

26 October 2020

Dear CEO,

### **Portfolio Strategy: Claims Management Companies (CMCs)**

As part of our [Approach to Supervision](#), we have grouped all the firms we supervise into 'portfolios' based on their business models. Your firm is in the Claims Management portfolio. This portfolio includes lead generators (which seek out, refer and identify claims), and other claims management companies which advise a claimant or potential claimant, investigate a claim or represent a claimant in relation to claims across the six sectors. These are personal injury, financial services and products, housing disrepair, specified benefit, criminal injuries and employment matters.

Other firms that undertake regulated claims management activity but have been allocated to a different primary portfolio (where claims management is ancillary to their main business activity) may also find this letter useful.

### **We will send you a portfolio letter every two years**

Our vision is for CMCs to be trusted providers of high-quality, good-value services that help people pursue legitimate claims for redress and benefit the public interest.

Our current supervision strategy for CMCs runs to July 2022, with work to identify, diagnose and resolve harm from claims management activities. We will measure and evaluate how effective this work is and write to you again after July 2022 with an update on what we consider to be the key harms arising from claims management and our plans for supervising CMCs.

In this letter we:

1. Set out our view of the key areas that continue to pose a risk of harm to consumers or the markets in which CMCs operate.

2. Outline our expectation of CMCs, including how firms should be mitigating these key harms. You should consider the degree to which your business may be causing or contributing to such harms and ensure that you have effective strategies in place for mitigating them.
3. Describe our supervisory strategy and programme of work, which aims to ensure that firms are meeting our expectations, and that harms and risks of harm are being remedied and/or mitigated.

### **Our view of the key drivers of harm**

We have examined a range of information and data, including CMCs' regulatory reports, complaints data, information gathered from CMCs' applications for authorisation and other regulatory work carried out on CMCs.

Our regulation has focused on the potential drivers of harm arising from the nature of the transaction between consumers and CMCs. Consumers who use CMCs are likely to have had something go wrong for them already and this can influence choices and behaviours. Furthermore, CMCs compete to acquire consumers for a service which in many cases has free alternative routes and consumers are not always aware of their right to complain for free.

Since taking on the regulation of CMCs, we have introduced rules focused on protecting consumers from these drivers of harm. We are also carrying out a reauthorisation exercise for firms intending to continue to provide claims management services (following the transfer of CMC regulation from the Ministry of Justice to the FCA in April 2019), in order to determine whether they meet our threshold conditions. The issues we have identified, and continue to identify, during our assessments of CMCs' applications include:

- **Misleading, unclear and unfair advertising** means that consumers, particularly those who are vulnerable, can be misled by firms' poor quality financial promotions. Examples include consumers being given the impression they are due compensation simply because they have purchased a particular product, regardless of how the product was sold. CMCs should ensure their advertising is clear, fair and not misleading, and that they contain the information that is required by our Claims Management: Conduct of Business (CMCOB) sourcebook. It is important for consumers to understand such information, which includes fees and the details of an ombudsman scheme where appropriate, so that they can make an informed decision whether to proceed with making a claim via that CMC, or indeed through a CMC at all.
- **Poor disclosure** of pre-contractual information about fees and/or the availability of free alternatives to make a claim, means that consumers are not able to make well-informed decisions about using a CMC. Information about the CMC's services should be explained clearly in a single page summary in accordance with the CMCOB

sourcebook. Those CMCs that enter into contracts with consumers must also ensure their terms and conditions are written clearly and are not unfair under the Consumer Rights Act 2015.

- **Unclear fee structures** can mean consumers are not aware of how much they will need to pay a CMC or that a CMC's fee will significantly reduce the amount of redress they might otherwise receive. CMCs are required to provide an illustration or estimate of the fee in their pre-contract information, but we do not always find that they do this.
- **Poor service standards**, including poor-quality advice, inadequate processes and procedures, and sub-standard representation are a problem in this area. CMCs are required to have appropriate resources to ensure that they are suitably skilled and experienced to provide the services they are authorised to provide and conduct its business with due skill, care and diligence.
- **Failing to undertake sufficient checks** and collect relevant information before presenting claims to third parties, resulting in submission of spurious claims, slower processing and poor outcomes is another of our concerns. CMCs should take reasonable steps to investigate the existence and merits of each element of a potential claim before making or pursuing a claim.
- Some CMCs have been established by, or have close associations with, **individuals at previous firms involved in misconduct** such as the mis-selling of financial products. Such misconduct can result in the right for a consumer to make a claim against those individuals or the firm for which they work or have worked at. The individuals may therefore profit from the same client twice, once from the transaction at their previous job, and secondly via their involvement and links with the CMC taking on the resulting claims. This is despite their previous poor advice. The consumer might have used another CMC or alternative routes to complain had they been made aware of the association in advance. We are taking steps to refuse such firms' applications, or otherwise preventing such CMCs from profiting in this way. CMCs must manage conflicts of interest fairly, and conduct their businesses with integrity, and their business models must be suitable. CMCs must also have regard to the FCA's operational objectives.
- **Some firms have been looking to use existing data** to recycle and re-market claims, giving rise to nuisance calls. Firms should ensure that they comply with direct marketing legislation and the General Data Protection Regulations, undertaking sufficient due diligence on leads they are obtaining.

In general, many CMCs have demonstrated a **poor understanding of, and sometimes attitude to, their regulatory obligations**. We expect CMCs to have a good understanding and regard to the requirements applying to them, take a pro-active approach to regulatory compliance and deal with the FCA in an open and co-operative way. If they fail to do so, we will consider whether they continue to meet our threshold conditions and comply with our rules. Any failure to do so may result in us using our supervisory or enforcement powers,

and this may include closing down a firm and/or refusing its application for authorisation to carry on claims management activities.

### **Our areas of focus in your portfolio**

We have already published two 'Dear CEO' letters reminding CMCs of our expectations around [financial promotions](#) and acting for their customers (June 2019) and the importance of carrying out due diligence to ensure the [validity of claims](#) (October 2019). We also issued [joint statements](#) with the Information Commissioner's Office and the Financial Services Compensation Scheme (FSCS), warning firms and Insolvency Practitioners to be responsible when handling personal data and directing consumers to FSCS (February 2020).

Additionally, we conducted work in 2019 to assess firms' compliance with client money requirements which identified a number of failings that needed to be remedied. As a result of this, a third of CMCs that declared they operated client accounts confirmed they would stop handling client money.

In addition to our routine supervision and authorisations work, and work to clamp down on unauthorised business, we have decided to focus our portfolio strategy for CMCs on the following areas in the next two years.

- **Complex, high-value financial claims:** following the PPI deadline, many CMCs are winding down their books of PPI claims and some are moving into more complex claims such as pensions, mortgages and investment claims. We will focus on the governance, culture, systems and controls of firms related to client acquisition and lead generation, and also on financial promotions, disclosure, due diligence on potential claims, and the quality of service being provided to clients. Importantly, we will have a strong focus on compliance with our client money rules, given the substantial sums often involved in these kinds of claims, and the consequent high levels of harm that can arise if client money is not adequately protected.
- **Personal injury CMCs:** we will carry out proactive work on the impact of legislative reform on whiplash-related claims in the personal injury sector. In particular, we will seek to understand how affected CMCs adapt and take steps to ensure any changes to their business models do not result in harm to consumers.
- **PPI firm wind-downs:** we identified dozens of firms during the application process that had no viable business model beyond the run-off of their existing PPI cases. Our work will aim to ensure these CMCs' clients continue to receive a good service from their CMC as they wind down their operations and that they leave the market in an orderly way.

In addition, the Financial Guidance and Claims Act placed a duty on the FCA to make rules with a view to securing an appropriate degree of protection for consumers from excessive charges for financial services and product claims. We are considering how best to meet this duty, and any proposals that arise from this will be subject to full consultation.

## **Helping firms**

We have seen issues with firms submitting their CMC001 and Complaints regulatory returns, including them missing submission deadlines and submitting erroneous returns. You can view our requirements in relation to Regulatory Reporting [here](#). Please ensure you understand your reporting requirements and submit your regulatory returns during the correct reporting period and on time. We also recommend firms [register for 'Regulation Round Up'](#), our monthly newsletter for all regulated firms. It includes hot topics, event information and news affecting each portfolio.

## **What we expect you to do**

We expect you to take notice of the areas of concern we have set out in this letter. You should consider whether you can make changes to reduce the harm or potential harm to consumers. We aim to identify firms that appear to cause harm and we will use our work with firms and other information available to us to identify issues and take action against firms that are relapsing and causing harm.

Whatever the size of your firm, you should have appropriate governance and systems and controls for the nature, scale and complexity of your business. If we contact you, we will expect you to be able to demonstrate this and your wider actions to protect consumers from harm. If you cannot do this, we will take steps to address any weaknesses we identify. In particular, we will act where we find that CMCs do not put their customers at the heart of how they do business, for example where they have put their own profits and income above consumers' interests and fair treatment.

We will consider using our full range of regulatory tools – including enforcement – where CMCs fail to comply with our rules. All CMCs must also adhere to the Principles for Businesses, including [Principle 11](#) (Relations with regulators) which requires firms to deal with their regulators in an open and cooperative way.

If you have any questions, please contact us on 0300 500 0597.