

Claims Management Companies and Financial Services Complaints

*A joint note from the Claims Management Regulator
(the Ministry of Justice), the Financial Services
Authority, the Financial Ombudsman Service and the
Financial Services Compensation Scheme*

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This note is designed to assist consumers, financial businesses and claims management companies to:

- **understand the role of claims management companies in financial services complaints;**
- **provide specific material and information on related topics of concern and respond to frequently asked questions; and**
- **explain the respective relevant roles of the Claims Management Regulator, the Financial Services Authority (FSA), the Financial Ombudsman Service (ombudsman service) and the Financial Services Compensation Scheme (FSCS).**

Most consumers with complaints about a financial business, such as a bank or an insurance company, deal with the matter themselves and in most cases the financial businesses can quickly resolve the problem.

The FSA sets rules to ensure that financial businesses deal with complaints promptly and fairly.

If the consumer does not agree with the financial business's response to their complaint they can ask the ombudsman service to consider the case.

The ombudsman service is free to consumers and is an informal and straightforward alternative to the courts. If the business has become insolvent or stopped trading, the FSCS may be able to compensate consumers that have suffered a financial loss. Consumers are not charged for using the FSCS.

This note is focused on those cases where the customer has decided to use the services of a claims management company (CMC) to handle their complaint.

Typically CMCs charge their clients a fee for doing this – normally only if they “win” the case and get compensation for the consumer. In some cases these fees can be significant – one third of the total compensation awarded or more. These are fees that the customer has to meet themselves from the compensation awarded.

The decisions which the ombudsman service and the FSCS make on individual cases are not more or less favourable because a consumer has chosen to be represented by a CMC.

As with most businesses, the quality of service offered by CMCs can vary significantly so if a consumer is considering using a CMC, it is advisable to shop around and think carefully before agreeing to any financial commitments with the CMC.

CMCs are regulated by the Claims Management Regulator.

Information for Consumers

Information for those using, or considering using, the services of a CMC

1. What is a claims management company (CMC)?

A claims management company is a business that handles certain types of claims for compensation (for instance in respect of personal injury claims and mis-sold financial products and services such as payment protection insurance, endowment mortgages and investments).

2. Are CMCs authorised?

Any business that handles such claims must be authorised by the Claims Management Regulator, unless they are covered by an exemption. There are exemptions for certain groups, such as solicitors and advice agencies. Authorised businesses that offer to help you make a compensation claim must follow strict conduct rules. For example, they must:

- not engage in unsolicited electronic marketing, face-to-face 'cold calling' or in any form of high-pressure selling;
- where advice is given, advise the client unambiguously of ombudsman schemes or other official means of obtaining redress;
- give you written information on how you can pursue a claim and the costs involved before a contract is agreed;
- allow a 'cooling off' period of at least 14 days; *and*
- operate a consumer complaints scheme.

3. Will my complaint be handled any differently depending on whether or not I use a CMC?

No. Your case will be decided in the same way whether you choose to use a CMC or not, by the financial business, the ombudsman service or the FSCS.

4. How much will the CMC cost?

In most cases, a CMC will charge a fee; this will affect the amount of any settlements received by the consumer. The CMC should inform you of its fees or any costs in the written information they

must provide before you enter into a contract with them. A consumer **should not** pay any money, provide credit card details or agree a verbal contract until they have seen the written information and they have had a reasonable time to consider this.

5. When do I pay a CMC for their service?

Some CMCs will ask you to pay an advance fee – which will usually be refunded if your claim for compensation is not successful – although most CMCs do not charge advance fees. It is advisable for consumers to 'shop around'.

Consumers are encouraged to make sure they fully understand the implications of paying an advance fee and not to pay this until they have seen the written information. Most CMCs that charge an advance fee will still require a percentage of any compensation you receive at the end of the claim and this can be as much as a third of any compensation to which you are entitled.

So, if a CMC charged 30% (including VAT), a consumer who obtained £1000 compensation would pay £300 in fees to the CMC – leaving him/her with £700. The percentage charges and how this relates to the actual compensation you will receive should also be included in the written information provided by the CMC before a contract is agreed.

Consumers should note that compensation may be awarded in the form of a lump sum or as a reduction on amounts they owe (for example, a reduction of amounts outstanding on a loan or of arrears). In some instances, a CMC's fees may therefore be higher than any lump sum compensation received by the client.

A CMC must permit a client to withdraw from a contract at any time. Any charge to the client shall be limited to what is

reasonable in the circumstances and shall reflect work undertaken by the business.

6. Are CMCs regulated?

The Claims Management Regulator is responsible for regulating the activities of businesses providing claims management services in England and Wales under the Compensation Act 2006. Businesses that offer to help consumers make a claim for a mis-sold financial product must be authorised to do so by the Claims Management Regulator and must follow strict conduct rules.

Solicitors are regulated by the Solicitors Regulation Authority.

7. What can I do if my CMC has acted unfairly?

All CMCs must have a complaints handling procedure. If you do not have a copy, you can request one from the business or obtain one from its website.

If you want help making a complaint, you will find advice on writing a letter of complaint on the DirectGov website (www.direct.gov.uk/en/Governmentcitizensandrights/Consumerrights/Howtocomplainaboutgoodsandservices/index.htm), or you can contact Consumer Direct on 0845 404 0506.

If you are dissatisfied with the way that a CMC has handled your complaint you can ask the Claims Management Regulator to review your case.

8. Will I be contacted even if I've appointed a CMC?

You might be. A financial business may still need to contact you directly about your account.

The ombudsman service will usually contact your CMC first, but there may be occasions when they need to contact you directly.

The FSCS may also contact consumers if necessary. Normally this is to obtain further evidence where the CMC has been unable to provide enough to support the

complaint. The FSCS will pay claimants directly unless explicitly instructed to do otherwise.

General information

If you are considering using a CMC you should:

- Not be pressured into making any on-the-spot decisions.
- Make sure you understand the fees the CMC will charge – ask for full written information from the business about the service it is offering, what it will cost and the time it will take before paying **any** money
- Seek independent advice about making your complaint -
 - Visit the Financial Ombudsman Service website at: www.financial-ombudsman.org.uk/consumer/complaints.htm for information about how to make a complaint yourself or phone them for free on **0300 123 9 123** 8am to 6pm, Monday to Friday. This number is free to call from landlines and they are happy to phone you back
 - Contact your local Citizens Advice or Trading Standards for advice on the best way to deal with financial problems and complaints or
 - Visit: www.moneyadvice.service.org.uk for impartial information and guidance about your money to help you work out what's right for you
 - Visit www.fscs.org.uk to understand how the FSCS handles claims

If you **do** decide that you want a CMC to take on your complaint for you always:

- Check the CMC is authorised at www.justice.gov.uk/about/cmr.htm
- Think carefully before you hand over any money in advance or give your credit or debit card details out to anyone.

Further information is available at: www.justice.gov.uk/guidance/inspection-and-monitoring/claims-management-regulation/information-for-consumers.htm

Financial services businesses

Information for financial services businesses receiving complaints from CMCs

1. Should I deal with complaints from CMCs differently?

FSA rules provide that a complaint may be brought by a third party on a consumer's behalf. These rules require that financial businesses must operate effective procedures for the prompt and fair handling of expressions of dissatisfaction from, or on behalf of, a consumer about a firm's provision of, or failure to provide, a financial service.

FSA rules do not prescribe the complaints handling processes that a business must adopt, however, the outcomes for the consumer should be the same regardless of whether the consumer uses a representative.

A complaint may be generated because a CMC has brought a particular issue to a consumer's attention. This does not mean that the complaint is less valid than any complaint that has been brought directly by a consumer.

Each complaint must be assessed on its merits, regardless of the process by which it was initiated. If a CMC backed complaint is subsequently referred to the ombudsman service or the FSCS, it will be assessed in the same way it would if the consumer had brought the complaint directly.

2. Some CMCs just send me a list of consumers and ask if we have ever dealt with them – is that a complaint?

No. The FSA rules about complaints only apply when there is a complaint about a product or service that you have provided (or failed to provide).

Simply asking whether or not a service has been provided is not a complaint.

However, where you receive a request for information about a consumer, the Data Protection Act 1998 may also apply.

3. What is being done to stop CMCs bringing frivolous complaints?

The ombudsman service has the power to dismiss claims which are considered to be '*frivolous or vexatious*', but in practice they find such cases to be rare.

Last year (2010/11) the ombudsman service concluded that only 0.9% of their total caseload could be categorised as '*frivolous or vexatious*' (0.4% in the year before that).

The ombudsman service and the FSCS monitors submissions received from CMCs and if either has concerns about how CMCs are handling cases it will refer this onto the Claims Management Regulator.

4. Why can't a CMC be charged if they take a complaint to the ombudsman and subsequently lose?

Consumers have a statutory right to refer disputes to the ombudsman service free of charge if they are unhappy with the way a business has dealt with a complaint. A business cannot claim back the costs of dealing with the complaint from the consumer. This applies whether or not the consumer has appointed a representative.

The FSCS deals with claims if an authorised financial firm is no longer trading. Consumers with a claim against these firms can apply for compensation from the FSCS free of charge. The FSCS also provides assistance to claimants entirely free of charge.

5. CMCs keep sending me standard template letters – do I have to treat them as proper complaints?

Ideally, consumers – and especially CMCs acting on their behalf – should try to identify the relevant points of their complaint as clearly as possible when they make a complaint. But, the FSA's rules require businesses to consider complaints fairly – regardless of how they are made. Even if you receive a standardised

complaint, it does not alter the fact that the consumer has expressed some form of dissatisfaction about the product or service provided.

6. We feel we are being unfairly targeted by a CMC, what can we do about it?

CMCs are regulated by the Claims Management Regulator, part of the Ministry of Justice. If you believe that a CMC is not acting in accordance with the

Conduct Rules with which they must comply as a condition of their authorisation, you can inform the Claims Management Regulator. This will help the Claims Management Regulator to prioritise and target enforcement work to tackle breaches of its Conduct Rules, in particular where the services provided by a CMC do not meet the needs of the consumer, causing consumer detriment.

The roles of the Claims Management Regulator (Ministry of Justice), Financial Services Authority, Financial Ombudsman Service and the Financial Services Compensation Scheme

The Claims Management Regulator is part of the Ministry of Justice and is responsible for regulating the activities of businesses providing claims management services in England and Wales under the Compensation Act 2006. Authorised businesses that offer to help consumers make a claim for a mis-sold financial product must follow strict Conduct Rules.

Further information about the role of the Claims Management Regulator is available at: www.justice.gov.uk/about/cmr.htm

The Financial Services Authority is the regulator of most financial services in the UK. Its role includes setting and overseeing the rules about how firms handle complaints. It requires the financial businesses it regulates to have procedures for the prompt handling of complaints and to assess complaints promptly and fairly, whether these are brought on behalf of consumers by a third party such as a claims management company, or directly by a consumer.

Further information about the role of the FSA is available at: www.fsa.gov.uk

The Financial Ombudsman Service is free for consumers and is an impartial service established by government to settle individual complaints between consumers and businesses providing financial services; its decisions are binding on financial businesses up to £100,000. (This will increase to £150,000 for cases we receive from 1 January 2012.)

Further information about the Financial Ombudsman Service is available at: www.financial-ombudsman.org.uk. If you have already complained about a financial firm or want advice about how to complain then the leaflet, '[your complaint and the ombudsman](#)', gives more details.

The **Financial Services Compensation Scheme** is the UK's statutory fund of last resort for customers of authorised financial services firms. This means that the FSCS can pay compensation to consumers if a financial services firm is unable, or likely to be unable, to pay claims against it. The FSCS is an independent statutory body. It does not charge individual consumers for using its service. There are limits to the cover the FSCS can provide.

Further information on the protection the FSCS provides is available at: www.fscs.org.uk