FCA
Financial Services Consumer Panel

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By email: ClaimsManagementMarketStudy@fca.org.uk

Dear FCA,

Financial Services Consumer Panel response to FCA MS26/2 - Claims management services: market study terms of reference

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to comment on the FCA's terms of reference for its market study into claims management services. We use the term 'CMC' in this response to refer to all firms offering claims management services and/or legal support to consumers seeking redress, including lead generation activities.

The Panel very much welcomes the launch of this study. We share many of the same concerns as the FCA and do not believe that the CMC market is working as well as it could for consumers.

1. General comments on the proposed scope and framing

While CMCs can provide a valuable service to individual consumers, the Panel is concerned that the market is underdelivering for too many consumers.

The Panel has heard concerns about consumers being drawn into claims processes without fully understanding who they are dealing with, what service they are signing up to, what the likely cost will be, or whether a free alternative is available. We have also heard of examples where CMCs have provided what seems to be a near minimal service with no real claims verification or support undertaken.

Particular attention should be paid to the role of lead generators and data-driven marketing practices. We are concerned about the multiple reports of spam[1], misleading[2] or exaggerated advertising, consumers being enrolled into claims activity without clear awareness, barriers to cancellation and the use or onward use of personal data in ways that may not be transparent to consumers. We also note that the nature and tone of some advertising risks unduly damaging consumer trust in the underlying market (e.g. financial services) and/or the relevant regulator. Accordingly, we agree lead generation activities merit close examination in their own right, alongside the role of authorised firms or legal service providers that receive leads.

We therefore support the proposal to include both lead generation and claims management services within the scope of the study.

The Panel also recognises that CMCs can play a valuable market function. For example, by helping to identify issues leading to consumer detriment, and supporting consumers to obtain redress when they have been wronged, CMCs can have a disciplining effect on firms and can help the FCA deliver on its statutory objectives. However, the Panel is concerned that poor practices by some CMCs risks undermining the opportunities for the sector to help deliver better consumer outcomes at a more macro level. The Panel encourages the FCA to be alive to this risk.

We also encourage the FCA to continue to engage closely with other regulators, including the Solicitors Regulation Authority, the ICO, the Law Society of Scotland and other relevant legal regulators, to ensure the study captures harms and incentives across the full claims ecosystem rather than only within the FCA perimeter.

2. Proposed areas of focus

The Panel supports the proposed areas of focus, and offers the following additional comments:

(i) *Consumer journey* – the FCA is right to place a focus on understanding the end-to-end consumer journey and associated consumer experience. However, it is critical this is underpinned with thorough consumer research. The Panel considers this needs to go beyond that included in the annual Financial Lives Survey data. It will be essential to understand in detail why and when consumers want to and/or use CMCs (and we note that these two things may well be different). Consumer research should capture both those

[1] for example text messages encouraging consumers who have never purchased a car to make a claim for motor finance redress.

[2] Including, in relation to motor finance claims, where consumers were being encouraged to use a CMC after the FCA had stated its intention to establish a scheme, but where this fact was not disclosed in the advertising to consumers.

who have used claims management services and those who chose not to, or who attempted to pursue claims directly.

(ii) *Consumer understanding of pursuing claims directly* – while some consumers will genuinely need the support of a CMC and others are happy to use a CMC because they are time poor (and at least that way they can obtain some of the redress owed), we encourage the FCA to investigate the reasons why some other consumers mistakenly feel unable or unwilling to pursue claims directly. For example, to understand whether this reflects product complexity, lack of confidence, poor awareness of available routes to redress, or the way claims are presented in marketing. Understanding these drivers will be important in assessing both the value some providers can add and where consumers may be paying for support they did not need or did not fully understand.

(iii) *Vulnerable consumers* – we would encourage the FCA to pay particular attention to the impact on consumers in vulnerable circumstances, including consumers with low financial capability, low confidence or poor digital skills. In that respect, the Panel notes that expanding the scope to expressly include issues that may particularly impact vulnerable consumers (for example veteran and hearing loss claims) may provide some helpful insights.

(iv) *Pricing and value for money* – the Panel is under the impression there is very little in the way of difference in terms of the core pricing offer from many CMCs. We would encourage the FCA to investigate whether this is the case and, if so, what the underlying drivers might be. The Panel is also unclear whether the current typical fees (based on a proportion of any redress recovered) are too high or really offer value for money. The study should test whether consumers can meaningfully assess price and value in practice, or whether competition is weakened by, for example, first-contact advantage, confusing fee models, poor disclosure, behavioural prompts, or misconceptions around 'no win, no fee' propositions.

(v) *Pricing model changes* - We also urge the FCA to be alert to the risk of harm if the study serves as a catalyst for a general shift in the way consumers are charged for the use of CMCs. We are conscious, for example, that some alternative pricing models (involving an element of upfront pricing) could work for large cohorts of consumers, but nonetheless effectively bar others from using CMCs. It may be that those so-barred are the consumers with the greatest need for third party support to bring a claim.

(vi) *Regulatory landscape* - the Panel strongly supports the FCA's intention to examine incentives created by the regulatory landscape. Fragmentation across regulators can create scope for arbitrage, uneven compliance costs and inconsistent consumer protections. We encourage the FCA to look at differences in underlying regulatory drivers of behaviour, such as principles, statutory objectives, approaches to systems and controls, enforcement and redress. In particular, we would encourage the FCA to identify whether firms have incentives to structure themselves, or their activities, in ways that reduce scrutiny or exploit gaps between regimes – such as through phoenixing.

3. Northern Ireland

The Panel would encourage the FCA to consider, so far as possible, the nature of harms affecting consumers in Northern Ireland, even where the relevant firms or activities fall outside the FCA's perimeter. We recognise the FCA cannot extend its remit through this study. However, understanding the scale and character of harm in Northern Ireland, and engaging with the relevant authorities, could help inform recommendations and reduce the risk that important consumer issues are left unexplored.

In our discussions, concerns were raised that weaker oversight may allow nuisance marketing, exaggerated promises and high-cost agreements to persist, with particular implications for insurance claims and consumer outcomes. Even where matters fall outside its remit, the FCA can play an important role in sharing insights and evidence from the study, helping to inform recommendations and support coordinated action by other relevant authorities.

The Panel stands ready to support the FCA as the study progresses.

Yours sincerely

Chris Pond
Chair, Financial Services Consumer Panel