

## **REVIEW OF CLAIMS MANAGEMENT REGULATION**

**Submission from The Claims Guys to the review of the regulation of claims management companies**

**November 2015**

The Claims Guys are pleased to submit the following response to the HM Treasury and Ministry of Justice review of the regulation of claims management companies chaired by Carol Brady. We would be happy to supply any further information as required.

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## INTRODUCTION

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- The Claims Guys specialise in managing claims for customers who have been mis-sold Payment Protection Insurance (PPI) policies
- We are one of the largest Claims Management Companies (CMCs) and currently have 150,000 customers using our services.
- We do not market or advertise for business via telephone or text message.
- Since we began trading in 2009 we have helped over 340,000 customers recover more than £450 million in successful PPI claims
- We have an annual turnover of £45 million and employ 350 people in Altrincham, Cheshire
- The Claims Guys are registered with the Claims Management Regulator (CMR)
- We are part of the Alliance of Claims Companies an informal group of CMC's who have a common aim of ensuring that the financial institutions act reasonably and consistently in their relationships with CMC's
- We adhere fully to the regulations

# EXECUTIVE SUMMARY

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## Context

- The review of the regulation of CMCs follows concerns that CMCs fuel speculative claims for compensation and create a social nuisance through unsolicited calls and texts.
- As an ethical and regulation abiding organisation we welcome the government taking steps to try and address the issues with rogue firms in the industry.
- There are a number of reasons why consumers use CMCs including a lack of expertise, a lack of time and a wariness of the financial institutions.
- CMCs have been able to carve out a distinct role by bringing consumers attention to the issue of PPI mis-selling and redress.
- The vast majority of PPI complaints are submitted by CMCs - Lloyds have said that two thirds of PPI complaints are made by 200 CMCs
- The introduction of a fee cap could have negative consequences, not just for the CMCs but for the customers the cap is purportedly there to protect.
- By placing a limit on the maximum quantum of fee charged for any claim, a compliant CMC's ability to ethically market its services would be severely compromised.

## Remedies

- In the absence of banks voluntarily identifying and compensating customers to whom they mis-sold PPI, the CMC sector provides the only realistic option of helping identify the remaining customers who have yet to seek redress. (70% of successful claims are made through a CMC and there are an estimated 6 million consumers who are still eligible to recover mis-sold PPI)
- If a cap is introduced at a prohibitive level then our ability to operate would be compromised and therefore compliant firms, who do not robocall or send unsolicited texts, would not be able to identify remaining consumers eligible for redress.
- Without proper levels of earnings ethical marketing (via radio, conventional media and advertising on social media) could not be afforded and the ability to encourage claimants to come forward and receive proper compensation would be massively and negatively impacted.
- More claims would be validated if financial institutions properly advised on the submission of Preliminary Information Requests (PIRs) or ceased improperly refusing valid claims.
- A cap would do nothing to stop nuisance behaviour by CMCs who currently flout the law - in fact it would have the opposite effect as those who are desperate for profitability and unconcerned about longer term action will increase their activities to balance lower revenues thus increasing nuisance calls.
- There are a number of key costs involved in generating a claim within a CMC environment to ensure the process is fair, ethical and meets or exceeds regulatory standards.
- Rather than a cap on fees, consideration should be given to imposing a 'per submission' fee payable to the regulator, balanced by a reduction in turnover based fees.

## Regulation

- A number of measures could be adopted across the industry that - if implemented or, where they already exist, properly enforced - would fundamentally tackle malpractice and put an end to rogue operators.
- The underlying issues relating to nuisance calls are appropriately dealt with in the existing regulations, but the nuisance call issue persists because of the lack of enforcement.
- The key to enforcement is that the relevant regulator [whoever that may be following the review] is given the power to take action against any CMC that acquires these leads in an illegal manner.
- Whilst in principal we would not be opposed to the transfer of regulation to the FCA there would need to be a number of detailed controls that ensure that the regulation of CMC's does not conflict with the same organisation regulating financial institutions.

## CONTEXT

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### Why do consumers use CMCs?

- In 2008, the Financial Ombudsman (FOS) wrote to the FSA (Financial Services Authority) to say it thought the problem was so serious, and general, as to mean there ought to be a redress exercise. The FSA could have done this pursuant to section 404 of the Financial Services and Markets Act. This would have meant very large numbers of clients could be compensated without the need for a formal complaint by anyone. That this was not done has led to the need for CMC's in the PPI marketplace
- Many consumers lack the time or expertise to assess whether they have been mis-sold a product or to handle the claim process - in our present business our focus is on PPI but there have been and will be other areas of mis-selling.
- For many of the population a PPI complaint is prohibitively frightening and complicated. It would not be unreasonable to assume that the most vulnerable were at risk of being sold it as evidenced by the latest FOS annual report which shows that complaints about PPI come from socio economic groups D & E.
- Customers accept that having this work carried out by experienced management companies is of value as it saves them from having to engage with the problem – and from the potential anxiety of dealing with the institution which wronged them in the first place.
- Consumers also benefit from having an expert eye looking over the documentation – this perfectly reasonable choice is no different from using a lawyer to handle a divorce or write a will; a travel agent to book a holiday or a barber to cut ones hair – all these services can be done without the use of a paid service but consumers choose to have expert, professional assistance.
- The poor standard of complaints handling by some banks resulted in many consumers feeling they could not trust their provider. This can be evidenced by the fact that there have been a series of FSA and FCA fines and interventions, but the banks appear to have treated these almost as a cost of doing business rather than as reasons to modify behaviour. A number of other major institutions have been fined in relation to poor complaint handling, and Lloyds twice, most latterly this year with a record fine of £117 million. It is clear that the consumer cannot and should not be expected to trust their provider when it comes to complaint handling.
- Consumers became increasingly aware that they may have suffered an injustice, were not being proactively offered recompense, and did not trust their bank to fairly handle their complaint - CMCs stepped in to handle compensation claims on behalf of consumers.
- And for those who were not aware, CMCs have been able to carve out a distinct role by bringing consumers attention to the issue of PPI mis-selling and redress. This action is vital given that according to the FCA in October 2015 43% of the population do not even know that there is a PPI problem (74% of those surveyed had heard of PPI and only 77% of them understood that there might be a problem with it)

## Rogue firms and bad behaviour

- The CMC sector experienced rapid growth fuelled by the scale of the mis-selling of PPI and as the sector has grown so too have rogue elements within it which have caused significant reputational issues.
- Higher levels of regulatory fees has meant many of those CMC's are no longer trading but there is still a core of rogue companies that has a negative impact on the compliant businesses.
- Despite several regulatory initiatives introduced in recent years, a number of stakeholders remain concerned that some CMCs continue to fuel speculative claims and are bombarding consumers with unsolicited texts and calls.
- The majority of large CMCs have supported tighter regulation and have worked together with the CMR to ensure the sector adheres to industry standards.
- However, as the Chancellor rightly pointed out in the Summer Budget 2015, there are still too many instances of some CMCs acting outside of the law.
- One element that is often overlooked in the argument is that a PPI complaint is a request to a bank for the return of monies paid to them for a product that was incorrectly sold. It is on this basis that the PR from the banks and bodies such as the BBA asserting that there are large numbers of "fraudulent claims " submitted must be incorrect. If a consumer did not have PPI on a product there will be no recompense and there can therefore be no fraud. If a consumer was sold PPI by one of the major institutions there is a high likelihood it was mis-sold (based on the low level of valid rejection at FOS). Why should a consumer or an ethical CMC acting on their behalf not investigate with their provider the existence of PPI and the validity of that sale merely because of a relatively small number of rogue CMC's

## The key issues

We welcome the review which offers an opportunity to address a number of key issues:

- Finding and seeking redress for the estimated 6 million remaining eligible victims of PPI mis-selling.
- Making sure that Claims Management Companies can continue to operate in the public interest in this area and in future areas of mis-selling.
- Dealing with the issue of nuisance marketing
- Reducing speculative and unmeritorious claims for compensation

## A note on capping fees

- The terms of reference for the Review of Claims Management Regulation state that the review should: "consider the resources and powers required for a strengthened regulatory regime - including the power to implement the cap on charges that CMCs can apply to their customers - and what architecture might be most appropriate to deliver this, including its governance and scope."
- We understand that a separate consultation will look at the possible level of a cap and that this review is more interested in how a cap might be practically implemented.

- Whilst we recognise the good intention behind such a proposal, we fear the outcome could have negative consequences, not just for the CMCs but for the customers the cap is purportedly there to protect.
- By placing a limit on the maximum quantum of fee charged for any claim, a compliant CMC's ability to ethically market its services would be severely compromised – not least because it restricts our ability to identify valid claimants.
- Furthermore, the higher return obtained from larger claims reduces the scale of fee that would otherwise need to be charged to smaller claimants.
- Should an attempt be made to introduce a cap The Claims Guys will be exploring all avenues open to it. We will be making a Freedom of information act request to review the deliberations that were undertaken in order to reach any conclusions. If we are not satisfied and if appropriate based on counsels advice we may request a judicial review of the validity of the process used to determine the outcome. We will also be working with other CMC's in respect of this matter.
- ***In the following section, we suggest potential remedies to the key problems which are based on our own methodology, and outline why the imposition of a fee cap is not the answer.***

## SOLUTIONS

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- The review must be based on a thorough analysis of why the sector is thriving and why consumers use claims companies.
- There needs to be an understanding of which actions will address the detriment that the elements within the sector are causing - rather than simply penalising consumers for seeking representation.

### Identifying the remaining customers

***To identify the remaining (estimated) 6 million consumers who could be eligible for compensation for mis-sold PPI, CMCs must be a core part of the solution.***

- In the absence of banks voluntarily identifying and compensating customers to whom they mis-sold PPI, the CMC sector provides the only realistic option of helping identify the remaining customers who have yet to seek redress.
- We understand that around 70% of successful claims processed are now made through a CMC, - this trend is indicative of how crucial CMCs have become in the redress of mis-sold PPIs.
- Consumers tend not to respond to the suggestion that they may have a valid claim when that is initiated by a bank or quasi-governmental entity. It needs the skilful - and expensive - compliant actions of experienced CMCs to encourage individuals to come forward.
- Their lack of motivation should not be a reason for them to miss receiving the compensation to which they are entitled - it is therefore imperative that any further regulation does not bring detriment to the consumer by depriving them of legitimate redress.

***If a cap is introduced at a prohibitive level then our ability to operate would be compromised and therefore compliant firms like The Claims Guys, who do not robocall or send unsolicited texts, would not be able to identify remaining consumers eligible for redress.***

## Ethical marketing

***To address the issue of nuisance calls and texts, the solution is ethical marketing as practiced by The Claims Guys.***

- CMCs do not need to use intrusive methods – they have the ability to identify consumers appropriately via radio, conventional media and advertising on social media – these methods do not create a nuisance but they are more expensive to use.
- Without proper levels of earnings ethical marketing could not be afforded and the ability to encourage claimants to come forward and receive proper compensation would be massively and negatively impacted.
- The priority should be to protect the public by investigating and punishing bad practices by rogue claims companies – not restricting the ability of firms who operate to high standards (such as The Claims Guys) from identifying consumers via ethical marketing.
- Indeed, professional firms like The Claims Guys pride ourselves on our ethical standards – yet we find ourselves at a competitive disadvantage because rogue firms are failing to adhere to the code of practice and existing regulations.
- The Claims Guys does not charge upfront fees and works on a success only basis - our charges are clearly explained to consumers before contract.

***A cap would do nothing to stop nuisance behaviour by CMCs who currently flout the law - in fact it would have the opposite effect as those who are desperate for profitability and unconcerned about longer term action will increase their activities to balance lower revenues thus increasing nuisance.***

## Submitting valid claims

***To address the concerns of the financial services sector and reduce speculative and unmeritorious claims for compensation there are two clear actions.***

*Preliminary information Request (PIR)*

- Since 2013 we have been working closely with a number of the major financial institutions to develop systems that reduce the volume of formal complaints that they receive.
- This involves providing initial information that allows the bank to check whether the customer had PPI and has reduced the administration costs of the banks considerably.
- This has resulted in around 70% of the claims submitted by The Claims Guys being validated and delivering compensation for consumers.
- We believe that the percentage could be higher if financial institutions properly advised on the submission of DSARs or ceased improperly refusing valid claims as evidenced by the high percentage of remediated claims after examination by the Financial Ombudsman Service (FOS).
- 75% of claims initially rejected by the banks are subsequently awarded compensation by the FOS - far from there being a problem with speculative claims there is an issue with arbitrary rejection of claims submitted by reputable CMCs.

- Furthermore, it must be noted that we pay a number of the banks a PIR fee – this acts as a contribution towards the costs they incur in dealing with the results of their own wrongful behaviour.

*A 'per submission' fee balanced by a reduction in turnover based fees paid to the Regulator*

- The imposition of a 'per submission' fee payable to the regulator (balanced by a reduction in turnover based fees) would instantly reduce the submission of cases that had not been properly validated.
- It would stop unethical CMCs 'trawling' for cases by inappropriate and nuisance creating methods knowing that they would not be able to afford the cost of submission of claims that were unlikely to succeed.
- Currently the level of contribution to the CMR is largely based on a member company's revenue - we believe that if this was changed to reflect the number of claims made there would be an inbuilt incentive to make sure claims were successful and would cut the number of vexatious claims made.

***Rather than a cap on fees, consider imposing a 'per submission' fee payable to the regulator, balanced by a reduction in turnover based fees.***

## **ANALYSING THE COSTS OF A COMPLIANT CLAIM**

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***We believe it is vital that the review appreciates the true costs of making a compliant claim.***

- There are a number of key costs involved in generating a claim within a CMC environment to ensure the process is fair, ethical and meets or exceeds regulatory standards.
- Firstly there is the marketing expenditure – at The Claims Guys, the average marketing expenditure is 40% of the revenue generated in any one month.
- When the agreement with the consumer is on a "No Win No Fee" basis the risk of losing a claim is entirely born by a CMC. CMC's accept that this is part of the cost of marketing, however this cost of losing is made considerably worse by the ongoing failure of the banks to properly consider a claim and to continue referring valid claims to FOS.
- In addition there is a cost to assessing the complaint in a compliant manner which we undertake over the phone and can take up 30 minutes or more.
- We then have over 100 individuals who process the claim once the customer has returned the signed claim form - this team spends considerable amounts of time liaising between the consumer and the financial institution. Out of this team nearly 20 are focused on FOS which if the banks were properly processing a claim would be unnecessary.
- In addition there are back office costs such as HR, IT and Finance - our latest financial accounts for the year ended 31/12/14 show a net profit margin of 12.2%. However for the year ended 31/12/13 the net profit margin was only 1.2%.

## ADDITIONAL MEASURES

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We believe that in addition to the actions we have outlined above, a package of measures could be adopted across the industry that should be considered as part of this review. If implemented or, where they already exist, properly enforced these measures would fundamentally tackle malpractice and put an end to rogue operators:

- No charging up-front fees
- No charging fees for monies obtained but set against a consumer's arrears
- No charging fees for future benefits
- No claims generated from text messages even if the consumer has a valid opt-in
- No claims generated from robocalls even if the consumer has a valid opt-in
- All telephone calls recorded and retained for a minimum of 12 months
- No unrequested phone calls to be made on Sunday's or outside of the hours 8:30am to 8:30pm

## THE REGULATORY ENVIRONMENT

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### Nuisance calls: enforce the existing regulations

- Whilst we believe the measures we have outlined should be incumbent on all CMCs we believe that if existing regulations were enforced strictly across the sector we would not be facing the industry wide challenges that currently exist.
- The underlying issues relating to nuisance calls are appropriately dealt with in the existing regulations, but the nuisance call issue persists because of the lack of enforcement.
- The regulator needs to follow the trail from the nuisance calls to the eventual claim and then the appropriate regulator can take any action required.
- It is almost always the case that the nuisance calls and texts are generated illegally and the CMC who is in receipt of these leads should be penalised for processing them.
- There has been only one action against a CMC as a result of illegally generating leads yet millions of these calls and texts have been made over the past 5 years.
- The current regulator has the power to issue penalties and or make restrictions to a CMC's authorisation but appear not to have used these powers in respect of nuisance calls and texts.

## Future regulation

- We do however believe in the principle that the regulation should be wholly financed from industry contributions and that there is an opportunity to modify the existing financing regime to incentivise better practice.
- The review is considering further reform of the existing regime, with new powers and resources provided to the CMRU; or dual regulation between the CMRU and the Financial Conduct Authority (FCA); or creation of a new independent regulator; or transfer of responsibility for regulation of CMCs to the FCA.
- Whilst in principal we would not be opposed to the transfer of regulation to the FCA there would need to be a number of detailed controls that ensure that the regulation of CMC's does not conflict with the same organisation regulating financial institutions. The reason for this is that CMC's action directly impacts the profitability of the financial institutions.

***We believe that the key to enforcement is that the relevant regulator [whoever that may be following the review] is given the power to take action against any CMC that acquires leads in an illegal manner***

***By so doing consumers who should and often need to receive legitimate compensation will be protected whilst the issues of supposed wasted costs and nuisance will have been resolved.***