

# Review of claims management regulation

Citizens Advice's response to HM Treasury and  
Ministry of Justice



# About the Citizens Advice service

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone about their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The service aims:

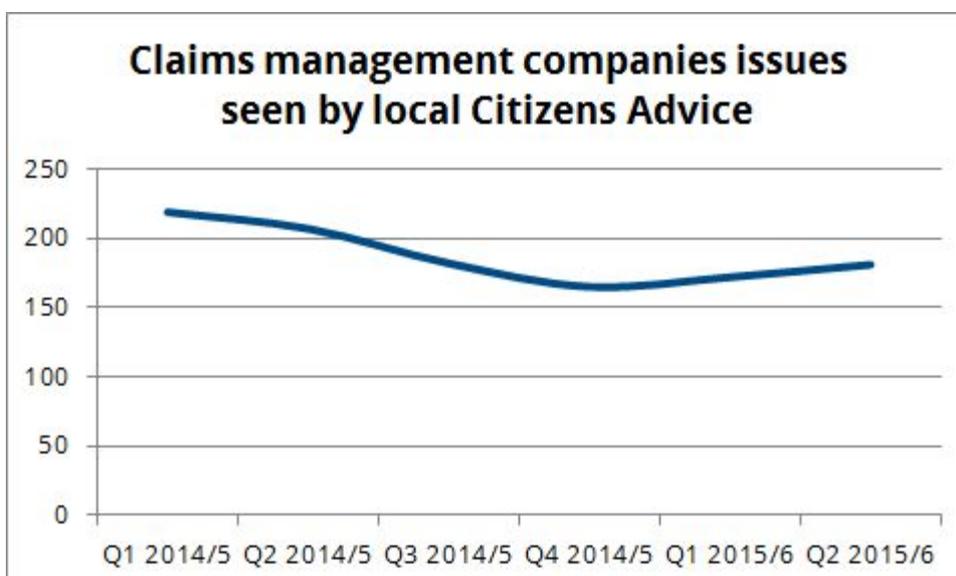
- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

Citizens Advice is the membership body for Citizens Advice Bureaux in England and Wales. There are over 300 member bureaux in England and Wales giving advice from about 3,500 locations including high street bureaux, libraries, courts, prisons, GP's surgeries and hospitals.

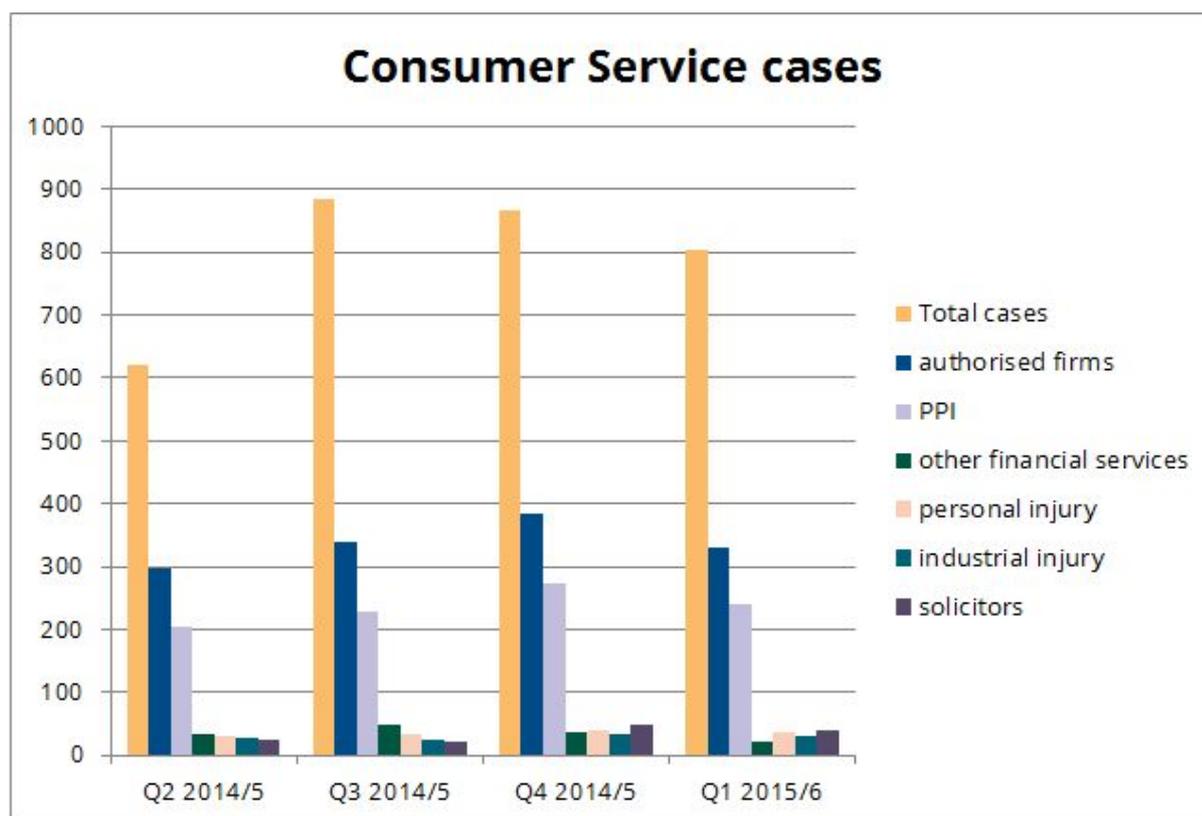
Citizens Advice and Citizens Advice Scotland jointly run the Citizens Advice Consumer Service (formerly Consumer Direct), which provides consumers and small businesses with advice about problems with goods and services. The Consumer Service database also provides a source of intelligence for Trading Standards Services across Great Britain and national regulators.

## Our experience of claims management companies

Both our local Citizens Advice network and our Consumer Service see clients who need advice about claims management companies. Local Citizens Advice deal with about 200 issues per quarter (see first graph). Predominantly these issues are about fees and charges (24 per cent), marketing, selling and cold calling practices (17 per cent) and complaints and redress (16 per cent).



The Consumer Service deals with an estimated 800 cases per quarter.<sup>1</sup> We undertake further analysis of these cases for the MoJ Claims Management Regulator. As the graph below shows, less than half the cases are about currently or previously authorised firms. A large proportion are consumers reporting cold calling/automated calls/unsolicited texts by un-named companies or by fraudsters.



Where we can identify cases that are about currently or previously authorised firms, the main issues reported by consumers are cold calling (27 per cent), the amount of the final fee (25 per cent), pre-shopping advice (11 per cent) and cancellation rights (10 per cent). In addition, 23 per cent of cases about currently or previously authorised firms had asked consumers to pay up-front fees.

## Our experience of claims management regulation

Citizens Advice has had considerable experience of working with the MoJ Claims Management Regulator from its inception. As it has developed its rules and gained new powers, we feel that it has become more effective at tackling poor and unacceptable conduct by claims management companies. Nevertheless, we feel that it could become a more effective regulator in policing the market. In particular we are disappointed that Government has yet to ban the use of unsolicited telephone calls and texts by claims management companies and lead generators.

Evidence from our services and sources such as ICO complaints data show that CMCs continue to bombard consumers with unwanted calls and texts, do not provide clear upfront information on their charges (which are frequently

<sup>1</sup> There is no current goods and services code for claims management cases and so we have to trawl the Consumer Service data to find relevant cases. This will be addressed next year with a new code.

disproportionate to the amount of work undertaken), and often provide poor customer service which is unresponsive to enquiries and complaints. We would welcome reformed regulation of these companies which results in more robust action being undertaken to tackle these problems, which are well-documented in our reports *The Cost of Redress* (2014)<sup>2</sup> and *The Claims Pests* (2012)<sup>3</sup>.

## Thoughts on future regulation

As CMCs do not deal solely with financial services-related claims, we do not think transferring responsibility for them to the FCA is appropriate. We are also concerned that sharing responsibility between the CMRU and FCA would over-complicate the regulatory landscape, potentially confusing consumers. Our key concern is that any new regulatory body has sufficient legal powers and resources to monitor CMCs and take effective enforcement action which protects consumers and deters bad practice. We would see the regulator have the following additional powers:

- The power to order firms to undertake a back business review where the regulator has identified unacceptable practice and directly compensate consumers
- To directly authorise key staff at the firm to hold them to account for bad practice
- To proactively supervise the market, rather be driven by complaints about bad practice

One useful feature of the current CMRU register is the ability to identify which firms are currently under investigation by the regulator. We would wish to see this feature retained in any register run by a new regulator.

## Banning unwanted communications from CMCs and lead generators

Our 2012 report *The Claims Pests*<sup>4</sup> set out how CMCs and lead generator companies employed by them to recruit new business bombard consumers with unsolicited and unwanted calls, texts and emails, which are widely regarded as a nuisance by most consumers.

This research suggested three-quarters of UK adults had received these, and in many cases the volume of 'spam' received was concerning and led them to believe they were being targeted by a scam, rather than receiving a legitimate offer of service. Furthermore, research conducted for us by Ipsos MORI for the report *The cost of redress* found that 63 per cent of adults in Great Britain have been contacted by an organisation offering to help them reclaim mis-sold PPI. Over half

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<sup>2</sup> [The cost of redress: the lessons to be learnt from the PPI mis-selling scandal](#), Citizens Advice, March 2014

<sup>3</sup> [The claims pests: CAB evidence on PPI and claims management companies](#), Citizens Advice, November 2012

<sup>4</sup> [The claims pests: CAB evidence on PPI and claims management companies](#), Citizens Advice, November 2012

of these had been contacted more than 10 times in the past 12 months. Ninety eight per cent of the adults contacted about PPI didn't feel that they had given permission to be contacted in this way.

ICO statistics show that unwanted PPI and accident claim calls and texts are consistently the two highest types of concern reported to them; in September 2015 they accounted for 2,767 and 1,963 complaints respectively - 38% of total complaints to ICO that month.<sup>5</sup> Furthermore the purchase method for nearly half of the cases to the Consumer Service about currently or previously authorised claims management firms was unsolicited telephone call.

We still think there is a compelling case for the regulator to ban regulated firms from cold calling, texting and emailing or buying leads from lead generators who use these techniques.

## **Clear, transparent communications between claims management companies and consumers**

It is clear from the clients that seek advice from us about problems with claims management companies that better communication about the key points of the contract would help them understand what they have entered into, particularly in relation to fees and service standards. Research for our 2014 report *The Cost of Redress* also found that consumers "struggled to recall what information was provided in the paperwork sent to them by CMCs, and many said that they didn't read most of it in any detail, as they felt that much of it was irrelevant and so focused their energies on completing or checking the application form. Most of the focus group participants said they had been provided with further information about how the relationship between themselves and the CMC would work, and most could recall general information about the fee structure. Only a minority recalled being told about the fee and payment structure in detail; very few could remember an explicit conversation or reading specific information which set out their responsibilities and those of the CMC."

Communications need to make fees, charges and service standards clearer, explain to consumers they will be charged, and that (in many cases, such as PPI) they could make a claim for free themselves or with the help of a free advice service. The FCA requires fee-charging debt management companies to alert potential customers of the existence of free debt advice in all financial promotions.<sup>6</sup> We think this might be best achieved by requiring firms operating in financial services sector to display a health warning to alert consumers to sources of free advice. This 'health warning' should be in text which is larger than the terms and conditions, at least Arial 12 font, in a prominent position - similar to the 'your home can be repossessed' text displayed on mortgage financial promotions. We do not think rule 10 of the client specific rules in the current Conduct of Authorised Persons rules goes far enough, as it only requires firms to make reasonable enquiries of clients whether they have alternative means of pursuing a claim.

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<sup>5</sup> <https://ico.org.uk/media/action-weve-taken/monitoring/1431832/concerns-reported-by-type-2015.csv>

<sup>6</sup> CONC 3.9.3 (8) R

We also recommend compulsory 'summary boxes' similar to those used for products such as credit cards, which clearly and easily explain to consumers:

- The work the CMC will undertake
- The fees and charges that will be paid, and when they are payable
- The standard of service to be provided (for example, how often the CMC will update the client on progress and how they will do this)
- In what circumstances their claim might be passed to a third party
- How to contact the CMC about the claim
- How long the claim might last, and how to cancel
- How to complain to the CMC and if unhappy, the Legal Ombudsman

This should be displayed at the beginning of the terms and conditions - not the end.

## Customer service standards

Citizens Advice has seen many consumers who have received poor service from CMCs, particularly in relation to keeping them informed of progress on their compensation claim. The recent report by the Legal Ombudsman on the initial claims management complaints it has dealt with stated that 6 per cent of the complaints it received were about the CMCs' failure to keep the consumer informed of progress on their claim.<sup>7</sup> Although the current Conduct of Business rules requires firms to keep consumers updated, there is no detail on how this is to be achieved. A new regulatory regime must consider how to drive up standards across the industry, for example by imposing and monitoring minimum customer service standards. We suggest the following:

- CMCs should provide clear information on how to contact them to enquire about a claim by phone, post, and electronically.
- A requirement for prompt responses to enquiries - for instance within 14 days - and mandatory publication of performance on this target.
- Pro-active, regular updates on the status of claims to consumers - as soon as possible where there is a new development or outcome, and at least once per calendar month where there is nothing new to report.
- Where the claim needs to be passed to a third party, firms should be required to tell consumers within 7 days including clear contact details and reiterating cancellation information.
- A commitment to recruit and treat customers honestly and treat them fairly.

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<sup>7</sup> *Complaints in focus: claims management companies*, Legal Ombudsman, November 2015

# Register of authorised persons within claims management companies

In addition to keeping a register of authorised claims management companies, we would like to extend regulation to key individuals within these, to increase accountability and promote personal responsibility for their activities and management practices. Whilst the current Conduct of Business rules require persons to be fit and proper, the regulator is not required to keep records or impose penalties on the authorised persons. This could mirror the FCA's 'approved persons' approach, which seeks to ensure that staff are fit and proper to perform the regulated functions and takes their honesty, reputation, integrity, capability, and financial soundness into account.<sup>8</sup> This innovation would help improve the behaviour of CMCs and prevent unsuitable individuals from moving between CMCs.

## Charges and cooling-off periods

Many claims such as PPI handled by CMCs are relatively simple, automated, and would not be difficult for most consumers to handle themselves. We strongly support a cap on fees payable to CMCs for simple claims for compensation, as in many cases the amount they charge for claims can be wildly disproportionate to the amount of work they have undertaken. Recent research we have undertaken on the level of fees for simple financial services complaint that the average fee for clients with PPI or packaged bank account claims is 35 per cent and could be as much as 52 per cent of the total compensation.

We also refer to the need for information on charges to be clear and transparent in the 'communications' section of this response. Providing worked examples of the payouts individuals might receive with and without using a CMC in a new, compulsory summary box would help individuals assess the merits of using one. If fees are capped we would like a clear explanation of this, and how charges will be calculated.

Information on cancellation fees after the cooling off period has elapsed should also be made more transparent - at present, some CMCs only provide these 'on application', making cancellation uncertain and a more difficult decision than it should be. Other CMCs charge excessive amounts (such as £50 per hour) for what will have been relatively simple work on a straightforward claim - an issue a new regulatory regime should consider. An analysis of recent calls to the Consumer Service found that consumers can be charged up to £70 per hour for work done by the CMC until the cancellation. All the rules suggest is that fees must be reasonable.

Finally, CMCs should not be able to include unfair contract terms which enable to them to collect fees from compensation they have not worked on obtaining - for example, where a consumer has effectively abandoned a claim through a CMC due to poor service, subsequently makes a claim themselves, and discovers a fee is still payable. Citizens Advice have seen cases where CMCs have levied heavy fees on claims they effectively stopped working on several years ago, which individuals then

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[https://www.the-fca.org.uk/approved-persons-consumer-credit?field\\_fcasf\\_sector=unset&field\\_fcasf\\_page\\_category=unset](https://www.the-fca.org.uk/approved-persons-consumer-credit?field_fcasf_sector=unset&field_fcasf_page_category=unset)

pursued. In these cases the onus should be on CMCs to prove they have undertaken work on the claim which entitles them to a portion of the compensation.