

Claims management companies: recovering the costs of FCA regulation and the Financial Ombudsman Service

Consultation Paper

CP18/23**

August 2018



How to respond

We are asking for comments on the Consultation Paper (CP) by 22 October 2018.

You can send them to us using the form on our website at: <https://www.fca.org.uk/cp18-23-response-form>

Or in writing to:
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Telephone:
020 7066 5406

Email:
cp18-23@fca.org.uk

How to navigate this document onscreen



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takes you to helpful abbreviations

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1 Summary

Why we are consulting

- 1.1** Responsibility for claims management regulation will pass from the Claims Management Regulator (CMR) to the FCA on 1 April 2019 under the Financial Guidance and Claims Act 2018. This will bring within our scope a new business sector and a new group of firms - claims management companies (CMCs). We consulted in June 2018 on our proposals for regulating CMCs.¹
- 1.2** We have had to familiarise ourselves with the businesses models of CMCs, the services they offer their customers and the range of regulatory challenges they present. On this basis, we have developed a temporary permissions (TP) regime, an authorisations gateway and a new supervisory structure for CMCs. This consultation paper (CP) sets out our proposals for recovering the costs of setting up these facilities, as well as supervising CMCs going forward.
- 1.3** Responsibility for considering complaints about CMCs will transfer from the Legal Ombudsman Service (LeO) to the Financial Ombudsman Service, so we also set out proposals for recovering the associated transfer costs and the Financial Ombudsman Service's ongoing costs.
- 1.4** We are funded entirely by the bodies we regulate and receive no subsidies from other sources. Our fees are intended to distribute cost recovery between fee payers as fairly and efficiently as possible. They are not intended to influence firms' behaviour. We have a standard cycle of fees consultation, which firms should monitor in case there are proposals which affect them. This is summarised in paragraphs 1.9 to 1.10 below.

Who this applies to

- 1.5** This CP applies to all existing CMCs intending to continue trading from 1 April 2019 onwards, and to all businesses considering establishing CMCs in the future. This includes:
- CMCs established or serving customers in England, Scotland and Wales, including those dealing with claims under section 75 of the Consumer Credit Act 1974²
 - trade bodies representing CMCs

¹ Claims management: How we propose to regulate claims management companies (CP18/15, June 2018)

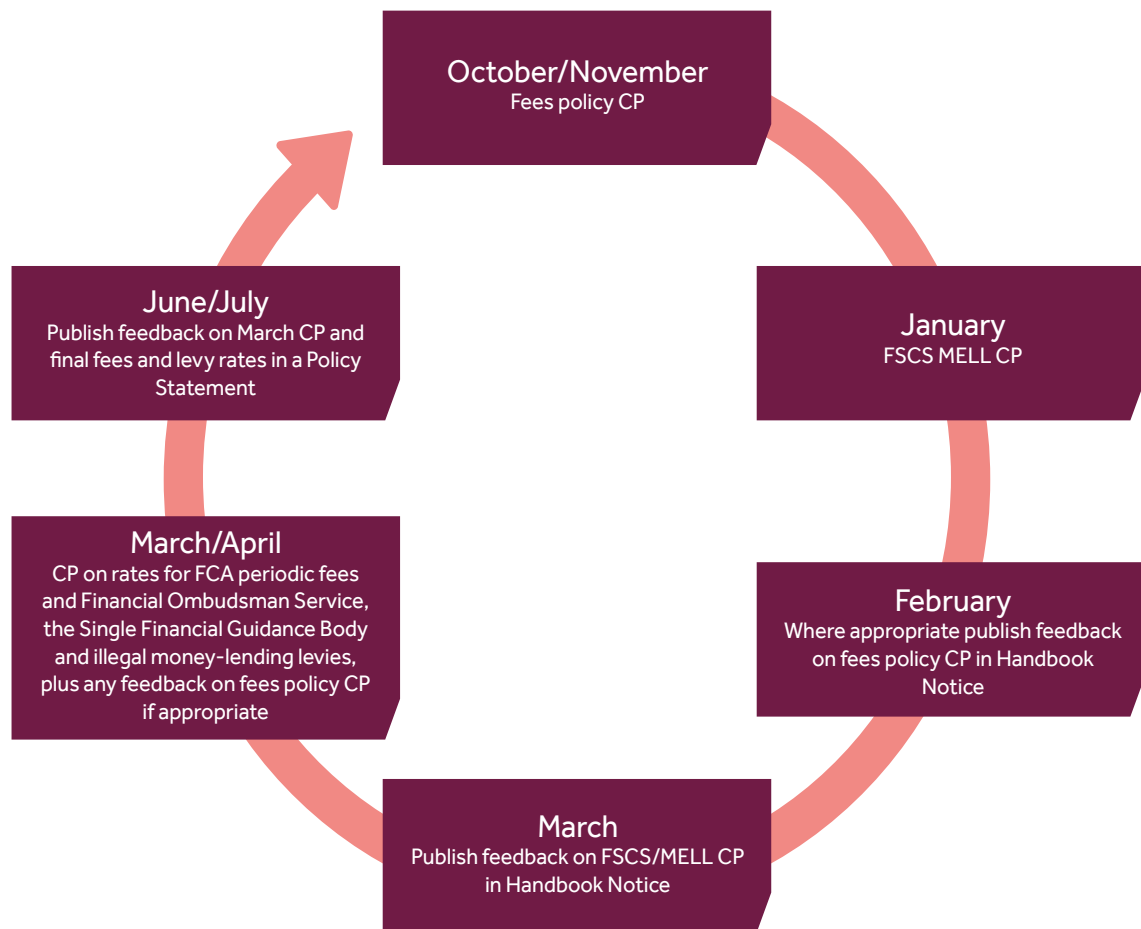
² Under section 75 of the Consumer Credit Act 1974, a credit card company is liable for any breach of contract or misrepresentation by the retailer or trader. Consumers can therefore make claims to both the retailer and credit card provider, although losses can be recovered only from one party. Section 75 also applies to foreign transactions as well as goods bought online, by telephone or mail order for delivery to the UK from overseas.



- 1.6** This CP is not directly relevant to retail financial services consumers or consumer groups, although our fees will be paid by CMCs out of revenue generated from the provision of services for consumers.

The wider context

- 1.7** In our June CP we set out the arrangements for a temporary permissions regime so that CMCs can continue trading from 1 April 2019 onwards, and for re-authorising and regulating them after that. The CP explained that the temporary permission gateway would open between 1 January 2019 and 31 March 2019.
- 1.8** This CP explains how we propose to set the fees that will recover our costs from firms, both under the TP regime and for regulation in the long term. It does not directly fit into our annual cycle of consultation on fees because we are proposing to recover the periodic fees for 2019/20 when firms register for TP from 1 January 2019. We are therefore consulting on periodic fees for 2019/20 in this CP. This would normally take place in March/April 2019.
- 1.9** Future fees proposals affecting CMCs and changes in the fee rates will be consulted on through our standard cycle of fees consultation:
- October/November - we consult on any changes to the policy on how fees and levies are raised. We provide feedback on the responses received to this consultation in the following February/March Handbook Notice or the March/April CP.
 - January - we consult on the Financial Services Compensation Scheme (FSCS) management expenses levy limit (MELL). This is a joint consultation with the Prudential Regulation Authority (PRA). We provide feedback on responses received in the March Handbook Notice. CMCs will not be subject to the FSCS but we mention this consultation for completeness.
 - March/April - we consult on FCA periodic fees rates for the next financial year (1 April to 31 March) and any proposed changes to application fees or other fees. We also consult on the Financial Ombudsman Service general levy, the Single Financial Guidance Body and illegal money-lending levies for the next financial year.
 - June/July - we publish feedback on the responses received to the March CP together with final fees and levy rates in a policy statement.



1.10 From 2020/21, CMCs will be invoiced at the same time as other firms and will become subject to the standard requirements of the Fees manual for payment of periodic fees. The key features are:

- Firms are required to provide the FCA with information annually to enable the FCA to calculate fees (FEES 4.4.1R).
- Firms whose FCA fees were £50,000 or more in any year are charged an amount equivalent to half the previous year's fee in April, with the balance payable in September. All other firms are invoiced from July onwards (FEES 4.3.6R).
- Payments are due within 30 days of the date of the invoice. There is an administrative charge of £250 for late payment to cover our expenses in chasing firms (FEES 2.2.1R).
- The periodic fee for a firm which becomes subject to FCA regulation during the financial year is pro-rated to cover only the remaining months of the fee-year (FEES 4.2.7E-FR).
- When a firm cancels its permission during the financial year, it pays the fee for the full year (FEES 4.2.9G).



Summary of proposals

- 1.11** Chapter 2 sets out our proposals for FCA fees:
- long term fees structure: authorisation fees, periodic fees, definition of turnover as the base for payment of fees
 - short term arrangements for temporary permissions: payment in advance of 2019/20 periodic fee
- 1.12** Chapter 3 sets out our proposals for the FOS general levy and the Financial Services Compensation Scheme.

Consumer protection

- 1.13** Our fees are intended to recover our costs, not influence the behaviour of firms. Consequently, our fees should have no direct impact on consumers, although there is an indirect benefit for them. This is because fees provide the funding for our regulatory oversight of claims management, and so consumers are better protected.

Market integrity and competition

- 1.14** Similarly, our fees should not have a direct impact on market integrity and competition, but they do recover the costs of our regulatory oversight.
- 1.15** It is our policy not to recover from applicants the full cost of processing applications for authorisation. Application fees contribute towards the costs and the balance is picked up by existing fee payers through their annual periodic fees. This ensures that our charges do not constitute unnecessary barriers to market entry.

Equality and diversity considerations

- 1.16** We have considered the equality and diversity issues that may arise from our proposals.
- 1.17** Overall, we do not think that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 1.18** In the meantime we welcome your input to this consultation.

Next steps

- 1.19** Please consider our proposals and send us your comments on the questions in this CP by 22 October 2018. Use the online response form on our website or write to us at the address on page 2.
- 1.20** We will consider your comments and publish our feedback in a Policy Statement (PS) in December. We will make the rules, amended if necessary in the light of your comments, at our December 2018 Board Meeting. The rules will come into effect from 1 January 2019, so that firms can start applying for temporary permission.



2 FCA fees proposals

(Draft rules in Appendix 1)

2.1 This chapter sets out our proposals for FCA fees to recover our regulatory costs. Claims management companies (CMCs) that are already trading and wish to continue trading from 1 April 2019 will be able to register for temporary permission from 1 January 2019. When they register, they will be given a date by which they must apply for FCA authorisation so that they can remain in business. We therefore present 2 sets of proposals:

- long term fees structure
- short term arrangements for temporary permissions

Before discussing the fees, we summarise the costs we are seeking to recover.

Costs

2.2 We estimate that setting up and delivering the claims management regulatory regime will cost us £16.8m up to and including 2020/21. We will have to recover this amount from CMCs. When we set up regulatory regimes that bring new entities into our scope, we can sometimes defer recovery of the project costs until we have a substantial body of fee payers in place to share the charges.

2.3 However, the claims management industry is undergoing considerable change and this uncertainty limits our ability to defer recovery of costs. Various reforms to the claims management environment, notably the deadline of 29 August 2019 for the submission of claims relating to payment protection insurance (PPI)³, may require CMCs to adjust their business models to continue providing claims management services for consumers, and some firms may exit the market entirely.

2.4 There is a strong risk that recovery of the project costs might fall disproportionately heavily on those firms that successfully apply for authorisation and become fee payers from 2020/21 onwards. It would be unfair for firms which take advantage of the regulatory gateway, but which leave within the first year, to pass their share of the project costs to those firms which continue to be authorised by us.

2.5 For this reason, we have decided to collect a substantial proportion of our project costs in the first year. We aim to recover £7.1m through periodic fees in 2019/20, which is around 42% of the total. The balance will be spread over subsequent years.

2.6 We normally invoice firms between July and September in a given year, but adopting this approach for CMCs would enable firms to register and operate under the TP regime, and then potentially leave the FCA's regulatory remit or cease trading without contributing any fees. It could be difficult or impossible to recover fees from firms which no longer exist or which have left the FCA's remit. We therefore propose to

3 See <https://www.fca.org.uk/ppi>

collect the 2019/20 fees in advance, at the time firms register for TP. This will ensure that project costs are not imposed disproportionately on authorised firms further down the line.

Long term fees structure

2.7 We are consulting on 2 sets of fees:

- application fees
- periodic fees

Application fees

2.8 When firms apply to be authorised by us, they pay a fee towards the costs of processing their applications. The balance is recovered from existing firms through ongoing fees. In setting the level of fees we look at the complexity of the authorisation process and therefore the amount of work that these authorisations will require.

2.9 We are proposing tiered application fees based on firms' turnover:

Table 2.1: proposed application fees

Size of firm	Fee
Firm turnover up to £1m	£1,200
Firm turnover above £1m	£10,000

We believe these rates will help to keep down the costs of entry to the market for the smallest firms and sole traders, while contributing proportionately towards our costs.

2.10 Firms already authorised by the FCA with Part 4A permissions normally pay only 50% of the application fee when they apply for a variation of permission (VoP) to undertake a new activity. This is because we have already established that they have satisfied our Threshold Conditions (the minimum standards for authorisation), reducing the processing work we have to undertake. We propose that any authorised firms which apply to become CMCs will benefit from the standard VoP discount.

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

Periodic fees

2.11 We will recover our costs through annual periodic fees. We use fee-blocks to link fee payers with similar permissions so that we can target cost recovery in the most effective way, so we will allocate CMCs to a new single fee block. Most FCA fee blocks (and Financial Ombudsman Service industry blocks) are broad groupings of permissions. This keeps the structure simple and avoids firms with multiple permissions paying several sets of fees in different fee blocks. There will be 7 claims management permissions and we are proposing to include all of them in a single block. We considered setting up separate fee blocks for different permissions, or for firms which limit their activity to a single permission, but concluded that this would have limited benefits and could unnecessarily complicate the structure. We propose to keep the position under review as the market evolves over the coming years.



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

- 2.12** We allocate our regulatory and supervisory costs to each fee block and recover them through periodic fees (variable annual fees). We base them on a metric known as a 'tariff base', common to fee payers in the fee block. The tariff base is intended to be an objective, transparent and simple measure that can be consistently applied across the fee block to ensure a fair distribution of cost recovery. The most common tariff measure is income. Our experience is that most firms support income as a fair indicator of size and therefore market impact, and because it can be reported consistently.
- 2.13** The total amount we wish to recover from a fee block is known as the annual funding requirement (AFR), and is based on operational costs. The fee rate is calculated by dividing the AFR by the total value of the tariff data reported by all the fee payers in the fee block. The intention is to distribute cost recovery within each fee block on the basis of the size of each fee payer according to its tariff data.
- 2.14** The fees CMCs currently pay the Claims Management Regulator (CMR) are based on turnover. The CMR's definition of turnover is compatible with our standard definition of income and so we propose to retain the measure CMCs are already familiar with. We therefore propose to insert the CMR's definition into our Handbook to ensure continuity. CMCs should note that our regulatory remit is slightly broader than the CMR's and so our definition will also encompass:
- all regulated activity in Scotland
 - business arising from section 75 of the Consumer Credit Act 1974

Firms will need to ensure that they factor these activities into the income figures that they report to us. The full definition is in Appendix 1.

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?

- 2.15** The CMR requires firms to report their turnover for the 12 months up to 30 November in the year preceding the relevant fee-year. We normally allow firms to report when their own financial year ends during the year before the fee-year. However, to simplify the transition from CMR regulation, we are proposing to keep to the CMR reporting period for the time being. We welcome views on whether firms would prefer to report according to their financial years. If so, we may consult on changing the reporting date in the future.

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?

- 2.16** The CMR puts an upper limit on the fees payable by CMCs. However, to bring CMCs into line with our standard policy that firms should pay in proportion to their market

share, the FCA does not propose to apply such a cap. We normally require smaller firms to pay a minimum fee only. We are proposing a minimum fee of £1,000 on turnover up to £100,000 for CMCs. CMCs with turnover above that threshold will pay £1,000 plus the variable rate per £1,000 on the balance of their income.

- 2.17** Firms authorised for other FCA-regulated activities will have to pay the CMC minimum fee in addition to the minimum fee they pay for in other fee blocks. This is because we need to ensure that all firms with permission to undertake claims management work contribute to the set-up costs.

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

Arrangements for temporary permission

- 2.18** CMCs which wish to continue trading from 1 April 2019 will have to register for temporary permission. Registration for TP will be open from 1 January until 31 March 2019. As explained in paragraphs 2.2 to 2.6 above, we propose that firms will need to register with us by submitting their details and paying their 2019/20 periodic fee in advance. Firms that fail to register will no longer be able to operate legally within the FCA's regime once the transfer has happened, although they could submit an application as a new market entrant after that date.
- 2.19** Upon registering for TP, firms will be allocated an application period during which they will have to apply for authorisation should they wish to continue trading. If they do not apply within their allocated period, they will have to cease trading. It is important to note that temporary permission does not equate to FCA authorisation; it is a way firms can continue to operate while their application for authorisation is processed by us. A firm's conduct during the temporary permission regime will be taken into consideration if firms subsequently apply for full authorisation. Only firms that demonstrate they satisfy, and will continue to satisfy, our Threshold Conditions will be authorised.

Payment of 2019/20 periodic fee in advance

- 2.20** We are proposing that CMCs will be required to pay their full periodic fee for 2019/20 after they register for temporary permission. This will consist of the minimum fee of £1,000 plus the variable rate per £1,000 of turnover above £100,000. The 2019/20 periodic fees will be payable within 14 days of the date of the issued invoice. Firms which achieve authorisation 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 as explained in paragraph 1.10.
- 2.21** As explained in paragraph 2.5 above, 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 going forward. All CMCs that register for temporary permission will take advantage of the gateway, whether or not they apply for authorisation. Those firms which are authorised will have to continue paying the remaining costs over the coming years. Consequently, we do not propose to refund the fees of CMCs which close their business or apply to cancel their temporary permission.



2.22 Firms which are not already trading as CMCs but which apply for authorisation as new businesses will be governed by our standard fee rules. They will pay an application fee and, if their application is successful, their periodic fee for 2019/20 will be pro-rated to reflect the months remaining in the fee year from the date of authorisation.

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

Periodic fee for 2019/20

2.23 We are aiming to recover £7.1m in periodic fees in 2020/21 to contribute towards the cost of developing the regulatory gateway. We calculate our fees on the basis of the total turnover reported by firms. 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.

2.24 On this basis, we are proposing a periodic fee of £13 per £1,000 of turnover for 2019/20. This will be payable on incomes above £100,000.

2.25 To ensure that all CMCs are satisfied that our records match the figures they supplied to the CMR, we will write to them in September 2018, asking them to confirm that the figure we quote is correct. We will be asking them only to verify that it is the figure on which their 2018/19 fees were calculated. They will not be given an opportunity to update their figures but we will ask them to add on to their CMR figure any income from Scottish business and activity under section 75 which, as explained in paragraph 2.14, will be regulated by us but is not currently regulated by the CMR.

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

3 Financial Ombudsman Service general levy and case fees for CMCs and the Financial Services Compensation Scheme

- 3.1** In this chapter we explain how the Financial Ombudsman Service is funded and how we propose the funding arrangements will apply to CMCs. The powers to make rules on funding the Financial Ombudsman Service are shared between the FCA and the Financial Ombudsman Service, so this chapter is issued jointly.
- 3.2** The rules that apply to fee-raising requirements for businesses currently covered by the Financial Ombudsman Service are contained in Chapter 5 of the FEES manual in the FCA Handbook. The key rules are summarised in Table 3.1 and we propose to apply these rules to CMCs.

Table 3.1: Key sections of FEES 5 that will apply to CMCs

Sourcebook chapter	Key rules and references
FEES 5.3 and FEES 5 Annex 1R	Businesses that are covered by the Financial Ombudsman Service are required to pay a general levy to fund its operating costs. Based on currently available information, the Financial Ombudsman Service estimates that it will need us to raise £1.5m to £2.5m by general levy for 2019/20 in relation to CMC activities. This will be divided between CMCs in the new CMC industry block, relative to their income. We propose 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 will confirm £x when we make final rules later this year but we estimate that £x will be £2.70 to £4.50.
FEES 5.7 Payment of the general levy	For the 2019/20 financial year, the general levy will be collected on or after 1 April 2019. After this, the FCA will consult on the amount of the general levy that will be collected from businesses in the CMC industry block on an annual basis. Businesses must pay the general levy annually on or before the later of 1 April and 30 calendar days after the date when the invoice is issued by the FCA.
FEES 5.8 and 5.5B.24R Joining and leaving the Financial Ombudsman Service	A business which becomes subject to the Financial Ombudsman Service part way through a financial year must pay a rateable proportion of the general levy. If a respondent ceases to be a CMC part way through a financial year it will remain liable to pay case fees in respect of cases within the jurisdiction of the Financial Ombudsman Service.
FEES 5.4 Information requirements	Businesses are required to provide the FCA with information annually to enable the FCA to calculate fees.
FEES 5.5 and FEES 5 Annex 3R Case fees	Businesses covered by the Financial Ombudsman Service ³ currently pay £550 per case and are permitted 25 free cases per year. It is likely that similar rules will apply to CMCs, but the Financial Ombudsman Service will consider the position and consult on its proposals for CMCs as part of the annual plan and budget consultation. Final rules will be confirmed in March 2019. The rules set out penalties for late payment of case fees and enable the Financial Ombudsman Service to refund, reduce or waive case fees in certain circumstances.



How is the Financial Ombudsman Service funded?

- 3.3** The Financial Ombudsman Service is free for consumers to use. The businesses it covers pay a combination of:
- case fees - which are usually invoiced and collected by the Financial Ombudsman Service once cases have been resolved
 - annual fees (levies) which are collected by the FCA for the Compulsory Jurisdiction (CJ) and by the Financial Ombudsman Service for the Voluntary Jurisdiction (VJ)
- 3.4** In each of the Financial Ombudsman Service's jurisdictions, the annual budget reflects the total expected to be raised by levies, plus the total expected to be raised by case fees for the relevant financial year.
- 3.5** The Financial Ombudsman Service is required to consider certain cases under the CJ and it also has its own VJ, which covers some types of complaints which are not covered by the CJ, by agreement with firms. CMCs that are not covered by the CJ may wish to consider signing up to the VJ.
- Case fees (FEES 5.5B)**
- 3.6** The Financial Ombudsman Service is responsible for writing the rules about case fees which are subsequently approved by the FCA Board. Case fees are invoiced and collected directly by the Financial Ombudsman Service when a case has been resolved.
- 3.7** The Financial Ombudsman Service does not charge a business for the first 25 cases that it deals with during a financial year. For the 26th and each subsequent complaint, the Financial Ombudsman Service charges a case fee of £550. The Financial Ombudsman Service currently expects to charge CMCs the same case fees as other businesses it covers, but case fees for CMCs will be confirmed in March 2019 following the Financial Ombudsman Service's plan and budget consultation.
- Penalties for late payment and circumstances in which case fees might be waived**
- 3.8** The rules for businesses that are currently covered by the Financial Ombudsman Service set out penalties for late payment of case fees and enable the Financial Ombudsman Service to refund, reduce or waive case fees in certain limited circumstances. We are proposing to apply the following requirement to CMCs:
- 3.9** If a business covered by the Financial Ombudsman Service does not pay a case fee that it is liable to pay under the rules within the specified time period (usually 30 calendar days), the business will be required to pay:
- an additional administrative fee of £250 plus
 - interest on any unpaid amount at the rate of 5% per annum above the official bank rate from time to time, accruing daily from the date on which the amount concerned became due
- 3.10** The Financial Ombudsman Service can decide in exceptional circumstances to refund, reduce or waive all or part of a case fee if charging all or part of the fee would be inequitable.

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?

Annual fees / levies (FEES 5.3, FEES 5.7 and FEES 5 Annex 1R)

- 3.11** The general levy applies to all businesses covered by the CJ, and it is raised and collected by the FCA. It is payable by all firms authorised or registered by us, including those that have not had any cases referred to the Financial Ombudsman Service, unless they have claimed exemption.
- 3.12** The general levy for the Financial Ombudsman Service 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. There is a minimum levy in each industry block and, in most cases, the levy increases in proportion to the amount of 'relevant business' (ie business done with consumers who are eligible to refer their complaint to the Financial Ombudsman Service) that each firm does. Annually, the amounts actually payable by each block will vary to reflect changes in the proportions of cases in each block.
- 3.13** The amount raised from each industry block is based on the operational costs required to deal with the forecast volume of complaints about relevant business activity in each of those blocks. We are proposing to create a new industry block for all types of business with one or more of the CMC permissions that we are consulting on in CP18/15 (including firms with only the lead generator permission).

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

- 3.14** For the 2019/20 financial year, the general levy for the whole year will be collected on or after 1 April 2019. After this, the FCA will consult on the amount of the general levy that will be collected from businesses in the CMC industry block and issue invoices.
- 3.15** The Financial Ombudsman Service estimates that it will need to raise £1.5m to £2.5m by general levy for 2019/20. This is the amount that the Financial Ombudsman Service estimates that it requires to cover transfer costs and to deal with complaints about CMCs in the 2019/20 financial year.⁵
- 3.16** Table 3.2 shows how much different size CMCs currently pay for the LeO annual fee and how much they would pay if the Financial Ombudsman Service required us to collect £1.5m or £2.5m via the general levy.

Table 3.2 Comparison of current LeO costs and proposed Financial Ombudsman Service general levy

Annual turnover	Current LeO annual levy	Proposed FOS general levy for 2019/20 ⁵ (£1.5m)	Proposed FOS general levy for 2019/20 ⁶ (£2.5m)
£50k	£340	£185	£275
£500k	£1750	£1400	£2,300
£1m	£3500	£2750	£4,550
£10m	£23,500	£27,050	£45,050
£50m	£50,000	£135,050	£225,050

⁵ The Financial Ombudsman Service does not yet have all the information to make a definitive estimate of costs. It is currently working on the information it has been provided with.

⁶ Including transfer costs. The Financial Ombudsman Service anticipates that the costs of the transfer will be covered in the 2019/20 general levy, but subsequent years may also include an element of the transfer costs.

⁷ See previous footnote.



3.17 The general levy will be divided between CMCs in the new CMC industry block. We propose 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 will confirm £x when we make final rules later this year but we estimate that £x will be £2.70 to £4.50.

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

3.18 Currently, firms that have notified us that they do not conduct business with eligible complainants (as defined in the Dispute Resolution: Complaints (DISP) sourcebook in the FCA Handbook) are exempt from certain rules in DISP and from paying the FOS general levy. We propose that the same exemption should apply to CMCs.

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?

Reporting requirements (FEES 5.4)

3.19 To enable the Financial Ombudsman Service to calculate its general levy, firms must provide a statement (or a best estimate) of their 'relevant business' for each fee year. We are proposing that CMCs should be required to provide this information by the end of February each year (or at a date requested by the FCA if the CMC becomes subject to the Financial Ombudsman Service part way through the financial year). If the firm does not provide the information when it is due, it must pay an administrative fee of £250 and the general levy will be calculated using the valuation applicable to the previous period where available, multiplied by a factor of 1.10.

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

Voluntary jurisdiction

3.20 The industry blocks and tariff rates for firms in the VJ are set out in FEES 5 Annex 2R. The Financial Ombudsman Service will consult on the rates for CMCs as part of their annual plan and budget consultation.

Fees 5.8 and FEES 5.5B.24R Joining and leaving the Financial Ombudsman Service

3.21 We propose that a CMC which becomes subject to the Financial Ombudsman Service part way through a financial year must pay a rateable proportion of the general levy. If a respondent ceases to be a CMC part way through a financial year it will remain liable to pay case fees in respect of cases within the jurisdiction of the Financial Ombudsman Service. CMCs which apply for, but do not obtain authorisation will not receive a refund of the amount that they have paid towards the general levy.

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

Financial Services Compensation Scheme

- 3.22** The Financial Services Compensation Scheme (FSCS) is an industry funded scheme of last resort that acts as a compensation safety net for consumers of authorised financial services firms. Under the current regulator, customers of CMCs do not have access to FSCS or an equivalent compensation scheme. Our proposed new rules for CMCs will help protect client money if it is held by CMCs and introduce new requirements to help ensure a smooth wind down if a CMC closes. We do not propose to extend FSCS cover to consumers of CMCs at present, but we may review the position in the future if there is evidence of significant consumer harm. CMCs will not be required to contribute to the costs of running the Scheme.

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



Annex 1

Questions in this paper

- Q1:** Do you agree with our proposed application fees for authorisation?
- Q2:** Do you have any comments on our proposal to create a single new fee block for CMCs?
- 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?
- 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?
- Q5:** Do you have any comments on our proposals for periodic fees, including the minimum fee of £1,000?
- Q6:** Do you have any comments on our proposal to charge the 2019/20 periodic fee when CMCs register for temporary permission?
- Q7:** Do you have any comments on our proposed periodic fee rates and arrangements for recovering 2019/20 fees?
- 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?
- Q9:** Do you have any comments on our proposals to create a new industry block for CMCs in FEES 5 Annex 2R?
- Q10:** Do you agree that the tariff base for CMCs should be income? If you disagree what alternative approach would you suggest?
- 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?
- Q12:** Do you have any comments on our proposed reporting requirements for CMCs?



- Q13:** Do you agree with our proposals for CMCs that join or leave the Financial Ombudsman Service part way through a financial year?
- Q14:** Do you agree that FSCS cover should not be extended to customers of CMCs?



Annex 2

Compatibility statement

Compliance with legal requirements

1. This annex explains our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA). Under section 138I of FSMA, the FCA and the Financial Ombudsman Service are exempt from the requirement to carry out and publish a cost benefit analysis regarding such proposals.
2. When consulting on new rules, the FCA is required by section 138I(2)(d) of FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s.1B(1) of FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s.1B(5)(a) of FSMA to have regard to the regulatory principles in s.3B of FSMA. The FCA is also required by s.138K(2) of FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this annex explains how we have considered the recommendations made by the Treasury under s.1JA of FSMA about aspects of the economic policy of Her Majesty's Government which we should consider in connection with our general duties.
5. This annex includes our assessment of the equality and diversity implications of these proposals.

The FCA's objectives and regulatory principles: Compatibility statement

6. Our proposals set out in this consultation are not intended in themselves to advance our operational objectives. However, the fees we collect will enable us to fund the regulation of claims management companies (CMCs) from 1 April 2019 onwards to meet our responsibilities. Therefore, these proposals will indirectly advance our operational objectives of:
 - delivering consumer protection - securing an appropriate degree of protection for consumers

- enhancing market integrity - protecting and enhancing the integrity of the UK financial system
- building competitive markets - promoting effective competition in the interests of consumers

7. We also think that these proposals are indirectly compatible with our strategic objective of ensuring that the relevant markets function well because they will enable us to fund the activities to meet it. For the purposes of our strategic objective, 'relevant markets' are defined by s.1F of FSMA, but this consultation paper (CP) relates specifically to the claims management market. In the rest of this annex, reference to objectives means both our strategic objective and operational objectives.
8. In the case of the Financial Ombudsman Service, certain proposals in this consultation relate to raising the general levy to fund its activities in relation to CMCs from 1 April 2019 onwards. This will help the Financial Ombudsman Service to indirectly meet its statutory function of providing a scheme for the quick and informal resolution of disputes between CMCs and their customers. The proper functioning of the Financial Ombudsman Service also helps us to meet our consumer protection objective.
9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s.3B of FSMA. Most of the relevant regulatory principles are considered below:
- The need to use our resources in the most efficient and economic way***
10. Our fee-raising proposals are set to recover our costs in carrying out our responsibilities under FSMA and associated legislation. We endeavour to carry out this work in the most efficient and economical way possible, concentrating on the areas of activity that pose the greatest risk to our objectives.
- The principle that a burden or restriction should be proportionate to the benefits***
11. Our fees are necessary for us to meet our objectives. As outlined above we take steps to use our resources in the most efficient and economic way, while delivering benefits to UK consumers, through our regulatory activities.
12. We are collecting our 2019/20 fees from CMCs in advance to reduce the project costs that would be passed on to authorised CMCs in the future if firms were able to leave the TP regime before paying their share.
- The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation***
13. We have set the application fee for the smallest CMCs at £1,200 to avoid unnecessary barriers to market entry. None of these proposals should affect mutual societies.
- The principle that we should exercise of our functions as transparently as possible***
14. In undertaking this consultation, we are proposing the unusual step of collecting the first year's fee in advance because we expect this to be the time when we have the largest population of fee payers to share the costs.
15. The proposals in this CP would enable us to fund the activities we need to undertake from the opening of the temporary permission (TP) gateway on 1 January 2019. These activities include taking action to minimise how far a business carried on (i) by an



authorised person; or (ii) in contravention of the general prohibition, can be used for a purpose connected with financial crime (as required by s.1B(5)(b) of FSMA).

Expected effect on mutual societies

16. The FCA does not expect the proposals in this paper to have any impact on mutual societies.

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

17. These proposals enable us to fund the activities we need to undertake in 2018/19. These activities include meeting our duty to promote effective competition in the interests of consumers. Fees are not intended in themselves to influence firms' behaviour, but our decision to charge a lower application fee for smaller CMCs is intended to facilitate entry into the market.

Equality and diversity

18. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
19. As explained in paragraphs 1.16 to 1.17 of this CP, we do not think that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.

HM Treasury recommendations about economic policy

20. Each year, the Treasury makes recommendations to us under section 1JA of FSMA about aspects of economic policy which we should consider when discharging our functions. Our fees proposals indirectly take account of the Treasury's recommendations by providing the resources that enable us to meet our objectives in taking responsibility for the claims management market. More directly, our proposal to set a lower application fee for small CMCs takes account of the Treasury recommendation to minimise barriers to entry.

Annex 3

Abbreviations in this document

AFR	Annual funding requirement
CJ	Compulsory jurisdiction
CMC	Claims management company
CMR	Claims Management Regulator
CP	Consultation paper
FCA	Financial Conduct Authority
FEES	Fees Manual
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
LeO	Legal Ombudsman
MELL	Management expenses levy limit
PRA	Prudential Regulation Authority
PS	Policy statement
TP	Temporary permission
VJ	Voluntary jurisdiction
VoP	Variation of permission



We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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

Draft Handbook text

[*Editor's note:* the text in this instrument takes account of the changes proposed in CP18/15 'Claims management companies: how we propose to regulate claims management companies' (June 2018) as if they were made.]

FEES (CLAIMS MANAGEMENT COMPANIES) (No X) 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);
 - (2) section 79 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.
- C. 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 of the Financial Ombudsman Service and the Compulsory Jurisdiction.

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.

Approval by the Financial Conduct Authority

- F. 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

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

Amendments to the Handbook

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

Citation

- J. This instrument may be cited as the Fees (Claims Management Company) (No X) Instrument 2018.

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

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

Annex B

Amendments to the Fees manual (FEES)

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

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><u>(1) £1,200 for <i>claims management companies</i> with annual turnover of up to and including £1,000,000</u></p> <p><u>(2) £10,000 for <i>claims management companies</i> with annual turnover of over £1,000,000</u></p> <p><u><i>Firms</i> 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>Claims management companies with turnover of up to and including £1,000,000</u>	<u>£1,200</u>
<u>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:
...	
<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
...	...
<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
...	...

<u>CMC.</u>	<u>Annual turnover for the 12 months ending 30 November</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>0-100</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, Benchmark Administrators and Claims Management Companies

Annual income definition
General definition for all relevant fee-blocks (other than where the firm is an operator of a Recognised Investment Exchange, a Benchmark Administrator <u>or</u> a Claims Management Company)
...
Where the relevant fee-block is fee-block A.19

...

Where the firm is a Claims Management Company (fee-block claims management company)

Income is defined as turnover.

‘Turnover’ means the sum of the amounts paid to, or received by, an authorised claims management company in respect of regulated claims management activities in Great Britain, including:

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

‘Annual turnover’ means:

- (d) the claims management company’s turnover for the 12 months to 30 November in the calendar year preceding the relevant fee-year; or
- (e) if the business did not trade for the full 12 months to 30 November, the estimated turnover for the first 12 months of trading.

...

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

Table 1

The following table sets out guidance on how a *firm* should calculate tariffs for 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.

...	
	Reporting period

...	
(4)	The <u>Except for claims management companies, the “reporting year” is the firm’s financial year ending during the calendar year prior to the FCA fee year. This fee year starts on 1 April. For claims management companies, the fee year is the 12 months to 30 November of the prior calendar year. This is specified in Part 5 of FEES 4 Annex 1A.</u>
...	

...

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~~ 2019/2019 2020

...

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 £X per £1,000 of annual income</u>
---	----------------------	--

...

After TP 19, insert the following new text. It is not shown 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 4 Annex 1A</i>	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 share of any compensation, fees and subscriptions;</p> <p>(b) the monetary value of any services received by the <i>claim</i></p>	1 January 2019	1 January 2019

			<p><i>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 CMC’s 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>Consumer Credit Act</i>.</p>		
Transitional provision for FOS general levy					
20.2	FEES 5.7.1	R	<p><i>Claims management companies</i> applying for authorisation for the 2019/20 financial year must pay the <i>FOS general levy</i> on or 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></p>	1 January 2019	1 January 2019

			will be calculated at £50 plus £X per £1,000 of annual income.		
Joining the Financial Ombudsman Service					
20.3	<i>FEES</i> 5.8.1	R	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> .	1 January 2019	1 January 2019

