

29 October 2020  
Our Ref: FOI7691

Thank you for your email of 5 October 2020, in which you asked for information about Claims Management Companies (CMCs).

We are handling your email as a request for information under the Freedom of Information Act 2000 (FOIA) and have answered each question in turn.

**1. *Can you please advise how many Claims management companies are under investigation for breach of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005?***

Section 21 of the Financial Services and Markets Act 2000 (FSMA) provides that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity or to engage in claims management activity unless the promotion has been made or approved by an authorised person, or it is exempt. The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO) supplements FSMA by defining the controlled activities and controlled investments for the purposes of section 21 of FSMA. FSMA also allows the FCA to set out rules and guidance that firms have to meet when they are producing or approving a financial promotion.

Please note that firms can be in breach of FSMA, but not the FPO.

We can confirm that we currently have 7 open cases in relation to CMCs that involve financial promotion issues. Please note that the Claims Management Companies department also considers financial promotions matters as part of its review of every application by potential CMCs for authorisation by the FCA, and we raise issues with firms when we consider it necessary to do so. These assessments are in addition to the 7 cases we refer to above.

**2. *Would it be possible to provide the name(s) of the companies under investigation too?***

We hold the information you requested but we are exempted from disclosing it under section 43 of FOIA, as the public interest in applying the exemption outweighs the public interest in disclosure.

Section 43 is a qualified exemption, and therefore we assess where the balance of the public interest lies in relation to the commercial interests of the firms. We have

considered the arguments for and against disclosure. For more details please see Annex A.

**Your right to complain under FOIA**

If you are unhappy with this response, you have the right to request an internal review. To do so, please contact us within 40 working days of the date of this response at [FreedomofInformationAppeals@fca.org.uk](mailto:FreedomofInformationAppeals@fca.org.uk).

If you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner by phone or via their website at:

Website: [www.ico.org.uk](http://www.ico.org.uk)

**Yours sincerely,**

**Information Disclosure Team**

## Annex A

- **Section 43 (Commercial Interests)**

This section of FOIA states that we are exempt from providing this information if disclosing it would, or would be likely to, prejudice the commercial interests of any person, including the public authority that holds the information.

As this exemption is subject to the public interest test, we have considered relevant factors in favour, and against, disclosing information as required by FOIA.

*For disclosure:*

- Disclosing the information might reassure the public about the effectiveness of the FCA's regulatory approach, and demonstrate how we respond to supervisory matters in the sector we regulate.
- Disclosure could also give consumers information to help them in making decisions about their dealings or potential dealings with firms and individuals that are, or may be, operating in the financial services industry.

*Against disclosure:*

- Disclosure would be likely to lead to widespread speculation affecting the firms' brand and reputation in the market in which they operate, without due process having been followed – i.e. without any formal public announcement and without the relevant markets and/or entities having had the opportunity to comment.
- It is strongly in the public interest that the FCA is able to have open and candid exchanges of information with the firms it regulates, regardless of the commercial sensitivity of the information. Disclosing the information could lead to firms being less willing to cooperate with us on similar work.

On this occasion, and for these reasons, we have concluded that the balance of the public interest is in favour of not disclosing the information.