|
| | assets less the value of its current liabilities? | 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</i> 's 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, was the <i>firm</i> 's overheads requirement (as calculated in <i>CMCOB 7.2.8R</i>) greater than the amount set out in whichever of <i>CMCOB 7.2.6R(1)(a)</i> or <i>7.2.7R(1)(a)</i> was applicable to the <i>firm</i> ? | The sums applicable under <i>CMCOB 7.2.6R</i> and <i>7.2.7R</i> 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". For the purposes of this question, include <i>client money</i> which has been sent out by cheque and is uncleared and/or unbanked. |
| 32 | What was the <i>firm</i> 's prudential resources requirement (as calculated in <i>CMCOB 7.2.6R</i> and <i>7.2.7R</i>) as at the end of the reporting period? | <i>CMCOB 7.2.6R</i> sets out how the prudential resources requirement is to be calculated for Class 1 firms. <i>CMCOB 7.2.7R</i> 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 (irrespective of whether the amount was a surplus or deficit.) |

| | | |
|-----|---|---|
| | The rest of the questions are only for <i>firms</i> that have permission for advising on a <i>claim</i> , investigating a <i>claim</i> , or representing a <i>claimant</i> . | All the questions below relate to advising on a <i>claim</i> , investigating a <i>claim</i> , or representing a <i>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>advice, investigation or representation in relation to a personal injury claim</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 <i>advice, investigation or representation in relation to a personal injury claim</i> 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 | Answer “yes” or “no”. |

| | | |
|----|--|--|
| | of the last Annual Claims Management Report form submitted to the <i>FCA</i> ? | |
| 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 <i>client money</i> ? | Report the number of <i>customers</i> to whom the balance reported for question 37 relates. |
| 39 | For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than two <i>business days</i> ? | Report the total number of <i>customers</i> for whom the <i>firm</i> held <i>client money</i> for longer than two <i>business days</i> . |
| 40 | For how many different <i>customers</i> did the <i>firm</i> hold <i>client money</i> for a period longer than five <i>business days</i> ? | Report the total number of <i>customers</i> for whom the <i>firm</i> held <i>client money</i> for longer than five <i>business days</i> . Exclude (for question 40 reporting purposes only) any <i>customers</i> to which the <i>firm</i> has sent a cheque or other payable order which is uncleared and/or unbanked. For the avoidance of doubt, a <i>firm</i> must continue to treat this money as <i>client money</i> until the cheque or order is presented and paid by the bank. |
| 41 | What was the longest period of time for which the <i>firm</i> held <i>client money</i> for a <i>customer</i> ? | Report in <i>days</i> . |
| 42 | What was the average fee charged by the <i>firm</i> , during the reporting period in respect of a <i>claim</i> ? | Include in the average only <i>claims</i> where a fee was charged. |
| 43 | 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. |
| 44 | 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 | Provide all the information requested in each column. |

| | | |
|-------|--|---|
| | leads during this reporting period: | |
| 45 | 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 <i>customer</i> , or details of a <i>customer</i> or <i>claim</i> , to a third party) | |
| 46-51 | How was the <i>firm's regulated claims management activity</i> divided among the following areas of work? | <p>Provide the following figures for each area of work.</p> <p>For financial services and products <i>claims</i> and <i>personal injury claims</i> show how this work is split between different subcategories.</p> <p>When reporting "other", complete the free text box to indicate what the figures relate to.</p> |
| | Revenue | Enter the total income earned from this type of work during the reporting period. |
| | 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> . |
| | Number of <i>claims</i> pursued | Enter the number of <i>claims</i> in respect of which an agreement was reached with the <i>customer</i> for the <i>firm</i> to investigate, advise or represent. |
| | Number of successful <i>claims</i> | Enter the number of <i>claims</i> which resulted in a payment or other remedy for the <i>customer</i> . Include <i>claims</i> settled on such terms. |
| | Number of <i>claims</i> halted or not taken forward because: no good arguable base, suspected fraud, or being frivolous or vexatious | Enter the number of <i>claims</i> 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. |

| | | |
|----|--|--|
| 52 | Of the above types of <i>claim</i> , 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 <i>claims</i> 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 financial services or financial product <i>claims</i> and <i>personal injury claims</i> , enter the more detailed <i>claim</i> category (e.g. Whiplash). |
|----|--|--|

...

Amend the following as shown.

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) <u>This transitional provision applies in respect of an auditor which was subject to SUP 3.10 immediately before 1 April 2019 in relation to a firm which becomes subject to the <i>claims management client money rules</i> on 1 April 2019.</u></p> <p>(2) <u>For the purposes of SUP 3.10.5R(1) in its application to the <i>claims management</i></u></p> | <u>From 1 April 2019</u> | <u>1 April 2019</u> |

| | | | | | |
|-----|--------------------|----------|--|--|----------------------------|
| | | | <p><u>client money rules, the first report which the auditor submits under SUP 3.10.4R which covers the <i>claims management client money rules</i> must state whether, in the auditor's opinion, the firm was in compliance with those rules from 1 April 2019 to the end of the period covered by the report.</u></p> | | |
| ... | ... | ... | ... | ... | ... |
| 19 | <u>SUP 16.25.7</u> | <u>R</u> | <p>(1) <u>This transitional provision applies in respect of the first Annual Claims Management Report which a firm is required to submit under SUP 16.25.7R.</u></p> <p>(2) <u>No report is required under SUP 16.25.7R in respect of a period ending on an <i>accounting reference date</i> of the firm earlier than 1 July 2019.</u></p> <p>(3) <u>If no report is provided under SUP 16.25.7R in respect of a period ending on an <i>accounting reference date</i> of the firm earlier than 1 July 2019, the first report under SUP 16.25.7R must address the period from 1 April 2019 to the firm's first <i>accounting reference date</i> which occurs on or after 1 July 2019.</u></p> | <p><u>From 1 April 2019 to 1 July 2020</u></p> | <p><u>1 April 2019</u></p> |

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-AR₂ and *DISP* 1.10.2AR₇ 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)₂ 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 1AAG (Notes on completing electronic money and payment services complaints return form) insert the following new Annex, DISP 1 Annex 1ABR. 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 financial product <i>claims</i> | <i>housing disrepair claims</i> | <i>claims for a specified benefit</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 (22 to 25) and complaints upheld (26)

Redress paid, in integers (27 to 30): 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.

| | | |
|----|--|--|
| 22 | Complaints closed within 3 days | |
| 23 | Complaints closed within 8 weeks, but after more than 3 days | |
| 24 | Complaints closed after more than 8 weeks | |

| | | |
|----|--|--|
| 25 | Total complaints closed | |
| 26 | Complaints upheld | |
| 27 | Redress paid for upheld complaints | |
| 28 | Redress paid for complaints not upheld | |
| 29 | 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 | |
| 30 | 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 about activities which are *claims management services* but 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) may 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 ~~27 July 2018~~ 1 April 2019

...

The activities which were covered by the *Compulsory Jurisdiction* (at ~~27 July 2018~~ 1 April 2019) were:

...

The activities which (at ~~27 July 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 II and Parts 3A and 3B of the *Regulated Activities Order* (with the addition of *auction regulation bidding* and *administering a benchmark*):

...

- (41) *seeking out, referrals and identification of claims or potential claims* (article 89G);
- (42) *advice, investigation or representation in relation to a personal injury claim* (article 89H);
- (43) *advice, investigation or representation in relation to a financial services or financial product claim* (article 89I);
- (44) *advice, investigation or representation in relation to a housing disrepair claim* (article 89J);
- (45) *advice, investigation or representation in relation to a claim for a specified benefit* (article 89K);
- (46) *advice, investigation or representation in relation to a criminal injury claim* (article 89L);
- (47) *advice, investigation or representation in relation to 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 Complaint handling procedures 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.

- 3.3.3A G Under the *Claims Management Order* the *Ombudsman* may dismiss a *relevant claims management complaint*, if he considers that the complaint would have been dismissed under the rules of the *former scheme* or should be dismissed under the grounds for dismissal in *DISP 3.3.4R* or *DISP 3.3.4AR*. Where the *Ombudsman* is dealing with a *relevant new claims management complaint* the rules of the *former scheme* must be read as if they were subject to paragraph 13 of Schedule 3 of the *ADR Regulations*.

...

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~~ make provision for 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 make provision for 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 |
|-----|---|----------|---|--|---|
| ... | ... | ... | ... | ... | ... |
| 47 | <u>DISP 1.10.1R, DISP 1.10.4AR, DISP 1.10.5R, and DISP 1 Annex 1ABR</u> | <u>R</u> | (1) <u>This transitional provision applies where a firm with permission to carry on only regulated claims management activities is required to provide the FCA with its first report under DISP 1.10.1R in the form of DISP 1 Annex 1ABR.</u> (2) <u>No report is required under DISP 1.10.1R in the form of DISP 1 Annex 1ABR in respect of a period ending on an accounting reference date of the firm earlier</u> | <u>From 1 April 2019 to 1 July 2020</u> | <u>1 April 2019</u> |

| | | | | | |
|-----------|--|----------|--|--------------------------|--------------------------|
| | | | <p><u>than 1 July 2019.</u></p> <p><u>(3) If the <i>firm</i> does not provide a report in the form of <i>DISP 1 Annex 1ABR</i> under <i>DISP 1.10.1R</i> in respect of a period ending on an <i>accounting reference date</i> of the <i>firm</i> earlier than 1 July 2019, the first report in the form of <i>DISP 1 Annex 1ABR</i> provided under <i>DISP 1.10.1R</i> must cover the period from 1 April 2019 to the <i>firm's</i> first <i>accounting reference date</i> which occurs on or after 1 July 2019.</u></p> | | |
| <u>48</u> | <u><i>DISP 2</i> and <i>DISP 3</i></u> | <u>R</u> | <p><u>In <i>DISP 2</i> and <i>DISP 3</i> references to a "<i>firm</i>" or "<i>firms</i>" include unauthorised persons subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant claims management complaints</i> in accordance with the <i>Claims Management Order</i>.</u></p> | <u>From 1 April 2019</u> | <u>From 1 April 2019</u> |
| <u>49</u> | <u><i>DISP 2</i> and <i>DISP 3</i></u> | <u>G</u> | <p><u>Under the <i>Claims Management Order</i>, a <i>relevant claims management complaint</i> is subject to the <i>Compulsory Jurisdiction</i> whether or not it is about a <i>firm</i> or an <i>unauthorised person</i>. <i>Unauthorised persons</i> are not subject to <i>DISP 1</i>, but references to "<i>firm</i>" in <i>DISP 2</i></u></p> | <u>From 1 April 2019</u> | <u>From 1 April 2019</u> |

| | | | | | |
|-----------|--|----------|---|--------------------------|--------------------------|
| | | | and <i>DISP 3</i> include <u>unauthorised persons</u> subject to the <u>Compulsory Jurisdiction</u> in relation to <u>relevant claims management complaints</u> , where applicable. | | |
| <u>50</u> | <u>DISP 1, DISP 2, DISP 3 and DISP 4</u> | <u>R</u> | In relation to <u>relevant claims management complaints</u> , references in <u>DISP 1, DISP 2, DISP 3 and DISP 4</u> to an “ <u>eligible complainant</u> ” include a person who is to be treated as an <u>eligible complainant</u> in accordance with the <u>Claims Management Order</u> and references to a <u>complaint</u> shall be construed accordingly. | <u>From 1 April 2019</u> | <u>From 1 April 2019</u> |

Annex H

Amendments to the Consumer Credit sourcebook (CONC)

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

2 Conduct of business standards: general

...

2.5 Conduct of business: credit broking

2.5.3 R A *firm* must:

...

- (4) before referring the *customer* to a third party which carries on *regulated activities* or a *claims management service* (within the meaning of section ~~4 of the Compensation Act 2006~~ 419A of the Act) or other services, obtain the *customer's* consent, after having explained why the *customer's* details are to be disclosed to that third party;

[**Note:** paragraph 3.9r of *CBG*]

...

...

3 Financial promotions and communications with customers

...

3.9 Financial promotions and communications: debt counsellors and debt adjusters

...

3.9.5 R A *financial promotion* or a communication with a *customer* by a *firm* must not:

...

- (3) promote a claims management service (within the meaning of section ~~4 of the Compensation Act 2006~~ 419A of the Act) as a way of managing a *customer's* debts;

[**Note:** paragraph 3.18k of *DMG*]

...

Annex I

Claims Management: Conduct of Business sourcebook (CMCOB)

In this Annex, all the text is new and is not underlined.

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*. *Firms* should note that *regulated claims management activities* (and activities ancillary to *regulated claims management activities*) can be carried on in *Great Britain* whether or not they are carried on from an establishment maintained in the *United Kingdom* (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 generating, obtaining, and passing on leads.
- 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*.

[**Note:** *CAPR GR 2(a)*]

- (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-
- (3) In complying with *CMCOB 2.1.7R* *firms* should have regard to:
 - (a) relevant guidance, including about their decisions, published by the *Financial Ombudsman Service*, any other relevant statutory ombudsman, or statutory compensation scheme; and
 - (b) decisions by the *Financial Ombudsman Service*, or any other relevant statutory ombudsman, or statutory compensation scheme concerning similar *claims* in respect of which the *firm* acted for the *claimant* to whom the decision was addressed.

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 Regulations 2013, or any equivalent provision made under the law of Scotland, 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 financial product *claim* before the provision of a *claims*

management service to the customer other than seeking out, referrals and identification of claims or potential claims.

[Note: CAPR CSR 15]

- (2) This *rule* is subject to CMC OB 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 *claim* or 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 either (i) 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*; or (ii) in respect of whom a *person* carries on the *regulated activity of seeking out, referrals and identification of claims or potential claims* or an activity which would be the *regulated activity of seeking out, referrals and identification of claims or potential claims* but for an 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 referrals, leads or data (including details of *claims* or of *customers*) from a *lead generator* must:
- (a) ascertain whether the *lead generator* is an *authorised person* with a *permission* to carry on *seeking out, referrals and identification of claims or potential claims*; and
 - (b) satisfy itself as to whether the *lead generator* has appropriate systems and processes in place to ensure compliance with (i) and (ii) (including that the referrals, leads or data have been obtained in compliance with (i) and (ii)):
 - (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 referrals, leads or data from a particular *lead generator* for the first time; and
 - (b) if the *firm* continues to accept sales referrals, leads or data 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 or potential 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 order to comply with *CMCOB 2.2.2R(1)(b)* the *FCA* expects *firms* and *lead generators* to ensure that they are aware of any requirements to obtain consent under:
- (a) regulation 21A of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (the cold calling ban);
 - (b) *data protection legislation*; and

- (c) any guidance published by the Information Commissioner's Office in relation to *data protection legislation* and the cold calling ban.
- (3) 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 and whether there is consent to use it in the *firm's* intended marketing.
- (4) *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. In this context, the *FCA* would normally expect *firms* to obtain consent and would only expect *firms* to be able to rely on the legitimate interests condition (under article 6(1)(f) the General Data Protection Regulation (EU) No 2016/679) very occasionally. Where the *firm* relies on consent which has been obtained by a *lead generator*, the *firm* should 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. In relation to consent, *firms* are also reminded of the requirements in article 7(2) of the General Data Protection Regulation (EU) No 2016/679.
- (5) 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). The Regulations also contain restrictions on marketing by fax, email and text message and apply to both the caller/sender of the marketing (e.g. the *lead generator*) and the instigator (e.g. the *firm*, where the *lead generator* is acting on behalf of the *firm*). Both the instigator of the marketing and the business carrying out the marketing may be subject to enforcement action if any breaches occur. *Firms* should therefore ensure that any marketing carried out on their behalf by a *lead generator* is compliant.
- (6) 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 sales referrals, leads or data

- 2.2.4 R Where a *firm* accepts a sales referral, lead or data, or details of a *claim* or of a *customer*, 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.
- 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 sales referrals, leads or data from that *lead generator* nor use sales referrals, leads or data 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 or potential 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 sales referrals, leads or data from that *lead generator* nor use sales referrals, leads or data 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 or potential 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 could reasonably be expected to know or suspect 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 *customers*, or the details of *customers* or of *claims*, 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 *customers*, or the details of *customers* or of *claims* 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 sales referral or lead it passes on; and
 - (b) the third party making a monthly, occasional or a one-off payment to the *firm* irrespective of how many sales referrals, or leads or data 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 (the *fair, clear and not misleading rule*).
 - (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) This *rule* and the other *rules* in this *chapter* apply when a *firm* approves a *financial promotion* in the same way as when a *firm* communicates a *financial promotion* itself. Before a *firm* approves a *financial promotion* it must confirm that it complies with the *rules* in this *chapter* and if, at any time after the *firm* approves a *financial promotion*, it becomes aware that the *financial promotion* no longer complies with the *rules* in this *chapter*, it must withdraw its *approval* and notify any *person* it knows to be relying on its *approval* as soon as practicable.
- 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* and that it is a *claims management company*;
 - (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) and that it is a *claims management company*.
- (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, a *housing complaint 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* to which a *financial promotion* relates is of a sort that may be made by a *customer* to a statutory ombudsman or statutory compensation scheme, without using the services of the *firm* and without incurring a fee, 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 a 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 financial product <i>claim</i> | 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> | a <i>housing complaint service</i> |
| <i>personal injury claim</i> | none specified |
| <i>claim for a specified benefit</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) In the case of a *firm* which charges or may charge a fee for services to which the *financial promotion* relates, 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;
- (b) where those fees are not fixed or ascertainable in advance, the method by which the fees would be calculated; and
- (3) In the case of a *firm* which charges a *termination fee* in respect of an agreement with a *customer* for services to which the *financial promotion* relates (see *CMCOB* 2.1.12R(2)(b) and *CMCOB* 2.1.12R(4)), the *firm* must ensure that the *financial promotion* indicates:
- (a) that the *firm* may charge a *termination fee* 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 *termination fee* is or, where it is not fixed or ascertainable in advance, the method by which it would be

calculated.

- (4) Subject to (5), where a *firm* (F) passes *customers*, or details of a *customer* or of a *claim*, to a third party (T), or gives details about the third party (also T) to a *customer*, F must include prominently in the *financial promotion*:
 - (a) the fees that T 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.
 - (5) Where F does not know the information required by (4), F must include prominently in the *financial promotion* an indication of the fee that may be charged for services to which the *financial promotion* relates.
 - (6) Subject to (7), where T charges a *termination fee* in respect of an agreement with a *customer* for services to which the *financial promotion* relates (see *CMCOB 2.1.12R(2)(b)* and *CMCOB 2.1.12R(4)*), F must ensure that the *financial promotion* indicates:
 - (a) that T may charge a *termination fee* 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 *termination fee* is or, where it is not fixed or ascertainable in advance, the method by which it would be calculated.
 - (7) Where F does not know the information required by (6), F must still inform the *customer* that they may be required to pay a *termination fee*.
 - (8) Where a *firm* is required, under this *rule*, to include information about fees or *termination fees* in a *financial promotion*, that information must be no less prominent than the term referred to in (1).
- 3.2.10 G (1) As a consequence of *CMCOB 3.2.9R(4)* and *CMCOB 3.2.9R(5)* if a *firm* is unaware of the charging basis of the third parties, to whom they pass the *customer* or details of the *customer*, or of a *claim*, or whose details they give to a *customer*, they should not advertise a no-win, no-fee service.
- (2) When providing an indication of the fee for the purposes of *CMCOB 3.2.9R(5)*, the *FCA* expects *firms* to provide a reasonable indication of the fee the *customer* is likely to pay bearing in mind the *fair, clear and not misleading rule*.

- (3) In particular, the *FCA* expects *firms* to provide:
- (a) an indication of a typical fee; or
 - (b) a range of the fees;
- that may become payable by the *customers*:
- (c) whom the *firm* passes to third parties or whose details the *firm* passes to third parties;
 - (d) whose *claims* the *firm* passes to third parties; or
 - (e) to whom the *firm* gives the details of third parties.
- (4) A *firm* could provide an indication of a typical fee where a significant majority of such *customers* all pay the same fee (e.g. where the fee inclusive of VAT is 25% of the compensation amount).
- (5) Where the *firm* provides an indication of a typical fee, it should make clear that that figure is only an indication of the amount which *customers* may be required to pay and that the actual fee may be higher. For example, the *firm* could state:
- “Typically customers pay 25% of the amount recovered, although this will be subject to your individual circumstances and the actual fee may be more or less than this”.
- (6) Where the *firm* provides a range of fees:
- (a) subject to (c), the range should represent all of the third parties to whom the *firm* passes *customers* or details of *customers*, or of *claims*, or whose details the *firm* gives to *customers*,
 - (b) the range should include the highest and the lowest fee that may become payable by such *customers*;
 - (c) the *firm* should not include a fee as the lowest fee unless that fee is charged to a reasonable proportion of such *customers*.

Restriction on advertising in certain buildings

- 3.2.11 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*]

- 3.2.12 G (1) The purpose of *CMCOB* 3.2.11R 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* 3.2.11R:
- (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 or potential 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* 4.2.8R);
 - (b) a brief description of the steps that the *customer* will need to take in respect of the *claim*;
 - (c) a brief description of how the *firm* will keep the *customer* updated on the progress of the *claim*;
 - (d) a fee illustration or estimate, and explanation (see *CMCOB* 4.2.5R);
 - (e) a brief description of the *customer's* right to cancel the agreement (see *CMCOB* 2.1.12R(2)(a)); and
 - (f) 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) and *CMCOB* 2.1.12R(4));
 - (g) 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
 - (h) 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 (g)), 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)(g).

- 4.2.4 G The requirement at *CMCOB* 4.2.2R(2)(b) to describe the steps a *customer* will need to take in respect of a *claim* will generally include, but are not limited to, providing documentation relevant to the *claim* (such as background information) and completing the necessary paperwork.
- 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, including but not limited to:
 - (a) the actions the *firm* will take to ascertain the basis and merits of the *claim*, including (where relevant):
 - (i) 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
 - (ii) the procurement of legal, specialist or expert advice;
 - (b) the nature of any advice to be provided by the *firm* including:
 - (i) advice on the merits of the *claim*; and
 - (ii) advice on any particular steps that the *customer* may need to take;

- (c) the actions the *firm* will take to present and pursue the *claim*;
 - (d) 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);
- (2) the person who will provide those services;
 - (3) the terms under which and the conditions on which those services will be provided;
 - (4) any charge the *firm* makes;
 - (5) whether the *firm*'s fees are:
 - (a) calculated on the gross or net amount of the *customer*'s damages, compensation or monies in settlement of a *claim*; and
 - (b) a clear explanation of how this will affect the damages, compensation or settlement monies that the *customer* will actually receive;
 - (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, in relation to repayments of a loan taken out for the purchase of a legal expenses insurance policy, or any similar purpose, and whether the *customer* may be liable to pay any shortfall in recoverable costs or premiums from the *person* against whom the *claim* is to be made;
 - (9) the documentation likely to be needed to pursue the *claim*;
 - (10) 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*;
 - (11) the procedures to follow if the *customer* wishes to make a complaint about the *firm*;
 - (12) 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);
 - (13) the nature and frequency of updates that the *firm* will give the

customer on the progress of the *claim*; and

- (14) 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 In addition to the matters in *CMCOB* 4.2.7R and 4.2.8R, the *firm* must also inform the *customer*, in a *durable medium*, that:
- (1) if the *customer* has outstanding liabilities with the *person* against whom the *claim* is to be made:
 - (a) any damages, compensation or settlement monies might, in certain circumstances, be off-set against those outstanding liabilities; and
 - (b) the *customer* will, where necessary, need to pay the *firm*'s fees from their own funds.
 - (2) in the case of pension related *claims*:
 - (a) it is possible that the *firm*'s fee may become payable before the *customer* has access to their pension; and
 - (b) the *customer* will, where necessary need to pay the *firm*'s fees from their own funds.
 - (3) if the *customer* is subject to or proposing any of the processes or arrangements listed at *CMCOB* 4.3.1R(6)(a) to (f) that:
 - (a) any damages, compensation or settlement monies might, in certain circumstances, be off-set against the *customer*'s outstanding debts; and
 - (b) the *customer* will, where necessary need to pay the *firm*'s fees from funds which are not subject to the processes or arrangements listed at *CMCOB* 4.3.1R(6)(a) to (f).
- 4.2.10 G (1) Examples of outstanding liabilities in *CMCOB* 4.2.9R(1) include:
- (a) late repayments due under a *credit agreement* for financial services claims; or
 - (b) the training costs paid by an employer for the employee which become repayable by the employee in accordance with the conditions of a contract.
- (2) Outstanding liabilities would not include arranged debts such as a mortgage account.
- 4.2.11 R When a *firm* gives information to a *customer* as required by *CMCOB*

4.2.1R, *CMCOB* 4.2.7R, *CMCOB* 4.2.8R and *CMCOB* 4.2.9R, the *firm* must accompany the information with:

- (1) the name, postal address and other contact details of the *firm*; and
- (2) the reference number under which the *firm* appears in the *Financial Services Register*.

[**Note:** in part, *CAPR CSR* 11(1)]

4.2.12 G (1) The information required by *CMCOB* 4.2.7R, *CMCOB* 4.2.8R and *CMCOB* 4.2.9R cannot be given in the same document as the information required by *CMCOB* 4.2.2R. However, it is permissible for all of this information to be provided in attachments to the same email or enclosures to the same letter.

- (2) When giving the information referred to in *CMCOB* 4.2.11R, *firms* are reminded of their obligations under *GEN* 4.3.1R.

4.2.13 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)(g) and (h), 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) ask the *customer* whether they have outstanding liabilities with the *person* against whom the *claim* is to be made and explain that if they do:

- (a) that any damages, compensation or settlement monies might, in certain circumstances, be off-set against those outstanding liabilities; and

- (b) the *customer* will, where necessary, need to pay the *firm's* fees from their own funds;

- (5) in the case of pension related *claims* explain:

- (a) that the *firm's* fee may become payable before the *customer* has access to their pension; and

- (b) that the *customer* will, where necessary, need to pay the *firm's* fees from their own funds;

- (6) ask the *customer* if they, whether in *Great Britain* or in another jurisdiction:

- (a) have been declared bankrupt;

- (b) are subject to a bankruptcy petition;

- (c) are subject to an individual voluntary arrangement;

- (d) have proposed an individual voluntary arrangement which is yet to be approved or rejected by creditors;

- (e) are subject to a debt relief order; or

- (f) have any other similar process or arrangement to those listed in

(a) to (e) including but not limited to sequestration; and

if so, explain that any damages, compensation or settlement monies might, in certain circumstances be off-set against the *customer's* outstanding debts; and that the *customer* will, where necessary, need to pay the *firm's* fees from funds that are not subject to the processes or arrangements listed above at (a) to (f).

(7) record the *customer's* response to questions (4) and (6) and where the *customer* does not know the answer, advise them to check.

- 4.3.2 G (1) For the purposes of *CMCOB* 4.3.1R(1)(a) a *firm* will have complied with its obligations if it has provided relevant examples of potential alternative methods of pursuing the *claim* and has asked the *customer* whether any such methods are available to them.
- (2) 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:
- (a) the *claim* is for personal injury and the *customer* has legal expenses cover under a contract of insurance relating to their car or home and that cover includes legal advice, assistance and representation; or
 - (b) the *customer* is entitled to legal advice, assistance and representation by virtue of their membership of a trade union.
- (3) Where the *customer* does have other methods for pursuing a *claim*, the *firm* should explore whether the *customer* has investigated whether they might pursue the *claim* through those methods (for instance, by using any advice, assistance and representation available under a contract of insurance or through their trade union membership).
- (4) Where a *customer* is unable to confirm whether they have other methods for pursuing the claim or is unaware of whether they have suitable cover in place, the *firm* should advise the *customer* to check whether they have such cover in place and inform the *customer* that it is possible to pursue a claim through such alternative arrangements if they are in place.
- (5) *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 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 or potential claims*.

Enquiries regarding outstanding liabilities

- 6.1.2 R (1) After a *firm* has entered into an agreement with a *customer* relating to *regulated claims management activity*, the *firm* must promptly ask the *person* against whom the *claim* is to be made whether the *customer* has any outstanding liabilities with that *person*, which the damages, compensation or settlement monies might be off-set against.
- (2) If the *person* against whom the *claim* is to be made confirms that the *customer* has such liabilities with it, the *firm* must:
- (a) in a *durable medium*, promptly inform the *customer* of this;
 - (b) inform the *customer* that they will, where necessary, need to pay the *firm's* fees from their own funds.
- 6.1.3 G (1) The *guidance* at *CMCOB* 4.2.10G also applies in relation to *CMCOB* 6.1.2R.
- (2) A *firm* should comply with *CMCOB* 6.1.2R(1) at the first opportunity it has, for example at the time of sending a letter of authority or initial information request to the *person* against whom the *claim* is to be made.

Passing on information and requests for information

- 6.1.4 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*.

- 6.1.5 R (1) A *firm* must notify the *customer* of:
- (a) the *firm* becoming aware of:
 - (i) any costs 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 (including any changes to the *firm*'s fees); 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)(g)), the fact that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme; and
 - (d) any actions the *firm* intends to take to present and pursue the *claim* that were not notified to the *customer* under *CMCOB* 4.2.8R (1)(c) at the time of contracting; and
 - (e) any allegation by a third party that the *claim* is fraudulent, except where there is a legal obligation preventing such disclosure. Where a *firm* is required to make such a notification under this provision, the *firm* must also advise its customer of the consequences of pursuing a fraudulent *claim*. *Firms* are reminded of their obligations under *CMCOB* 2.1.7R(2).
- (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*, except for (1)(d), which may alternatively be made over the telephone.
- (3) Where a *firm* notifies the *customer* of any costs or changes to costs in accordance with (1)(a), the *firm* must obtain and record the *customer*'s consent in relation to those costs before it invoices the *customer* for them.
- (4) The *firm* must obtain consent for any actions it proposes to take that:
- (a) have not previously been notified to the *customer*; or
 - (b) were notified to the *customer* more than six *months* ago and

are significant in nature.

- (5) For the purposes of (4)(b), examples of actions that are significant in nature include, but are not limited to, the *firm* proposing to:
 - (a) commence legal proceedings; or
 - (b) submit a *claim* to a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.
- (6) A *firm* must obtain the *customer's* consent in (3) and (4):
 - (a) over the telephone; or
 - (b) in a *durable medium*.

- 6.1.6 G (1) Examples of developments in the progress of the *claim* which should be treated as material for the purposes of *CMCOB* 6.1.5R(1)(b) include:
- (a) 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;
 - (b) 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;
 - (c) 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;
 - (d) the *firm* receiving an offer of any kind from the *person* against whom the *claim* is being made to settle the claim, whether for money or some other non-monetary benefit, even where such an offer was not originally the intended outcome of the *claim*; and
 - (e) the *firm* receiving a decision in respect of the *claim* from a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.
- (2) When making a notification in accordance with *CMCOB* 6.1.5R (1)(b), a *firm* should consider whether it is necessary to inform the *customer* that:
- (a) updates from the *firm* are likely to be less frequent while the progress of the claim is not within the *firm's* control; and
 - (b) the *customer* may contact the *firm* at any time to discuss their *claim* and its progress.

Revised fee estimates

- 6.1.7 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.
- 6.1.8 G (1) *CMCOB* 6.1.7R 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 in relation to a misold financial product (for example because it has obtained the relevant *credit agreement*) 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) When calculating the likely compensation, damages or redress to provide the revised fee estimate under *CMCOB* 6.1.7R, a *firm* should include in their calculation any interest or other sum likely to be paid in satisfaction of the *claim* on which the *firm's* fees will be based.
- (3) If the *firm* realises that a revised estimate is incorrect, it should provide a further revised estimate.
- (4) When giving a revised fee estimate as required by *CMCOB* 6.1.7R the *firm*:
- (a) should, where relevant, communicate to the *customer* any assumptions it has used in its calculations, for example that the *customer* made all of the payments they were obliged to make under the agreement; and
 - (b) may, where appropriate, include a statement to the effect that the fee estimate may be subject to change and may be different to the actual amount the *customer* will receive.
- (5) For *claims* concerning pension or *investment* products or services, *firms* are expected to:
- (a) take all reasonable steps to obtain sufficient information about the *claim* as soon as reasonably practicable after entering into an agreement with the *customer* to provide *regulated claims*

management activity, enabling them to comply with *CMCOB* 6.1.7R promptly; and

- (b) where such information is unavailable, consider whether, based on experience of similar claims, the *firm* is in any case able to give the *customer* a more reliable indication of the fee that the *customer* is likely to pay.

Keeping the customer informed

- 6.1.9 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:
- (a) as part of a notification required under *CMCOB* 6.1.5R(1), given an update on the progress of the claim; and
 - (b) 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.
- 6.1.10 G (1) If, during the period to which the report relates, the *firm* has not sent any notifications to the *customer* under *CMCOB* 6.1.5R, 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* 6.1.9R 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* 6.1.5R(1) and updates under *CMCOB* 6.1.9R, 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).

- 6.1.11 R *CMCOB* 6.1.9R does not apply if the *customer* expressly requests not to receive such updates.

Providing information to persons other than the customer

- 6.1.12 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

- 6.1.13 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.
- 6.1.14 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* 6.1.13R.

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 including, where relevant, by reference to the full amount of any money recovered for the *customer* in respect of damages or compensation, or in settlement of the claim.
- (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 vulnerable.
- 6.2.4 R (1) If a *customer* is unable to pay fees and charges to the *firm* when they fall due, a *firm* must:
- (a) treat the *customer* with forbearance and due consideration, including by allowing the *customer* a reasonable opportunity to pay the fee and charges; and
 - (b) where appropriate, direct the *customer* to sources of free and independent debt advice.
- (2) A *firm* must 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/resouces/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 or potential 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 or potential claims*; and
 - (b) in respect of which it has been determined that the *firm* is to cease carrying on that *regulated activity*.
- (3) The following provisions in *CMCOB* 6.3 apply to a *firm* with a *claims management temporary permission* as modified below:
- (a) the reference in *CMCOB* 6.3.3R(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*;
 - (b) the reference in *CMCOB* 6.3.5R to 40 *business days* must be read as 30 *days*; and
 - (c) the reference in *CMCOB* 6.3.7(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*.

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 the *customer*, or 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 or potential 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 or potential 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 in relation to a criminal injury claim*.

7.1.2 R A contravention of the *rules* in *CMCOB 7.2* or *CMCOB 7.3* does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules*) is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

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, calculated in accordance with *CMCOB 7.3*, 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 or potential 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 or potential 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 one

sixth of its overheads expenditure.

- (2) For the purposes of (1), a *firm's* overheads expenditure is to be calculated as follows:
 - (a) 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*;
 - (vii) 20% of total marketing expenditure; and
 - (viii) other variable expenditure.
- (3) 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 (2)(a) and (2)(b) are to be calculated on a pro-rated basis to produce an equivalent annual amount.
- (4) Where the *firm* has not yet started to trade, the items in (2)(a) and (2)(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*.
- (5) In (2)(b)(vii) total marketing expenditure means spending in the twelve *months* ending on the *firm's* most recent *accounting reference date* on, or relating to:
 - (a) advertising across different media channels;
 - (b) digital marketing;

- (c) publicity expenses;
 - (d) advertising agency fees;
 - (e) public relations consultancy fees;
 - (f) expenses for promotions offered in connection with services provided by the *firm*;
 - (g) market research and customer surveys;
 - (h) publications including printed promotional material such as brochures and leaflets, and the *firm's annual report*;
 - (i) sponsorships; and
 - (j) gifts to *customers*.
- (6) Where, during a period of six *months*, a *firm's* overheads expenditure, calculated according to (2), decreases by 20% or more relative to the overheads expenditure calculated at the last *accounting reference date*, the *firm* may recalculate its overheads requirement and therefore its prudential resources requirement accordingly.
- (7) For the purpose of the recalculation in (6), the *firm's* overheads requirement shall be equal to one third of:
- (a) the *firm's* total expenditure in the period of 6 *months* ending on the date it changes its prudential resources requirement; less
 - (b) the total of the items in (2)(b) (if they are included in such expenditure) in that six *month* period.
- (8) A *firm* must notify the *FCA* of any change in its prudential resources requirement within 14 *days* of that change.

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 a *lead generator* holds *client money*, the prudential requirement for the *firm* is the client money requirement (see *CMCOB* 7.2.9R).

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 as set out in the table in *CMCOB 7.3.2R*.

- (2) In arriving at its calculation of its prudential resources, a *firm* must deduct certain items as set out in the table in *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 partner and an equal amount is transferred to another such account by the <i>person</i>'s 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>(3) a <i>firm</i> must derecognise any <i>defined benefit asset</i>;</p> <p>(4) 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) | <p>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's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.</p> |
| 5 | Revaluation reserves | <p>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.</p> |

| | | |
|-------|-------------------------|---|
| 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 <i>firm's</i> 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. |

7.3.3R 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

- 7.3.4 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.

7.3.5 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* 7.3.3R)

7.3.6 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> | | |

| | | |
|-----|--|---------|
| | 7.3.4R 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 in relation to 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 *claims management 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 *claims management temporary permission* are not to apply; or
- (2) are to apply to those *persons* with the modifications specified in the table in *CMCOB* 8.1.4R.

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* 8.1.4R:
- (1) do not apply, to the extent set out in the table, to a *person* with a *claims management 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 | <i>Guidance</i> applies with necessary modifications to reflect the <i>Claims Management Order</i> (see Note 1). |

| | | |
|-----------------------------------|--|---|
| (COND) | Note 1 | <p>A <i>firm</i> is treated as having a <i>claims management 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 5 of Part 3 of that Order at that date. According to article 83(9) of the <i>Claims Management Order</i> section 55B(3) of the <i>Act</i> (The 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>claims management 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>claims management temporary permission</i> for which the <i>FCA</i> is responsible. The <i>guidance</i> in <i>COND</i> should be read accordingly.</p> |
| Supervision Manual (<i>SUP</i>) | <p><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 Chapters 2 and 5 of Part 3 of the <i>Claims Management Order</i> (see Note 2).</p> | |
| | Note 2 | <p>If a <i>firm</i> with <i>claims management 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 <i>firm</i> has <i>claims management temporary permission</i>.</p> |
| | | <p>For a <i>firm</i> with only <i>claims management temporary permission</i>: <i>SUP</i> 15.5.1R, <i>SUP</i> 15.5.2G, <i>SUP</i> 15.5.4R, <i>SUP</i> 15.5.5R are modified so that the words “reasonable</p> |

| | |
|--|---|
| | 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 6.1.7R | 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 6.1.7R until 1 July 2019; and;</p> <p>(2) the reference in CMCOB 6.1.7R 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 6.1.7R | G | <p>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.</p> | | |
| 3 | CMCOB 7.2.4R to 7.2.10R | R | <p>A <i>firm</i> need not comply with CMCOB 7.2.4R to 7.2.10R.</p> | 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; and conclusions reached | When the steps are taken | Not specified |
| <i>CMCOB</i> 2.2.4R | Source of sales leads | <i>Lead generator</i> which supplied the lead | When the lead is accepted | Not specified |
| <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 9.1.1R for electronic |

| | | | | |
|------------------------|--|---|--|----------------|
| | | | | communications |
| <i>CMCOB</i> 4.3.1R | Availability of alternative methods for pursuing a claim; whether <i>customer</i> has outstanding liabilities with the <i>person claim</i> made against; and whether <i>customer</i> subject to bankruptcy etc | The <i>customer's</i> confirmation that they have alternative methods and the reasons for not using them; and the <i>customer's</i> confirmation regarding outstanding liabilities and bankruptcy etc | Before an agreement is entered into with the <i>customer</i> | Not specified |
| <i>CMCOB</i> 6.1.5R | Costs not previously notified or changes to notified costs | <i>Customer's</i> consent in relation to costs | When consent obtained | 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>firm</i> not being satisfied that the <i>lead generator</i> may carry on <i>seeking out, referrals and identification of claims or</i> | Promptly |

| | | | | |
|---------------------|---|--|--|--------------------------------------|
| | | the <i>lead generator</i> may carry on <i>seeking out, referrals and identification of claims or potential claims</i> without breaching the <i>general prohibition</i> | <i>potential claims</i> without breaching the <i>general prohibition</i> | |
| <i>CMCOB</i> 7.2.8R | Changes in prudential resources requirement | Change in prudential resources requirement | The <i>firm</i> changing its prudential resources requirement | Within 14 <i>days</i> of that change |

**Sched
ule 3 Rights of action for damages**

Sch 3.1 G The table below sets out the *rules* in *CMCOB* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 3.2 G If a “Yes” appears in the column headed “For private person?”, the *rule* may be actionable by a “*private person*” under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A “Yes” in the column headed “Removed” indicates that the *FCA* has removed the right of action under section 138D(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 3.3 G The column headed “For other person?” indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the rule may be actionable is given.

| Chapter / Appendix | Section/ Annex | Paragraph | Right of action under section 138D | | |
|--|----------------|-----------|------------------------------------|------------------|-------------------|
| | | | For private person? | Removed? | For other person? |
| The clear, fair and not misleading <i>rule</i> in <i>CMCOB</i> 3.2.3 R | | | Yes | In part (Note 1) | No |

| | | | |
|---|-----|--------------------------------|----|
| The prudential <i>rules</i> for <i>firms</i> carrying on regulated claims management activity in <i>CMCOB</i> 7.2 and 7.3 | No | Yes, <i>CMCOB</i> 7.1.2R | No |
| All other <i>rules</i> in <i>CMCOB</i> | Yes | No | No |
| <p>Note: <i>CMCOB</i> 3.2.3R provides that if, in relation to a particular communication or <i>financial promotion</i>, a <i>firm</i> takes reasonable steps to ensure it complies with the <i>fair, clear and not misleading rule</i>, a contravention of that <i>rule</i> does not give rise to a right of action under section 138D of the <i>Act</i>.</p> | | | |

Annex J

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 K

Amendments to the Perimeter Guidance manual (PERG)

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

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 89F(3) of the *Regulated Activities 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 constituted 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 constituted 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 financial 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 financial 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 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 22(1B) 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 in the *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 89W 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 constituted 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 or potential 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 *claimant* or potential *claimant* to another *person*; and
 - (c) identifying a *claim* or potential *claim*, or a *claimant*, or potential *claimant*;
- when carried on in relation to a *personal injury claim*, a financial services or financial product *claim*, a *housing disrepair claim*, a *claim for a specified benefit*, a *criminal injury claim* or an *employment-related claim*.
- (2) The other *regulated claims management activities* are:
 - (a) *advice, investigation or representation in relation to a personal injury claim*;
 - (b) *advice, investigation or representation in relation to a financial services or financial product claim*;

- (c) advice, investigation or representation in relation to a housing disrepair claim;
 - (d) advice, investigation or representation in relation to a claim for a specified benefit;
 - (e) advice, investigation or representation in relation to a criminal injury claim; and
 - (f) advice, investigation or representation in relation to 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 into, or commissioning the investigation of, the circumstances, merits or foundation of a claim (see article 89F(2)(i) 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)(j) 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 carries on that activity at the direction of, and under the supervision of, a legal practitioner, provided that the legal practitioner carries on that activity in the ordinary course of legal practice pursuant to the professional rules to which that legal practitioner is subject (article 89N);
- (2) activity carried on by a charity or not-for-profit body (article 89O);
- (3) exclusion from seeking out, referrals and identification of claims or potential 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, organisation, or body corporate 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;
 - (e) the introducer, in obtaining and referring those details, has complied with the provisions of the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (EU) 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, organisation, or body corporate that carries on the activity through legal practitioners); and
- (4) any regulated activity of the kind specified in articles 21, 25, 39A, 53 or 64 of the Regulated Activities Order carried on by a person who has permission to carry on that activity in relation to a contract of insurance (article 89U).

5 Guidance on insurance distribution activities

5.1 Application and purpose

...

Guidance on other activities

- 5.1.11 G A person may wish to carry on activities related to other forms of investment in connection with contracts of insurance, such as advising on and arranging regulated mortgage contracts. Such a person should also consult the guidance in PERG 2 (Authorisation and Regulated Activities), PERG 4 (Regulated activities connected with mortgages) and PERG 8 (Financial Promotion and Related Activities). A person may also wish to carry on regulated claims management activities (where their activities are not insurance distribution activities, and they fall outside of the exclusion in article 89U of the Regulated Activities Order). Such a person should also consult the guidance in PERG 2.7.20M and PERG 2.7.20N.

...

5.7 The regulated activities: assisting in the administration and performance of a

contract of insurance

5.7.1 G The *regulated activity* of assisting in the administration and performance of a contract of insurance (article 39A) relates, in broad terms, to activities carried on by intermediaries after the conclusion of a *contract of insurance* and for or on behalf of *policyholders*, in particular in the event of a claim. Loss assessors acting on behalf of *policyholders* in the event of a claim are, therefore, likely in many cases to be carrying on this *regulated activity*. By contrast, managing claims ~~management~~ on behalf of certain insurers is not a *regulated activity* (see PERG 5.7.7G (*Exclusions*)).

...

5.7.8 G ...

So, a *person* whose activities are excluded under article 12 of the *Regulated Activities Order* (Breakdown insurance) will not be a relevant insurer for these purposes and any *person* who performs loss adjusting or managing claims ~~management~~ on behalf of such a *person* will not be able to use the exclusion in article 39B.

...

5.15 Illustrative tables

...

5.15.4 G Types of activity – are they regulated activities and, if so, why?

| Type of activity | Is it a regulated activity? | Rationale |
|---|-----------------------------|---|
| ... | | |
| ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS | | |
| Negotiation of settlement of claims on behalf of an <i>insurance undertaking</i> | No. | Claims management <u>Managing claims</u> on behalf of an <i>insurance undertaking</i> does not amount to <i>assisting in the administration and performance of a contract of insurance</i> by virtue of the exclusion in article 39B (see PERG 5.7.7G) |
| ... | | |
| Loss adjusters <u>adjusting</u> and claims management <u>managing</u> | Potentially. | These activities may amount to <i>assisting in the administration and performance of a contract</i> |

| | | |
|---|--|--|
| <p>claims services (for example, by administration outsourcing providers)</p> | | <p>of insurance. Article 39B excludes these activities, however, when undertaken on behalf of an <i>insurance undertaking</i> only (see <i>PERG 5.7.7G</i>).</p> |
|---|--|--|

...

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 or engaging in claims management 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 or potential 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 or potential 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 Part 1A of 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 89W of the *Regulated Activities Order* in relation to *regulated claims management activities* are set out as exemptions in articles 73A to 73J 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 or potential 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 or potential 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*
A *claims management activity*.

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* 8.12.27G). ...

...

8.14 Other financial promotions

...

8.14.2A G The exemptions in Part 6 of the *Financial Promotions Order* apply to communications which relate to “*controlled claims management activity*” except where stated otherwise in that Part (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*.

...

Overseas communicators (articles 30-33)

8.14.14 G There are a number of exemptions in the *Financial Promotion Order* relating to *financial promotions* sent into the *United Kingdom* by an

overseas *communicator* who does not carry on certain *controlled activities* in the *United Kingdom*. These exemptions apply in addition to any other exemptions which may apply to any particular *financial promotion* by an overseas *communicator*. The article 30-33 exemptions do not apply to any communications in respect of *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*. This exemption does not apply to any communication in respect of a *controlled claims management activity*. ...

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-
A G The article 49 exemption does not apply to communications in respect of *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 and claims-management related services 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 L

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?

...

Annex M

Amendments to the Reader's Guide

In this Annex, underlining indicates new text.

Reader's Guide: An introduction to the Handbook

...

3. Structure of the Handbook

The Handbook is divided into the following blocks. The Handbook also contains a Glossary of definitions <https://www.handbook.fca.org.uk/handbook/glossary/> which specifies what the legal meaning is of various phrases and wording used.

...

Business Standards

Day-to-day conduct rules that apply to firms, as specified.

...

- BCOBS (Banking: Conduct of Business sourcebook) – applies to firms that accept deposits from banking customers
- CMCOB (Claims Management: Conduct of Business sourcebook) – applies to firms that provide claims management services

...

FEES (CLAIMS MANAGEMENT COMPANIES) INSTRUMENT 2018

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 234 (Industry funding);
 - (e) paragraph 23 (Fees) of Schedule 1ZA (The Financial Conduct Authority);
and
 - (2) articles 1(2) and 74 of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018; and
 - (3) section 27 of the Financial Guidance and Claims Act 2018.
- B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Powers exercised by the Financial Ombudsman Service

- D. The Financial Ombudsman Service Limited:
- (1) makes and amends the scheme rules relating to the payment of fees under the Compulsory Jurisdiction;
 - (2) fixes and varies the standard terms for Voluntary Jurisdiction participants relating to the payment of fees under the Voluntary Jurisdiction, and
 - (3) fixes and varies the standard terms for the Voluntary Jurisdiction, as set out in the Annex to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
 - (a) section 225 (The scheme and the scheme operator);
 - (b) section 227 (Voluntary jurisdiction);
 - (c) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (d) paragraph 15 (Fees) of Schedule 17; and
 - (e) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- E. The making and amendment of these scheme rules and fixing and variation of these standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

- F. The Financial Ombudsman Service Limited notes that, for the avoidance of doubt, the Transitional Provisions at TP 20 in Annex A below apply equally to the Voluntary Jurisdiction and the Compulsory Jurisdiction of the Financial Ombudsman Service Limited.

Approval by the Financial Conduct Authority

- G. The Financial Conduct Authority consents to the making and amendment of the scheme rules and approves the fixing and variation of the standard terms by the Financial Ombudsman Service Limited.

Commencement

- H. This instrument comes into force on 1 January 2019.

Amendments to the Handbook

- I. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- J. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- K. This instrument may be cited as the Fees (Claims Management Companies) Instrument 2018.

By order of the Board of the Financial Ombudsman Service Limited
7 December 2018

By order of the Board of the Financial Conduct Authority
13 December 2018

Annex A

Amendments to the Glossary

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

Amend the following definition as shown.

- participant* (1) a *firm* other than:
- firm*
- ...
- (i) ... ; ~~and~~
- (j) ... ; and
- (k) a claims management company in relation to a regulated claims management activity;
- ...

Annex B

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

| Part 1: Application, notification and vetting fees | | |
|---|---|---|
| (1) Fee payer | (2) Fee payable (£) | Due date |
| ... | | |
| <u>(zzd) applications for claims management companies</u> | <p>(1) £1,200 for <u>claims management companies with annual turnover of up to and including £1,000,000; and</u></p> <p>(2) £10,000 for <u>claims management companies with annual turnover of over £1,000,000.</u></p> <p><u>Firms which already have Part 4A permissions and are applying to vary their permissions will receive a 50% reduction in the relevant fee.</u></p> | <u>On the date the application is made.</u> |

...

3 Annex 1R **Authorisation Fees payable**
Part 1 - Authorisation fees payable

...

| Part 1(a) Authorisation Fees payable to the FCA by FCA-authorized persons | |
|--|---------------------------|
| Application type | Amount payable (£) |
| ... | |
| (3) Complexity groupings relating to <i>credit-related regulated activity</i> – see Part 3 | |
| ... | |
| (4) Complexity groupings relating to <i>claims management companies</i> | |
| <u>(k) Claims management companies with turnover of up to and including £1,000,000</u> | <u>1,200</u> |
| <u>(l) Claims management companies with turnover of over £1,000,000</u> | <u>10,000</u> |

...

4 **Periodic fees**

...

4 Annex 1AR FCA activity groups, tariff bases and valuation dates

Part 1

This table shows how the *FCA* links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

| | |
|--|--|
| Activity group | Fee payer falls in the activity group if: |
| ... | ... |
| CC2. Credit-related regulated activities | ... |
| <u>CMC.</u> | <u>it is a <i>claims management company</i>.</u> |

...

Part 3

This table indicates the tariff base for each fee-block set out in Part 1.

The tariff base in this Part is the means by which the *FCA* measures the amount of business conducted by a *firm* for the purposes of calculating the annual periodic fees payable to the *FCA* by that *firm*.

| | |
|--|--|
| Activity group | Tariff base |
| ... | ... |
| CC2. Credit-related regulated activities | ... |
| <u>CMC.</u> | <u>Annual turnover as defined in <i>FEES 4 Annex 11AR</i>.</u> |

...

Part 5

This table indicates the valuation date for each fee-block. A *firm* can calculate

its tariff data in respect of fees payable to the *FCA* by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.

| Activity group | Valuation date |
|--|--|
| ... | ... |
| CC2. Credit-related regulated activities | ... |
| <u>CMC.</u> | <u>Annual turnover for the financial year ended in the calendar year ending 31 December.</u> |
| ... | |

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2018 2019 to 31 March 2019 2020

Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of *FEES* 4 Annex 1AR.

...

| Activity group | Fee payable | |
|----------------|--|---|
| ... | ... | ... |
| CC2. | ... | ... |
| <u>CMC.</u> | <u>Band width (£ thousands of annual turnover)</u> | <u>Fee (£) for 2019/20</u> |
| | <u>0-50</u> | <u>500</u> |
| | <u>50-100</u> | <u>1,000</u> |
| | <u>>100</u> | <u>13 per £ thousand or part per £ thousand</u> |

...

...

4 Annex 11AR **Definition of annual income for the purposes of calculating fees in fee blocks A.13, A.14, A.18, A.19 and B. Service Companies, Recognised Investment Exchanges, and Regulated Benchmark Administrators and Claims Management Companies**

| Annual income definition |
|--|
| <p>General definition for all relevant fee-blocks (other than where the firm is an operator of a Recognised Investment Exchange, or a Benchmark Administrator or a Claims Management Company)</p> <p>...</p> <p>Where the relevant fee-block is fee-block A.19</p> <p>...</p> <p><u>Where the firm is a Claims Management Company (fee-block claims management company)</u></p> <p><u>Income is defined as turnover.</u></p> <p><u>“Turnover” means the sum of the amounts paid to, or received by, an authorised <i>claims management company</i> in respect of <i>regulated claims management activities</i> in <i>Great Britain</i>, including:</u></p> <p><u>(j) charges, commission, the share of any compensation, fees and subscriptions;</u></p> <p><u>(k) the monetary value of any services received by the <i>claims management company</i> where it makes no payment for those services or where the payment received is worth less than the monetary value of the services; and</u></p> <p><u>(l) the monetary value of any advertising in respect of the <i>claims management company</i> that it has not paid for out of funds referred to in sub-paragraphs (j) and (k).</u></p> |

...

4 Annex 13G **Guidance on the calculation of tariffs set out in FEES 4 Annex 1AR Part 3**

| |
|--|
| <p>Table 1</p> <p>The following table sets out guidance on how a <i>firm</i> should calculate tariffs for fee blocks A.13, A.14, A.18, A.19 and B. Service Companies, Recognised</p> |
|--|

| | |
|--|--|
| Investment Exchanges, and Regulated Benchmark Administrators <u>and Claims Management Companies</u> . | |
| ... | |
| Reporting period | |
| ... | |
| (4) | The <u>Except for claims management companies</u> , the “reporting year” is the <i>firm’s</i> financial year ending during the calendar year prior to the <i>FCA fee year</i> . This <i>fee year</i> starts on 1 April. This is specified in Part 5 of <i>FEES 4 Annex 1A</i> . |
| ... | |

...

5 Financial Ombudsman Service Funding

...

5.5B Case fees

...

Leaving the Financial Ombudsman Service

- 5.5B.24 R Where a *respondent* ceases to be a *firm*, *payment service provider*, *electronic money issuer*, *CBTL firm*, a *designated credit reference agency*, a *designated finance platform*, ~~or VJ participant~~ or claims management company (as the case may be) part way through a *financial year* it will remain liable to pay case fees under *FEES 5.5B* in respect of cases within the jurisdiction of the *Financial Ombudsman Service*.

...

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2018 2019/1920

...

Compulsory jurisdiction - general levy

| Industry block | Tariff base | General levy payable by firm |
|---|----------------------|---|
| ... | ... | ... |
| <u>24 – claims management companies</u> | <u>Annual income</u> | <u>£50 plus £3.00 per £1,000 of annual income</u> |

...

After FEES 5 Annex 3R (Case Fees Payable for 2018/19) insert the following new Annex, FEES 5 Annex 4R. The text is not underlined.

5 Annex 4R Definition of annual income for the purposes of the FOS general levy where the firm is a claims management company

| Annual income definition |
|---|
| <p>Income is defined as turnover.</p> <p>“Turnover” means the sum of the amounts paid to, or received by, an authorised <i>claims management company</i> in respect of <i>regulated claims management activities</i> in <i>Great Britain</i>, including:</p> <p>(a) charges, commission, the share of any compensation, fees and subscriptions;</p> <p>(b) the monetary value of any services received by the <i>claims management company</i> where it makes no payment for those services or where the payment received is worth less than the monetary value of the services; and</p> <p>(c) the monetary value of any advertising in respect of the <i>claims management company</i> that it has not paid for out of funds referred to in sub-paragraphs (a) and (b).</p> |

...

After FEES TP 19 (Transitional provisions relating to statements provided by participant firms before 1 April 2019 with respect to the FSCS 2019/20 financial year) insert the following new transitional provisions. The text is not underlined.

TP 20 Transitional provisions relating to the Temporary Permissions regime for Claims Management Companies, taking effect on 1 January 2019

These transitional provisions will only apply to firms that are already trading as *claims management companies* as at 1 January 2019 and who apply to the *FCA* for temporary permission, prior to authorisation.

| (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 |
|---|--|-----|--|--|---|
| Periodic fee transitional provisions | | | | | |
| 20.1 | <i>FEES</i> TP 20 | G | <p>(1) This transitional provision applies to <i>claims management companies</i>.</p> <p>(2) <i>Claims management company</i> is defined in the <i>Glossary</i> as a <i>person</i> carrying on a <i>regulated claims management activity</i> in <i>Great Britain</i>.</p> <p>(3) <i>Regulated claims management activity</i> is in turn defined as comprising various individual <i>regulated activities</i> which are defined in the <i>Glossary</i> by reference to the <i>regulated activities</i> in articles 89G to 89M of the <i>Regulated Activities Order</i>. All of the <i>Glossary</i> definitions above come into force on 1 January 2019.</p> <p>(4) The <i>regulated activities</i> in articles 89G to 89M of the <i>Regulated Activities Order</i> were added to the <i>Regulated Activities Order</i> by the <i>Claims Management Order</i>. That Order comes into force for most purposes on 1 April 2019. However, it came into force on</p> | 1 January 2019 | 1 January 2019 |

| | | | | | |
|------|--------------------|---|--|----------------|----------------|
| | | | <p>29 November 2018 for various purposes including:</p> <p>(a) for the purpose of enabling the <i>FCA</i> to make <i>rules</i>, give guidance, impose requirements, make directions, and approve <i>rules</i>;</p> <p>(b) for the purpose of enabling the <i>scheme operator</i> to do various things including making <i>rules</i> and standard terms.</p> <p>(5) That means that, for the purposes of the definition of <i>claims management company</i> and the related <i>Glossary</i> definitions (including the definitions of <i>regulated claims management activity</i> and the related <i>regulated activities</i>) in this instrument, the references to the <i>Regulated Activities Order</i> are references to that Order as amended by the <i>Claims Management Order</i>.</p> | | |
| 20.2 | FEES 4 Annex 1A | R | <p><i>Claims management companies</i> registering for temporary permission must pay the periodic fee for the 2019/20 year within 14 days of the date of the invoice, which will be issued following registration. The periodic fee for 2019/20 will be calculated from the <i>firm's</i> annual turnover.</p> <p>“Turnover” means the sum of the amounts paid to, or received by, a <i>claims management company</i> in respect of <i>regulated claims management activities</i>, including:</p> <p>(a) charges, commission, the</p> | 1 January 2019 | 1 January 2019 |

| | | | | | |
|--|-------------------|---|--|----------------|----------------|
| | | | <p>share of any compensation, fees and subscriptions;</p> <p>(b) the monetary value of any services received by the <i>claim management company</i> where it makes no payment for those services or where the payment received is worth less than the monetary value of the services; and</p> <p>(c) the monetary value of any advertising in respect of the <i>claims management company</i> that it has not paid for out of funds referred to in subparagraphs (a) and (b).</p> <p>“Annual turnover” means:</p> <p>(d) the <i>claims management company’s</i> turnover for the 12 months to 30 November 2017; or</p> <p>(e) if the business did not trade for the full 12 months to 30 November 2017, the estimated turnover for the 12 months to 30 November 2018; or</p> <p>(f) where the application for authorisation by the Claims Management Regulator was made on or after 30 November 2017, the estimated turnover for the 12 months to 30 November 2018.</p> <p><i>Firms</i> must also notify the <i>FCA</i> of any turnover arising from business in Scotland, or business conducted under section 75 of the <i>CCA</i>.</p> | | |
| Transitional provision for FOS general levy | | | | | |
| 20.3 | <i>FEES</i> 5.7.1 | R | <i>Claims management companies</i> applying for authorisation for the 2019/20 financial year must pay the <i>FOS general levy</i> on or | 1 January 2019 | 1 January 2019 |

| | | | | |
|--|--|--|--|--|
| | | <p>before the later of 1 April 2019 and 30 calendar days after the date when the invoice is issued by the <i>FCA</i>. The <i>general levy</i> for <i>claims management companies</i> will be calculated at £50 plus £3.00 per £1,000 of annual income.</p> <p>“Income” is defined in <i>FEES 5 Annex 4R</i> and means the sum of the amounts paid to, or received by, a <i>claims management company</i> in respect of <i>regulated claims management activities</i>, including:</p> <p>(a) charges, commission, the share of any compensation, fees and subscriptions;</p> <p>(b) the monetary value of any services received by the <i>claims management company</i> where it makes no payment for those services or where the payment received is worth less than the monetary value of the services; and</p> <p>(c) the monetary value of any advertising in respect of the <i>claims management company</i> that it has not paid for out of funds referred to in subparagraphs (a) and (b).</p> <p>“Annual income” means:</p> <p>(d) the <i>claims management company’s</i> turnover for the 12 <i>months</i> to 30 November 2017; or</p> <p>(e) if the business did not trade for the full 12 <i>months</i> to 30 November 2017, the estimated turnover for the 12 <i>months</i> to 30 November 2018; or</p> <p>(f) where the application for authorisation by the Claims Management Regulator was</p> | | |
|--|--|--|--|--|

| | | | | | |
|--|-------------------|---|---|----------------|----------------|
| | | | <p>made on or after 30 November 2017, the estimated turnover for the 12 <i>months</i> to 30 November 2018.</p> <p><i>Firms</i> must also notify the <i>FCA</i> of any turnover arising from business in Scotland, or business conducted under section 75 of the <i>CCA</i>.</p> | | |
| Joining the Financial Ombudsman Service | | | | | |
| 20.4 | <i>FEES</i> 5.8.1 | R | <p>For <i>claims management companies</i> applying for authorisation in the 2018/19 financial year, this rule does not apply to those <i>firms</i> which have paid in full upon registration but are not authorised until part way through the <i>financial year</i>.</p> | 1 January 2019 | 1 January 2019 |

